

# Contract-II — Special Contracts

---

*KSLU LL.B. — Complete Exam-Ready Study Bundle (All Five Units)*

KSLU LL.B. Study Bundle

**Medha-Academy**

[www.medha-academy.in](http://www.medha-academy.in)

Notes Version: **v1.0**

June 2026



**Read this first page, then go to your unit.** This bundle covers the whole of Contract-II (Special Contracts) under the Indian Contract Act, 1872 (Indemnity, Guarantee, Bailment, Pledge, Agency), the Indian Partnership Act, 1932, and the Sale of Goods Act, 1930. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real KSLU exam questions (2011–2026, both 80- and 100-mark papers).

## How to Use These Notes

**What this is.** A complete, exam-focused bundle covering all five units of KSLU Contract-II. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time.

**Who it is for.** The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

**What is inside every topic** — the same blocks, in the same order:

Block	Its job	The mark it earns
<b>Previous Year Questions</b>	Real questions + years asked	What to prepare and how often it repeats
<b>The Hook</b>	A true story / landmark-case opener	Memorable; a strong opening line
<b>Jurist / Statutory Quotes</b>	Exact definitions & sections	Examiners reward precise authority
<b>In Simple Terms</b>	Plain-English translation	Ensures you <i>understand</i>
<b>The Visual (chart)</b>	Maps the topic structure	Recall and structure at a glance
<b>Case Laws</b>	Landmark judgments + ratio	Case names with years are pure marks
 <b>Tracker +  Risk Alert</b>	Answer plan + applied IRAC	Converts knowledge into a scoring answer

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

**The 4-step study plan.** (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the Tracker and one Risk Alert.

## The 10 Rules That Win Marks

- Lead with a definition + roadmap.**
- Follow the Blueprint Tracker** stage by stage.
- Name the case AND the year** every time.
- Quote the exact section** (ICA 1872 / Partnership Act 1932 / Sale of Goods Act 1930).
- Translate every Latin maxim in [brackets].**
- Use the four IRAC headings** for problems; spot the decoy fact.
- Always give a definite verdict.**
- Use the chart's structure** to organise the body.
- Close with a short, confident conclusion.**
- Manage time** so no high-mark question is left unwritten.

**Disclaimer.** *A study aid, not a substitute for bare Acts and prescribed texts. Cross-check section numbers against the official text. © Medha-Academy.in · KSLU LL.B. · For personal academic use.*

---



# UNIT 1 – Contract of Indemnity & Contract of Guarantee

---

Contract-II (Special Contracts) · KSLU LL.B. · Medha-Academy.in

---

## Table of Contents

---

1. Contract of Indemnity
  2. Difference Between Indemnity and Guarantee
  3. Contract of Guarantee
  4. Rights of Surety
  5. Discharge of Surety
  6. Continuing Guarantee
  7. Co-Surety & Extent of Surety's Liability
  8. Quick Revision & Case Law Table
- 

## 1. Contract of Indemnity

---

### Previous Year Questions

- **[16M]** Define contract of indemnity. Explain the rights of an indemnity holder. (Jan2012, Jun2013, Dec2013, Jun2017, Dec2019, + 80-mark Jun2019, Nov2022, Mar2022, Feb2025, Jun2025) ★★
- **[16M]** In what respects does Indian law differ from English law on the contract of indemnity? (Jun2013)
- **[Short Note]** Contract of Indemnity / Rights of indemnity holder. (Dec2012, Jun2016, Dec2016, Dec2017, Jun2018, Jun2019, Dec2020, Apr2022, Apr2023)

### The Hook

In *Adamson v Jarvis (1827)*, an auctioneer sold cattle on the instructions of a man who turned out not to be the owner. The true owner sued the auctioneer and won. The auctioneer then turned on the man who had told him to sell — and the court held that a

person who acts on another's request is entitled to be indemnified against the consequences. That single idea — “you told me to do it, so you cover my loss” — is the seed of every indemnity contract.

## What is a Contract of Indemnity?

An indemnity is a promise to **save another person from loss**. One party (the **indemnifier** or *promisor*) promises to make good the loss suffered by the other (the **indemnity holder** or *promisee*). Section 124 limits the statutory definition to loss caused **by the conduct of the promisor himself or by the conduct of any other person** — it does not, in its words, cover loss from accidents or acts of God.

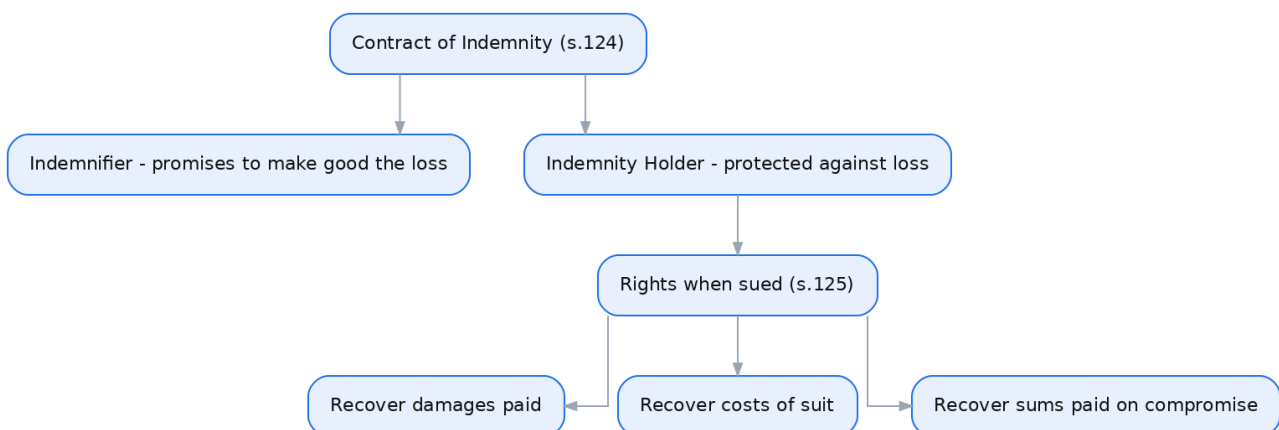
Every valid indemnity must also satisfy the ordinary essentials of a contract under Section 10 — free consent, lawful object, lawful consideration and capacity. An indemnity to do an unlawful act (e.g. to commit a crime) is void.

**Section 124, Indian Contract Act, 1872:** “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a ‘contract of indemnity’.”

