

CONTRACT OF GUARANTEE

Rights and liabilities of co-sureties

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SURBHI WADHWA

Assistant Professor (Law)

Jiwaji University,

Gwalior



Rights and liabilities of co-sureties

- *Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default - Where two persons contract with a third person to undertake a certain liability,*



- and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. *[Section 132]*



- For example, 'A' and 'B' make a joint and several promissory note to 'C'. 'A' makes it, in fact, as surety for 'B', and 'C' knows this 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.



- In other words, any undertaking between debtors *inter se*, that one of them only shall be liable as surety, will not affect the right of the creditor in any way even if the creditor knew of the agreement between the debtors.



- *Release of one co-surety does not discharge others -*
Where there are co-sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties. [Section 138]



- *Guarantee on contract that creditor shall not act on it until co-surety joins -*
Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join. [Section 144]



- *Co-sureties liable to contribute equally* - 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,



- in the absence of any contract to the contrary, 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 [*Section 146*].



- *For examples,*
- 'A', 'B' and 'C' are sureties to 'D' for the sum of Rs. 3,000 lent to 'E'. 'E' makes default in payment. 'A', 'B' and 'C' are liable, as between themselves, to pay Rs. 1,000 each.



- 'A', 'B' and 'C' are sureties to 'D' for the sum of Rs. 1,000 lent to 'E', and there is a contract between 'A', 'B' and 'C' that 'A' is to be responsible to the extent of one-quarter, 'B' to the extent of one-quarter, and 'C' to the extent of one-half. 'E' makes default in payment. As between the sureties, 'A' is liable to pay Rs. 250, 'B' Rs. 250, and 'C' Rs. 500.



- *Liability of co-sureties bound in different sums -*
Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit [*Section 147*].



- *For example,*
- 'A', 'B' and 'C', as sureties for 'D', enter into three several bonds, each in a different penalty, namely, 'A' in the penalty of each Rs. 10,000, 'B' in that of Rs. 20,000, 'C' in that of Rs. 40,000, conditioned for D's duly accounting to 'E'. 'D' makes default to the extent of Rs. 30,000. 'A', 'B' and 'C' are each liable to pay Rs. 10,000.



- 'A', 'B' and 'C', as sureties for 'D', enter into three several bonds, each in a different penalty, namely, 'A' in the penalty of Rs. 10,000, 'B' in that of Rs. 20,000, 'C' in that of Rs. 40,000, conditioned for D's duly accounting to 'E'. 'D' makes default to the extent of Rs. 40,000. 'A' is liable to pay Rs. 10,000, and 'B' and 'C' Rs. 15,000 each.



- 'A', 'B' and 'C', as sureties for 'D', enter into three several bonds, each in a different penalty, namely, 'A' in the penalty of Rs. 10,000, 'B' in that of Rs. 20,000, 'C' in that of Rs. 40,000, conditioned for D's duly accounting to 'E'. 'D' makes default to the extent of Rs. 70,000. 'A', 'B' and 'C' have to pay each the full penalty of his bond.

