

B.A.LL.B five years course (paper-5) special contract(second semester)

- Nature of contract –indemnity
- Date (26-3-2020)

A contract of indemnity may be express or implied depending upon the circumstances of the case, though Section 124 of the Indian Contract Act does not seem to cover the case of implied indemnity.

A broker in possession of a government promissory note endorsed it to a bank with forged endorsement. The bank acting in good faith applied for and got a renewed promissory note from the Public Debt Office. Meanwhile the true owner sued the Secretary of State for conversion who in turn sued the bank on an implied indemnity. It was held that – it is general principle of law when an act is done by one person at the request of another

Important –case law

Implied Indemnity was identified in the case of 'SECRETARY OF STATE vs. THE BANK OF INDIA' [1938] where an agent presented a government promissory note in his custody to a bank with a false presentation. The bank in good trust put into use the promissory note for a refurbished promissory note which was issued from the Public Debt Office. In the interim time, the real owner of the note sued the Secretary of State for conversion. The

the Secretary of State for conversion. The Secretary of State, in turn, prosecuted the bank on the basis of implied indemnity where it was held that the express indemnity clause is not necessary for face of implied right to indemnity which is beforehand existing under the Indian Laws.

The cases of implied indemnity are bargained in the Indian Contract Act 1872, under the section 69, section 145 and section 222

1. Some special cases of implied indemnity

- 1-under section 69,"a person who is intrested in the payment of money which another is bound by law to pay and who therfore pays it,is entitled to reimboursed by the other"
- 2- section 145, provides "in every contract of guarantee there is an implied promise by the principal debtor to indemnity the surety;and

- The surety is entitled to recover from the principal debtor whatever
- sum he has rightfully paid under the guarantee , but no sums
- which he has paid wrongfully”
- 3 section 222-given that ‘the employer of an agent is
- bound to indemnity hi against the consequences of
- all lawful acts done by such agent in execise of the authority conferred upon him’