**In Simple Terms:** If I promise, “Go ahead and do this — if you lose money because of what I do or what someone else does, I will pay you back,” that promise is a contract of indemnity. Insurance is the everyday example, though the Act's definition is narrower than insurance practice.

**Indian vs English Law (the Jun2013 angle):** English law is **wider** — it covers loss from any cause, including accident and acts of a third party not at the promisor's instance. Indian law (s.124) is **narrower** — it covers only loss caused by the conduct of the promisor or another person, and the courts have read in the wider protection through equity (Gajanan Moreshwar).

## The Visual



## Rights of the Indemnity Holder (Section 125)

When the indemnity holder is **sued** in respect of a matter to which the indemnity applies, and he acts within his authority, he can recover from the indemnifier:

- **All damages** he is compelled to pay in any suit on the matter indemnified against;
- **All costs** he is compelled to pay in bringing or defending such a suit, provided he acted prudently or with the indemnifier's authority;
- **All sums** paid under the terms of any **compromise** of such a suit, provided the compromise was prudent or authorised.

**Commencement of liability — the key refinement.** Section 125 speaks only of recovery *after* the holder has paid. But the courts have held the indemnity holder need **not** wait until he actually pays. In *Gajanan Moreshwar v Moreshwar Madan (1942)*, the Bombay High Court held that once the holder's liability has become **absolute and certain**, he can compel the indemnifier to put him in funds to meet it — "*indemnity is not necessarily given by repayment after payment; it requires that the party be saved from the loss in the first place.*"

## Case Laws

- **Adamson v Jarvis (1827)** — a person acting on another's request is entitled to be indemnified against the consequences.
- **Gajanan Moreshwar v Moreshwar Madan (1942)** — the indemnity holder may compel the indemnifier to discharge the liability *before* he himself actually pays, once the liability is absolute.
- **Osman Jamal & Sons Ltd v Gopal Purshottam (1929)** — an indemnified party may recover even before paying, once the liability is established.

### ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** open with *Adamson v Jarvis*; state you will define indemnity (s.124), explain the rights of the holder (s.125), and the rule on commencement of liability.
- **STAGE 2** → **Definition & essentials:** quote s.124; note it must satisfy s.10 essentials; distinguish express and implied indemnity.
- **STAGE 3** → **Rights of indemnity holder:** the three heads under s.125 — damages, costs, compromise sums.
- **STAGE 4** → **Commencement of liability + Indian/English contrast:** *Gajanan Moreshwar*; Indian s.124 narrower than English law.
- **STAGE 5** → **Verdict:** indemnity protects against loss; equity ensures the holder is saved, not merely reimbursed.

### ⚠️ **FACT-PATTERN RISK ALERT**

**Scenario:** An auctioneer sells goods on A's instruction; the goods belong to a third party who sues and recovers from the auctioneer. The auctioneer, **before paying** anything himself, asks A to cover the liability. (Decoy: A argues the auctioneer must first pay out of his own pocket.)

- **I — ISSUE:** Can the indemnity holder claim before he actually pays the loss?
- **R — RULE:** s.124-125; Gajanan Moreshwar — once liability is absolute, the holder may be put in funds before paying.
- **A — ANALYSIS:** The auctioneer acted on A's request (implied indemnity, *Adamson v Jarvis*); his liability to the true owner is now absolute; the decoy fails because indemnity means being saved from loss, not merely repaid after it.
- **C — CONCLUSION:** A is bound to indemnify the auctioneer, and must do so even before the auctioneer pays.

## 2. Difference Between Indemnity and Guarantee

### Previous Year Questions

- **[16M]** Define contracts of indemnity and guarantee and discuss their differences. (Jun2011, Jun2014, Dec2014, Dec2018, + 80-mark Aug2024, Jan2026) ★★★
- **[Short Note]** Distinction between Indemnity and Guarantee. (Jun2013)

### The Hook

*Birkmyre v Darnell* (1704) drew the line that exam-setters love. One man told a creditor, "Lend to him, and if he does not pay, I will." The court said: because the original debtor remained liable, this was a **guarantee** (a promise to answer for *another's* default), not an indemnity (a promise to bear *one's own* loss). Three centuries later, that single sentence still decides whether two parties or three are on the hook.

