

- B.A.LL.B Five Years Course
II semester
Paper –V special contract
(29-3-2020)

Unit-II guarantee

CONTRACT OF GUARANTEE

Sec. 126 defines contract of guarantee

Includes –

Performance of a promise – corresponds to a duty

Discharge of a liability – corresponds to a debt –

Either oral or written

Operative only in case of default



Contract of Guarantee (Sec. 126)

A Contract of Guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is known as the 'Surety', the person in respect of whom the guarantee is given is known as the 'Principal Debtor', and the person to whom the guarantee is given is called the 'Creditor'.

Three parties in contract of guarantee are:



Principal Debtor – The one who borrows or is liable to pay and on whose default the guarantee is given

Creditor – The party who has given something of value to borrow and stands to receive the payment for such a thing and to whom the guarantee is given

Surety/Guarantor – The person who gives the guarantee to pay in case of default of the principal debtor