

- B.A.LL.B Five Years Course
II semester
Paper –V special contract
(30-3-2020)

Unit-II

Basic essentials of a
valid guarantee contract

Essential Features of Guarantee

1. Tripartite Agreement:

Concurrence of three Contracts: The Contracts connecting each-other as contract between:

- ◆ **the Principal Debtor and Creditor,**
- ◆ **the Creditor and Surety, and**
- ◆ **the Surety and Principal Debtor**

2. Liability:

Under such contract the primary liability is of the principal debtor and only secondary liability is of the surety.

Contd.

3. Essentials of Valid Contract:

Requirements for Valid Contract i.e. free consent, consideration, lawful object, competency of the parties etc. are necessary to form this kind of contract. But, in respect of consideration, no direct consideration in the contract between the surety and creditor. Consideration of principal debtor is considered to be adequate for the surety.

Indian Contract Act 1872

Persons not competent to contract

1. Minors
2. Persons of unsound mind
3. Persons disqualified by law

Minor

The term Minor is explained in sec 3 of Indian Majority Act 1875

'A minor is a person who has not completed eighteen years of age'

Note:

Where a guardian has been appointed to take care of a minor's person or property under the guardian and Wards Act 1890 or Where the superintendence of minor's property is assumed by a Court of Wards

The person becomes major on completing the age of 21 years

Position of Minor before Mohri Bibi Case (1903)

- Before 1903 it was felt that the phrase in Sec. 11 “no person is competent to contract who is not of the age of majority..” has two interpretations –
- (1) a minor is absolutely incompetent to contract; the agreement with minor void ab initio,
- (2) an agreement with the minor voidable, the minor is not liable but the other party is liable.

Indian Contract Act 1872

Effects of minor's contract

Sec.10 & 11 make it clear that any agreement made by a minor is *void ab initio*(not existent from the very beginning) Mohri bibi V. Dharmodas Ghosh(1903)

Facts.

"A minor borrowed Rs. 20000 from B and as security executed a mortgage in his favor.

He became major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled.

It was held that a mortgage by a minor was void and B was not entitled for recovery of money.

Contract for the benefit of the Minor

- Srikakulam Subrahmanyam v. Kurra Shubha Rao (ILR 1949 Mad 141 PC),
In order to pay off the promissory note and mortgage debt of his father, the minor son and his mother sold a piece of the land to the holders of the promissory note. Afterwards the minor filed to recover the property back. It was found that the sale was made for the benefit of the minor and his mother (guardian) had the capacity to contract on his behalf. The sale of land was held to be valid.