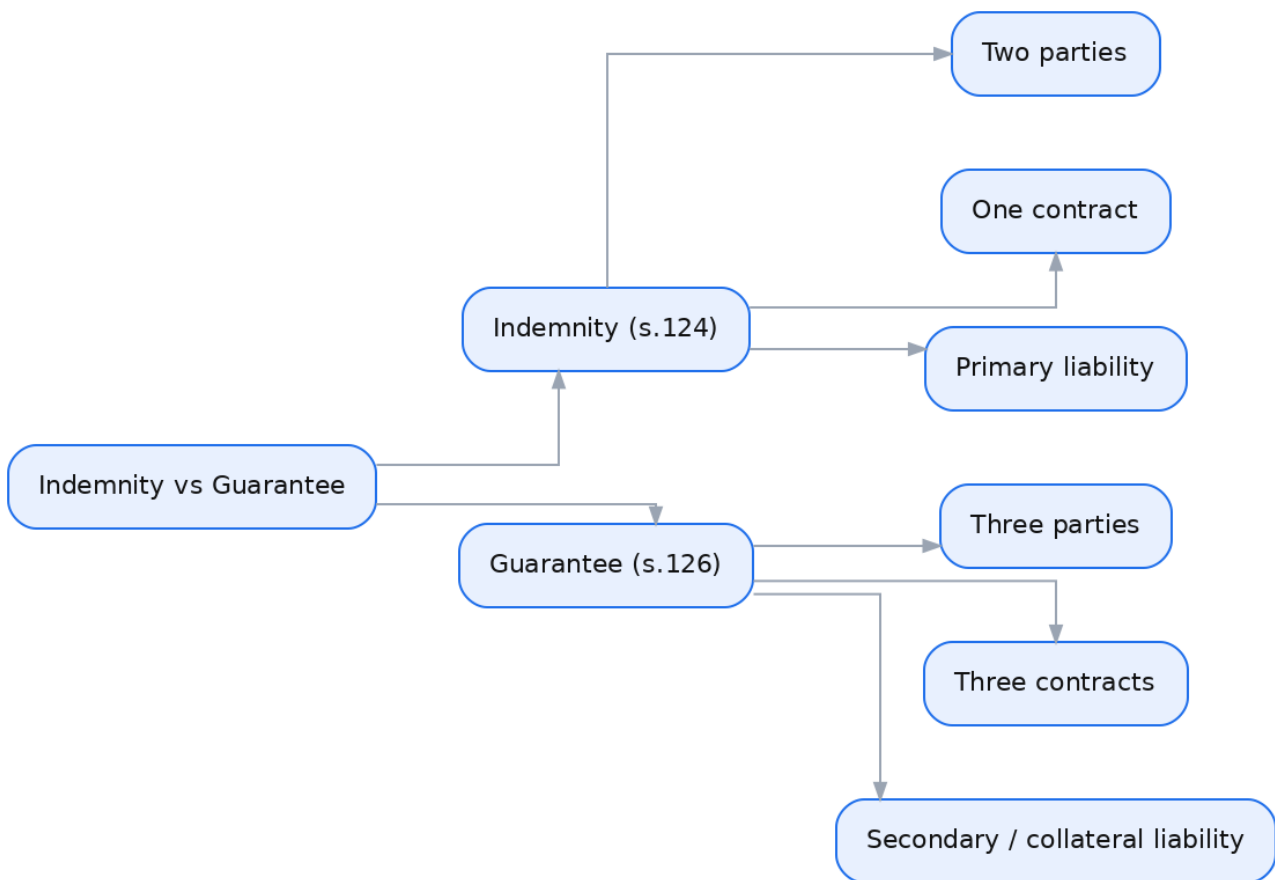
### How the Two Differ

Both are contracts to protect against loss, but they are built differently. The simplest test: **count the parties and the promises**. Indemnity has two parties and one contract; guarantee has three parties and (in substance) three contracts.

**The core distinction:** In **indemnity** the indemnifier's liability is **primary and independent** — it arises the moment the loss occurs. In **guarantee** the surety's liability is **secondary and collateral** — it arises only when the principal debtor defaults.

**In Simple Terms:** An indemnifier says "I will bear *your* loss." A surety says "If *he* doesn't pay *his* debt, I will." Indemnity stands alone; guarantee leans on a main debt that someone else owes.

## The Visual



## Point-by-Point Comparison

Basis	Indemnity (s.124)	Guarantee (s.126)
Parties	Two — indemnifier & indemnity holder	Three — surety, principal debtor, creditor
Number of contracts	One	Three (creditor-debtor, creditor-surety, surety-debtor)
Nature of liability	Primary	Secondary / collateral (surety liable only on default)
Existence of debt	No prior debt necessary	A recoverable principal debt must exist
Request	Indemnifier acts on his own interest	Surety undertakes at the principal debtor's request
Purpose	To reimburse a loss	To give security for a debt
Right to sue third party	Indemnifier cannot sue a third party in his own name	On payment, surety steps into the creditor's shoes (subrogation, s.140)

## Case Laws

- ***Birkmyre v Darnell (1704)*** — a promise to answer for another's default, the principal debtor remaining liable, is a guarantee, not an indemnity.
- ***Punjab National Bank v Sri Vikram Cotton Mills (1970)*** — surety's liability is collateral and arises only on the principal debtor's default.

### ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** open with *Birkmyre v Darnell (1704)*; promise to define both and tabulate the differences.
- **STAGE 2** → **Definitions:** quote s.124 and s.126 precisely.
- **STAGE 3** → **The differences (the scoring core):** parties, contracts, nature of liability, existence of debt, request, subrogation.
- **STAGE 4** → **Illustrate:** apply the "lend to him and I will pay" example to show secondary liability.
- **STAGE 5** → **Verdict:** indemnity = bear your own loss (primary); guarantee = answer for another's default (secondary).

### ⚠️ **FACT-PATTERN RISK ALERT**

**Scenario:** X tells a shopkeeper, “Supply goods to Y; whatever Y does not pay, I will.” Y takes the goods, the original liability to pay remaining on Y. (Decoy: X calls his promise an “indemnity” to escape the guarantee rules.)

- **I — ISSUE:** Is X’s promise an indemnity or a guarantee?
- **R — RULE:** s.124 vs s.126; *Birkmyre v Darnell* (1704) — if the principal debtor remains liable, the promise is a guarantee.
- **A — ANALYSIS:** Y remains primarily liable; X’s liability is secondary and arises only on Y’s default — that is the hallmark of guarantee. The “indemnity” label cannot change the substance.
- **C — CONCLUSION:** X is a surety; the contract is one of guarantee, governed by ss.126–147.

## 3. Contract of Guarantee

### Previous Year Questions

- **[16M]** Define contract of guarantee and analyse its essential features. (Dec2016, Apr2022) ★★
- **[16M]** “Do you agree that a contract of guarantee is a tri-partite contract?” (Nov2022)
- **[16M]** What are the effects of misrepresentation and concealment on a contract of guarantee? (Jun2013)

### The Hook

When a bank lends to a small trader, it rarely trusts the trader alone — it asks for a guarantor. The guarantor signs, the loan is released, and three relationships spring to life at once. The Indian Contract Act captures this everyday scene in three short words of Section 126: **surety, principal debtor, creditor**. That is why a guarantee is famously a **tri-partite** contract.

### What is a Contract of Guarantee?

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 the **surety**; the person in respect of whose default the guarantee is given is the

**principal debtor**; and the person to whom the guarantee is given is the **creditor**. A guarantee may be **oral or written** (s.126).

**Consideration (s.127)**: anything done, or any promise made, for the benefit of the principal debtor is sufficient consideration for the surety to give the guarantee. The surety need not personally receive any benefit.

