

- B.A.LL.B Five Years Course  
II semester  
Paper –V special contract  
(2-3-2020)

## Surety's Liability

The liabilities of a surety arises from the creation of a contract. But it comes into execution only when the principal debtor fails to perform his obligation. The liabilities are already found in the name of contract and provided in Section. 16 of NCA. But a surety may place a limit upon his liability in the contract. The nature of liability of a surety according to the contract of guarantee is give below:



1. **Primary or co-extensive nature of liability**: The liability of the surety is secondary and co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. In general terms the quantum of obligation of a surety wills neither be more nor less than the surety will be responsible until the principal debtor becomes free his liability.
2. **Secondary and Contingent nature of liability**: The surety is liable only when the principal debtor fails to fulfill promise made to the creditor.
3. **Limited nature of liability**: When a security and guarantee both are given as a consideration for the debt or liability, the surety will not be liable to the extent of the security.



3. **Limited nature of liability**: When a security and guarantee both are given as a consideration for the debt or liability, the surety will not be liable to the extent of the security.

Sometimes, a discharge of the principal debtor by the operation of law does not discharge the surety from his liability.

- A. The surety will be liable for the remaining part of the debt from the sale of the security of the principal debtor.
- B. The surety will not be liable if any alterations are made by the principal debtor and creditor without the consent of the surety.
- C. The surety will not be liable to the extent of loss or destruction.
- D. The surety will be liable for the entire debt if:
  - The principal debtor is minor;
  - The principal debtor becomes insolvent; or
  - The principal debtor dies.