

Contract of Indemnity
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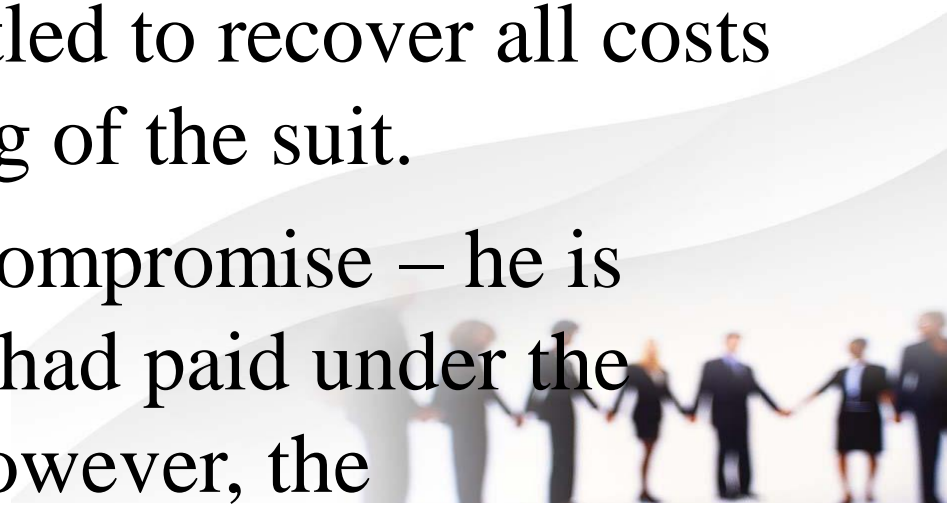
- The definition of a contract of indemnity as laid down in Section 124 – “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.
- The term Indemnity literally means “Security against loss”. In a contract of indemnity one party – i.e. the indemnifier promise to compensate the other party i.e. the indemnified against the loss suffered by the other.



- Every contract of insurance, other than life insurance, is a contract of indemnity.
- Eg: A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.



Right of the indemnity holder

- An indemnity holder (i.e. indemnified) acting within the scope of his authority is entitled to the following rights –
 - 1. Right to recover damages – he is entitled to recover all damages which he might have been compelled to pay in any suit in respect of any matter covered by the contract.
 - 2. Right to recover costs – He is entitled to recover all costs incidental to the institution and defending of the suit.
 - 3. Right to recover sums paid under compromise – he is entitled to recover all amounts which he had paid under the terms of the compromise of such suit. However, the
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- 4. Right to sue for specific performance – he is entitled to sue for specific performance if he has incurred absolute liability and the contract covers such liability. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-
- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit .



- (3) all sums which he may have paid under the terms of any compromise of any such suit,



Right of Indemnifier

- Section 125 of the Act only lays down the rights of the indemnified and is quite silent of the rights of indemnifier as if the indemnifier has no rights but only liability towards the indemnified.
- In the logical state of things if we read Section 141 which deals with the rights of surety, we can easily conclude that the indemnifier's right would also be same as that of surety.
- Where one person has agreed to indemnify the other, he will, on making good the indemnity, be entitled to succeed to all the ways and means by which the person indemnified might have protected himself against or reimbursed himself for the loss.



- Principle of Subrogation is applicable because it is an essential part of law of indemnity and is based on equity and the Contract Act contains no provision in contravention with.