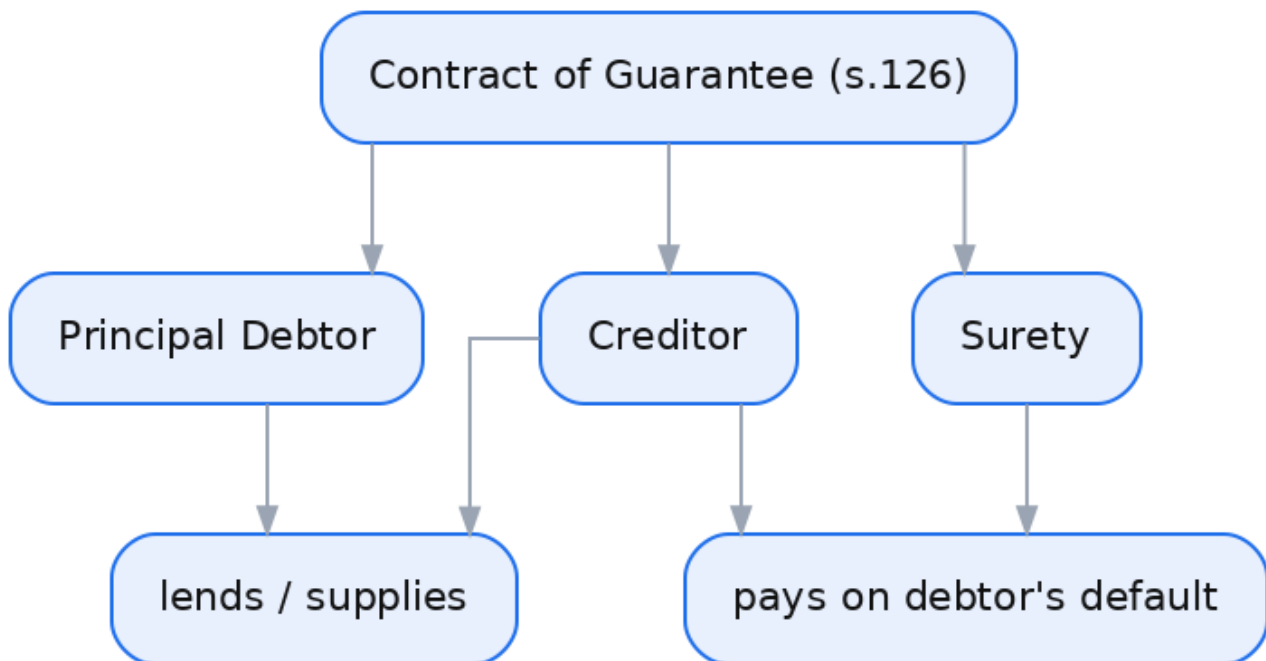
**Section 126, Indian Contract Act, 1872**: “A ‘contract of guarantee’ is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the ‘surety’; the person in respect of whose default the guarantee is given is called the ‘principal debtor’, and the person to whom the guarantee is given is called the ‘creditor’. A guarantee may be either oral or written.”

**In Simple Terms**: A guarantee is a safety net. The creditor lends to the principal debtor; the surety promises to step in if the debtor fails. Three people, three relationships, one purpose — security for the debt.

## Essential Features

- **Tri-partite agreement** — three parties and three sub-contracts.
- **Existence of a principal debt** — there must be a recoverable liability; no debt, no guarantee.
- **Consideration (s.127)** — benefit to the principal debtor suffices.
- **Secondary liability** — the surety is liable only on the principal debtor’s default.
- **No concealment / misrepresentation (ss.142-143)** — a guarantee obtained by misrepresentation or by concealment of a material fact by the creditor is **invalid**.
- **Free consent** — a guarantee where the creditor obtains the surety’s consent by silence on material circumstances is void.

## The Visual



## Effect of Misrepresentation & Concealment (the Jun2013 angle)

- **Section 142** — a guarantee obtained by **misrepresentation** made by the creditor (or with his knowledge and assent) concerning a material part of the transaction is **invalid**.
- **Section 143** — a guarantee obtained by the creditor's **concealment** (keeping silence as to material circumstances) is **invalid**.

## Case Laws

- ***Birkmyre v Darnell (1704)*** — establishes the collateral nature of the surety's promise.
- ***London General Omnibus Co v Holloway (1912)*** — a guarantee is invalid where the creditor conceals from the surety material facts about the principal debtor's past dishonesty.
- ***M.S. Anirudhan v Thomco's Bank (1963)*** — an immaterial alteration that benefits the surety does not discharge him; consent and materiality are key.

## ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the bank-and-guarantor scene; promise to define guarantee and analyse its essentials.
- **STAGE 2** → **Definition:** quote s.126; name the three parties; oral or written.
- **STAGE 3** → **Essential features (scoring core):** tri-partite nature, principal debt, consideration (s.127), secondary liability.
- **STAGE 4** → **Validity:** misrepresentation and concealment (ss.142-143) with London General Omnibus.
- **STAGE 5** → **Verdict:** a guarantee is a genuinely tri-partite security contract; defective consent destroys it.

## ⚠️ FACT-PATTERN RISK ALERT

**Scenario:** A creditor knows an employee has been dishonest before but, while taking a guarantee for the employee's future conduct, says nothing about the past. The surety later seeks to avoid liability. (Decoy: the surety did not ask, so the creditor "had no duty to speak".)

- **I — ISSUE:** Is a guarantee obtained by concealment of material facts valid?
- **R — RULE:** s.143; London General Omnibus Co v Holloway — concealment of material circumstances invalidates the guarantee.
- **A — ANALYSIS:** The employee's prior dishonesty is material to the risk the surety undertook; the creditor's silence is concealment; the decoy fails because the duty arises from materiality, not from being asked.
- **C — CONCLUSION:** The guarantee is invalid; the surety is not liable.

## 4. Rights of Surety

### Previous Year Questions

- **[16M]** What are the rights of the surety against the principal debtor, the creditor and the co-sureties? (Dec2012, Dec2017) ★★★
- **[16M]** Define contract of guarantee and explain the rights of the surety. (Jun2012, Jun2018, Dec2020, Apr2021, + 80-mark Jun2019, Feb2025)
- **[Short Note]** Rights of the surety; “the surety is a favoured debtor”. (Jun2013, Dec2013, Jun2017, Dec2012)

### The Hook

The law treats the surety with sympathy — he is, in the old phrase, a “**favoured debtor**”, because he undertook the risk for another’s benefit, often for nothing in return. So when the surety finally pays, the law hands him a bundle of rights: against the debtor he bailed out, against the creditor he paid, and against anyone who shared the burden. Pay once, recover three ways.

### The Three Sets of Rights

**(A) Against the Principal Debtor - Right of subrogation (s.140):** once the surety pays the debt, he steps into the creditor’s shoes and acquires all the rights the creditor had against the principal debtor. - **Right to indemnity (s.145):** there is an implied promise by the principal debtor to indemnify the surety; the surety may recover whatever he has rightfully paid.

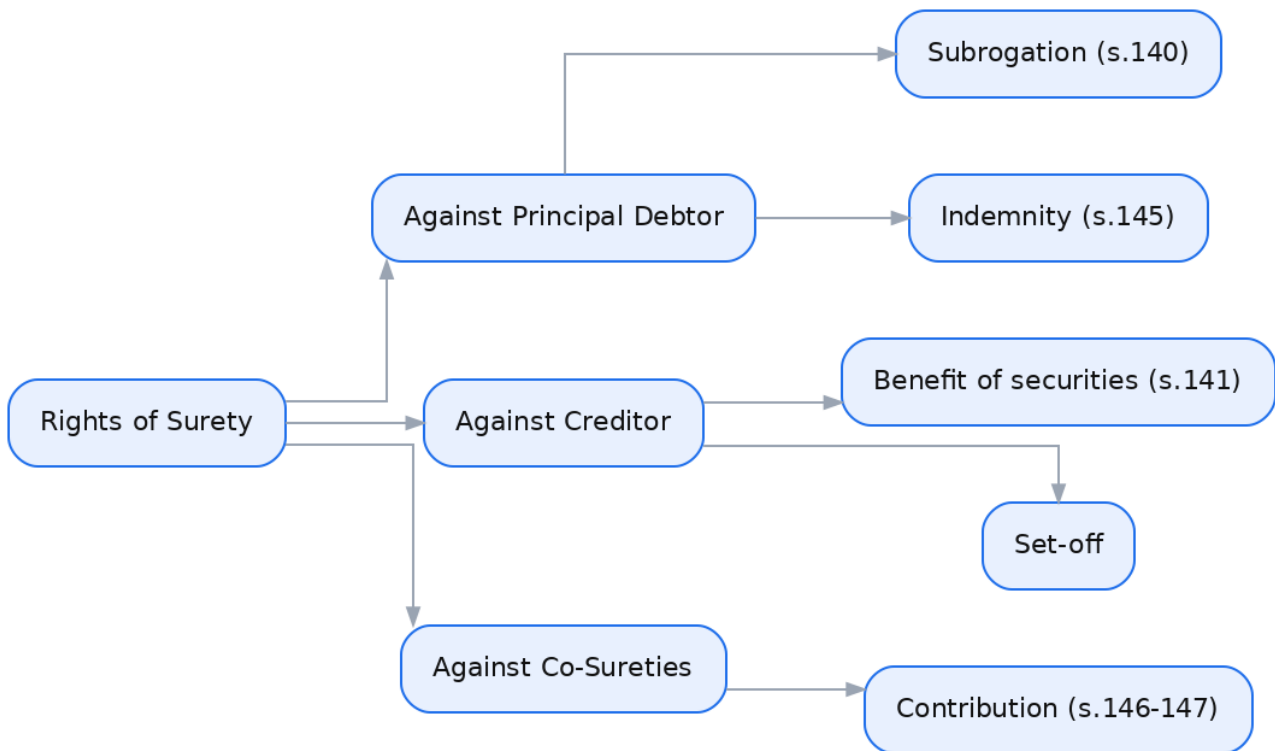
**(B) Against the Creditor - Right to securities (s.141):** the surety is entitled to the benefit of every security the creditor holds against the principal debtor, whether or not the surety knew of it. If the creditor loses or parts with the security without the surety’s consent, the surety is discharged to that extent. - **Right to set-off:** the surety may claim any set-off or counter-claim the principal debtor could have used against the creditor.

**(C) Against Co-Sureties - Right to contribution (ss.146-147):** where the same debt is guaranteed by several sureties, each must contribute equally (or rateably, where amounts differ) to a co-surety who has paid more than his share.

**Section 140, Indian Contract Act, 1872:** “Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.”

**In Simple Terms:** When the surety clears the debt, the law treats him as if he were now the creditor — he can chase the debtor for the money (subrogation), demand repayment (indemnity), grab any security the creditor held, and make the other guarantors pay their share.

## The Visual



## Case Laws

- ***Duncan Fox & Co v North & South Wales Bank (1880)*** — the surety is entitled to every security held by the creditor, whether or not he knew of it.
- ***Amrit Lal Goverdhan Lalan v State Bank of Travancore (1968)*** — loss of security by the creditor discharges the surety pro tanto (to that extent) under s.141.
- ***State Bank of India v Indexport Registered (1992)*** — the creditor may proceed against the surety without first exhausting remedies against the principal debtor.

## ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** “the surety is a favoured debtor”; promise to cover rights against the three classes.
- **STAGE 2** → **Against principal debtor:** subrogation (s.140) + indemnity (s. 145).
- **STAGE 3** → **Against creditor (scoring core):** benefit of securities (s.141), set-off; *Duncan Fox, Amrit Lal Goverdhan*.
- **STAGE 4** → **Against co-sureties:** contribution (ss.146-147).
- **STAGE 5** → **Verdict:** the surety who pays is fully protected — one payment, rights in three directions.

## ⚠️ **FACT-PATTERN RISK ALERT**

**Scenario:** A bank holds the principal debtor’s mortgaged machinery as security and also a surety’s guarantee. The bank **releases the machinery** without the surety’s consent, then sues the surety for the full debt. (Decoy: the bank argues the surety’s guarantee was “separate” from the security.)

- **I — ISSUE:** Is the surety discharged when the creditor loses or releases a security?
- **R — RULE:** s.141; *Amrit Lal Goverdhan Lalan* — surety discharged to the extent of the value of the security lost.
- **A — ANALYSIS:** The surety was entitled to the machinery’s benefit; by releasing it the bank impaired the surety’s eventual remedy; the “separate contract” decoy fails because s.141 ties the security to the guarantee.
- **C — CONCLUSION:** The surety is discharged to the extent of the value of the released machinery.

## 5. Discharge of Surety

### Previous Year Questions

- **[16M]** Explain the circumstances in which a surety is discharged from his liability. (Jan2011, Jun2014, Jun2016, Jun2019, Apr2022) ★★★
- **[16M]** What is continuing guarantee? Explain the various modes of discharge of surety. (Jan2012, Dec2015, Jun2018)
- **[10M]** Various modes of discharge of surety from liability. (80-mark Jun2019, Nov2022, Mar2022, Jan2026)

### The Hook

A surety's promise is serious, but it is not a trap. The Act gives him several exits — and most of them open because of something the **creditor** did. Vary the contract behind his back, let the debtor off the hook, give the debtor more time by a binding deal, or carelessly lose a security: each act can set the surety free. The lesson examiners test: *the surety's liability is fragile in the creditor's careless hands.*

### Modes of Discharge

**(1) By revocation - Revocation of a continuing guarantee (s.130):** the surety may revoke as to future transactions by notice to the creditor. - **Death of the surety (s.131):** the death of the surety revokes a continuing guarantee for future transactions, absent a contrary contract.

**(2) By conduct of the parties - Variance in terms (s.133):** any **variation** in the terms of the contract between the creditor and the principal debtor, made **without the surety's consent**, discharges the surety as to transactions after the variance (*Bonar v Macdonald (1850)*). - **Release or discharge of principal debtor (s.134):** the surety is discharged if the creditor makes a contract releasing the principal debtor, or by any act or omission of the creditor whose legal consequence is the debtor's discharge. - **Composition, extension of time, promise not to sue (s.135):** a creditor's binding **composition** with, **extension of time** to, or **promise not to sue** the principal debtor — without the surety's consent — discharges the surety.

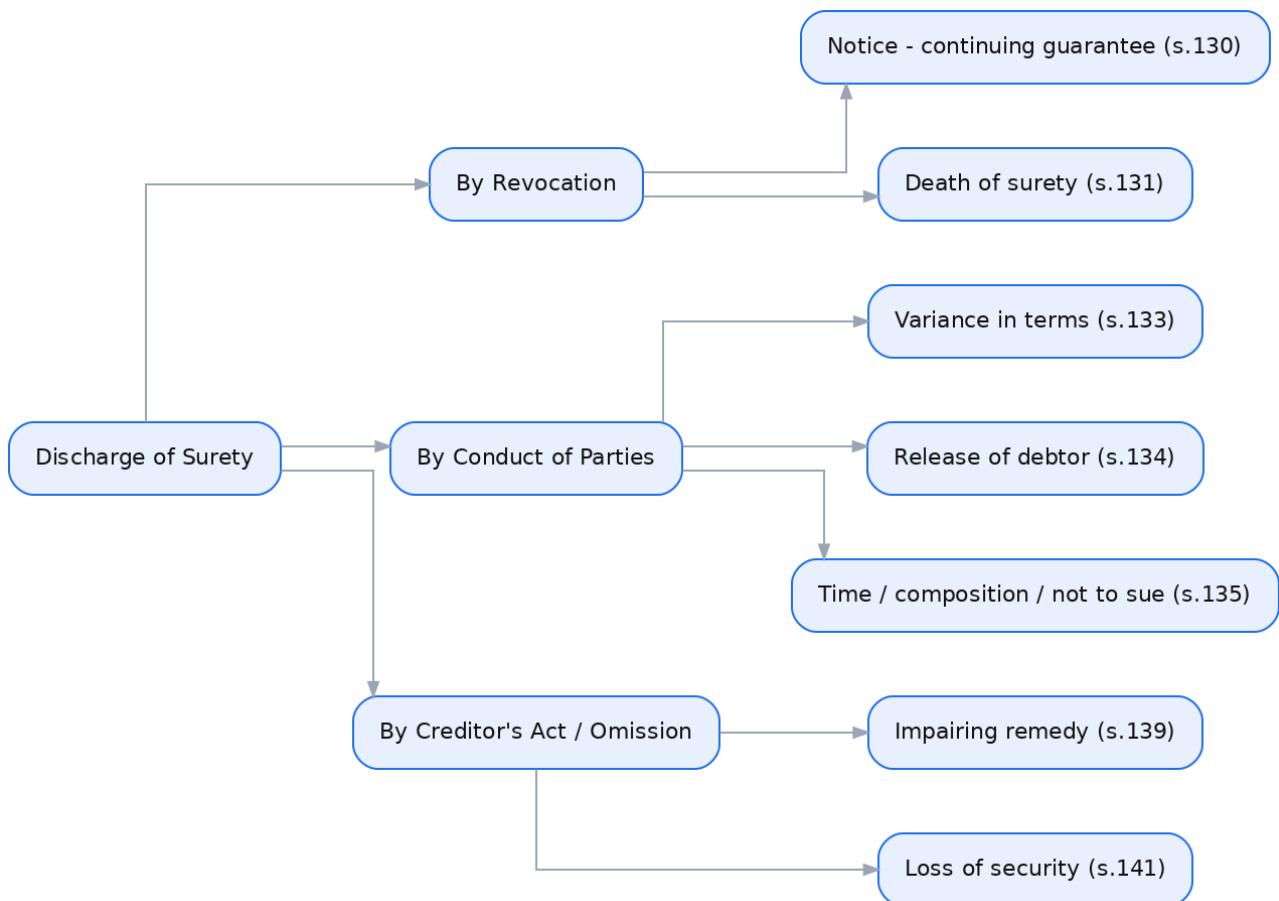
**(3) By the creditor's act or omission impairing the surety's remedy - Section 139:** if the creditor does any act inconsistent with the surety's rights, or omits to do an act which his duty to the surety requires, and the surety's eventual remedy against the principal debtor is thereby impaired, the surety is discharged. - **Loss of security (s.141):** parting with or losing a security without the surety's consent discharges him to that extent.

**What does NOT discharge the surety: - Mere forbearance to sue (s.137)** — the creditor’s simple delay in suing the principal debtor does not discharge the surety. - **Discharge of one co-surety (s.138)** — releasing one co-surety does not discharge the others.

**Section 133, Indian Contract Act, 1872:** “Any variance, made without the surety’s consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.”

**In Simple Terms:** The surety signed up for a *particular* deal. If the creditor changes that deal, lets the debtor go, binds himself to give the debtor more time, or loses the security — all without asking the surety — the surety walks free. But merely being slow to sue the debtor does not release the surety.

### The Visual



### Case Laws

- **Bonar v Macdonald (1850)** — a material variation in the contract without the surety’s consent discharges the surety.
- **M.S. Anirudhan v Thomco’s Bank (1963)** — a variation that is immaterial or beneficial to the surety does not discharge him.

- **Amrit Lal Goverdhan Lalan v State Bank of Travancore (1968)** — loss of security discharges the surety pro tanto.

## ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the surety's "exits"; promise to group the modes into revocation, conduct, and creditor's acts.
- **STAGE 2** → **Revocation:** ss.130-131.
- **STAGE 3** → **Conduct (scoring core):** variance (s.133, *Bonar v Macdonald* (1850)), release (s.134), time/composition (s.135).
- **STAGE 4** → **Creditor's acts + what does NOT discharge:** ss.139, 141; contrast s.137 (mere forbearance) and s.138.
- **STAGE 5** → **Verdict:** the surety is discharged whenever the creditor alters the bargain or weakens the surety's remedy without consent.

## ⚠️ FACT-PATTERN RISK ALERT

**Scenario:** A is surety for the good conduct of B, a bank employee. B misappropriates money; the bank **keeps B on without informing A**; B misappropriates again, and the bank now sues A. (Decoy: the bank's "mere silence" looks like harmless forbearance.)

- **I — ISSUE:** Is the surety discharged by the creditor's failure to act on the first default and its concealment?
- **R — RULE:** ss.139 and 141; a creditor's act or omission impairing the surety's remedy, or concealment of the debtor's dishonesty, discharges the surety.
- **A — ANALYSIS:** By retaining B and saying nothing, the bank deprived A of the chance to revoke and worsened the risk; this is more than mere forbearance to sue (s.137) — it is an omission inconsistent with the surety's rights.
- **C — CONCLUSION:** A is discharged from liability for the subsequent misappropriation.

## 6. Continuing Guarantee

### Previous Year Questions

- **[16M]** What is a continuing guarantee? When and how is it revoked or terminated? (Dec2012) ★★★
- **[10M]** What is meant by continuing guarantee? When and how is it revoked? (80-mark Jun2025)
- **[Short Note]** Continuing guarantee. (Dec2014, Jun2014, Dec2018, + 80-mark Jun2019, Nov2022, Feb2025)

### The Hook

Some guarantees cover a single deal; others cover a **running account**. A guarantee that backs a series of transactions — say, every supply a wholesaler makes to a retailer over a year — is a **continuing guarantee**. Section 129 captures it in one line, and the illustrations to the section are a goldmine for problem questions.

### What is a Continuing Guarantee?

A guarantee that extends to a **series of transactions** is a continuing guarantee. It is contrasted with a **specific (or simple) guarantee**, which covers a single transaction and is exhausted once that transaction is complete.

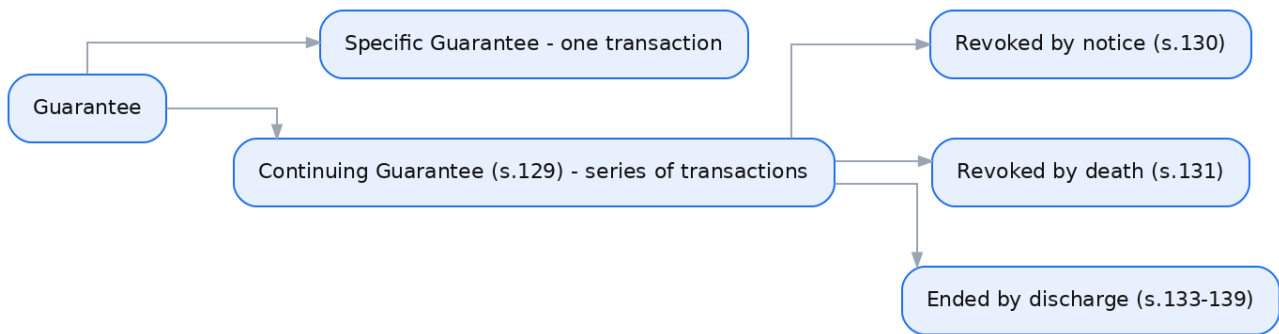
**Section 129, Indian Contract Act, 1872:** “A guarantee which extends to a series of transactions is called a ‘continuing guarantee’.”

**In Simple Terms:** A specific guarantee is a one-shot promise — once that single debt is paid, the guarantee is over. A continuing guarantee is an umbrella — it keeps covering each new transaction in a running series until it is revoked.

### Revocation / Termination

- **By notice (s.130):** the surety may revoke a continuing guarantee **as to future transactions** by giving notice to the creditor; he stays liable for transactions already entered into.
- **By death of the surety (s.131):** the surety’s death operates as a revocation for future transactions, in the absence of a contrary contract.
- **By the general modes of discharge (ss.133-139):** variance, release, etc., also terminate a continuing guarantee.

## The Visual



## Case Laws

- **Offord v Davies (1862)** — a continuing guarantee may be revoked as to future transactions before they are acted upon.
- **Lloyd's v Harper (1880)** — the death of the surety does not automatically revoke a guarantee where the contract shows a contrary intention.
- **Hargopal Agarwal v State Bank of India (1956)** — a continuing guarantee continues until validly revoked.

### ☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the running-account image; promise to define and explain revocation.
- **STAGE 2** → **Definition:** quote s.129; contrast with specific guarantee.
- **STAGE 3** → **Modes of revocation (scoring core):** notice (s.130), death (s.131).
- **STAGE 4** → **Apply illustrations + cases:** Offord v Davies, Lloyd's v Harper.
- **STAGE 5** → **Verdict:** a continuing guarantee covers a series until lawfully revoked, but past transactions remain binding.

### ⚠️ **FACT-PATTERN RISK ALERT**

**Scenario:** A guarantees payment to B for the price of five sacks of flour delivered to C, payable monthly. B delivers five sacks; C pays. Later B delivers four more sacks, which C does not pay. B sues A. (Decoy: A's guarantee "looks" continuing because deliveries repeated.)

- **I — ISSUE:** Was this a specific guarantee (exhausted by the first five sacks) or a continuing one?
- **R — RULE:** s.129 and its illustration — a guarantee for a single quantified supply is **specific**, not continuing.
- **A — ANALYSIS:** The guarantee was for the price of five sacks; once five were delivered and paid for, the guarantee was exhausted; the later four sacks fall outside it; the repetition decoy does not convert a specific guarantee into a continuing one.
- **C — CONCLUSION:** A is **not** liable for the four later sacks.

## 7. Co-Surety & Extent of Surety's Liability

### Previous Year Questions

- **[Short Note]** Co-surety. (Dec2013, + 80-mark Apr2023) ★★
- **[Problem]** Liability and contribution of co-sureties. (Jun2017)
- **[10M]** Extent of surety's liability (folded into "rights/discharge of surety"). (80-mark Jun2019)

### The Hook

When two friends jointly guarantee a loan and one of them is forced to pay the whole, fairness demands the other share the burden. The Act agrees: co-sureties must **contribute equally**. And the reach of any surety's liability is fixed by a single, powerful word in Section 128 — **co-extensive**.

### Extent of Surety's Liability (Section 128)

The liability of the surety is **co-extensive** with that of the principal debtor, unless the contract provides otherwise. He is liable for exactly what the principal debtor is liable for — no more, no less — and the creditor may proceed against the surety **without first suing the principal debtor** (*Bank of Bihar v Damodar Prasad* (1969)).

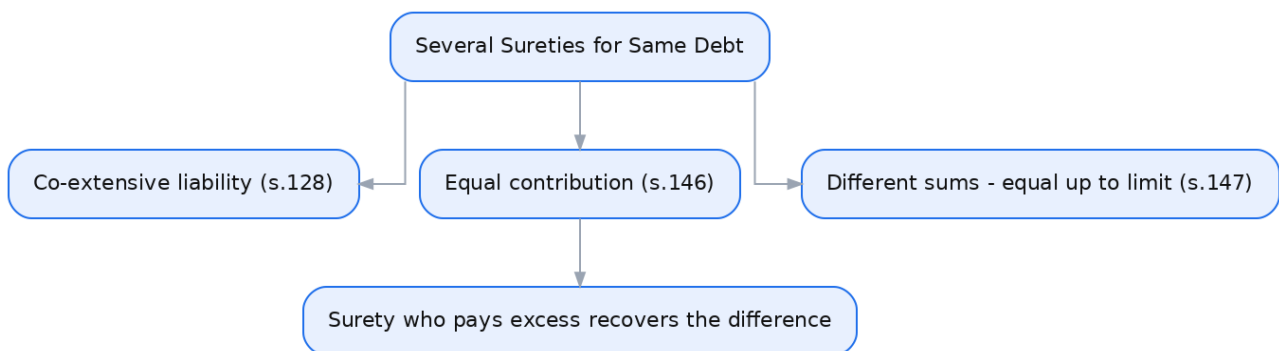
**Section 128, Indian Contract Act, 1872:** “The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.”

**In Simple Terms:** “Co-extensive” means the surety’s liability is a mirror of the debtor’s — same amount, same conditions. And the creditor need not chase the debtor first; he can knock on the surety’s door straight away.

## Co-Sureties — Contribution (Sections 146-147)

- **Equal contribution (s.146):** where two or more persons are co-sureties for the same debt, they are liable, as between themselves, to contribute **equally** to the whole debt (or the part unpaid by the principal debtor), in the absence of a contrary contract.
- **Limited co-sureties (s.147):** where co-sureties have guaranteed **different sums**, they contribute equally up to the limit of their respective guarantees.

## The Visual



## Case Laws

- **Bank of Bihar v Damodar Prasad (1969)** — the creditor may sue the surety without first exhausting remedies against the principal debtor; liability is immediate on default.
- **State Bank of India v Indexport Registered (1992)** — a decree may be executed against the surety first; co-extensive liability confirmed.

## ☰ 16-MARK / SHORT-NOTE TRACKER

- **STAGE 1** → **Open:** “co-extensive” (s.128) and the fairness principle behind contribution.
- **STAGE 2** → **Extent of liability:** s.128; creditor need not sue debtor first (Bank of Bihar).
- **STAGE 3** → **Co-sureties (scoring core):** equal contribution (s.146), different sums (s.147).
- **STAGE 4** → **Apply:** worked example of three sureties for Rs. 9,000.
- **STAGE 5** → **Verdict:** liability mirrors the debtor’s; among themselves co-sureties share equally.

## ⚠️ **FACT-PATTERN RISK ALERT**

**Scenario:** A, B and C are co-sureties to D for Rs. 9,000 lent to E. E defaults. (Decoy: each surety argues he is liable only for “his own” share to the creditor.)

- **I — ISSUE:** What is each co-surety’s liability to the creditor and among themselves?
- **R — RULE:** s.128 (co-extensive) + s.146 (equal contribution).
- **A — ANALYSIS:** To the creditor D, each surety is liable for the whole Rs. 9,000 (co-extensive); but among themselves A, B and C must share equally — Rs. 3,000 each — so a surety who pays more may recover the excess; the “own share only” decoy fails as against the creditor.
- **C — CONCLUSION:** D may recover Rs. 9,000 from any one of them; inter se, each ultimately bears Rs. 3,000.

## Quick Revision & Case Law Table

### One-line memory hooks

- **Indemnity:** “save another from loss” (s.124); holder recovers damages, costs, compromise (s.125); claim even before paying (*Gajanan Moreshwar*).
- **Indemnity vs Guarantee:** 2 parties/1 contract/primary vs 3 parties/3 contracts/secondary (*Birkmyre v Darnell (1704)*).
- **Guarantee:** tri-partite (s.126); consideration = benefit to debtor (s.127); void if misrepresentation/concealment (ss.142-143).

- **Rights of surety:** subrogation (s.140), indemnity (s.145), securities (s.141), contribution (s.146).
- **Discharge of surety:** variance (s.133), release (s.134), time (s.135), loss of security (s.141); NOT mere forbearance (s.137).
- **Continuing guarantee:** series of transactions (s.129); revoked by notice (s.130) or death (s.131).
- **Co-surety / extent:** co-extensive (s.128); equal contribution (ss.146-147); creditor need not sue debtor first (*Bank of Bihar*).

## Master Case List for Unit 1

<b>Case</b>	<b>Topic</b>	<b>One-line ratio</b>
<i>Adamson v Jarvis (1827)</i>	Indemnity	One who acts on another's request is entitled to be indemnified.
<i>Gajanan Moreshwar v Moreshwar Madan (1942)</i>	Indemnity	Holder may be put in funds before he actually pays the loss.
<i>Osman Jamal &amp; Sons v Gopal Purshottam (1929)</i>	Indemnity	Indemnified party may recover before paying once liability is fixed.
<i>Birkmyre v Darnell (1704)</i>	Indemnity vs Guarantee	Promise to answer for another's default (debtor still liable) is a guarantee.
<i>London General Omnibus Co v Holloway (1912)</i>	Guarantee	Concealment of material facts invalidates the guarantee.
<i>M.S. Anirudhan v Thomco's Bank (1963)</i>	Guarantee / Discharge	Immaterial or beneficial alteration does not discharge the surety.
<i>Duncan Fox &amp; Co v North &amp; South Wales Bank (1880)</i>	Rights of surety	Surety entitled to all securities held by the creditor.
<i>Amrit Lal Goverdhan Lalan v SB of Travancore (1968)</i>	Discharge	Loss of security discharges surety pro tanto (s. 141).
<i>Bonar v Macdonald (1850)</i>	Discharge	Material variance without consent discharges the surety (s.133).
<i>Offord v Davies (1862)</i>	Continuing guarantee	Revocable as to future transactions before they are acted on.
<i>Bank of Bihar v Damodar Prasad (1969)</i>	Extent of liability	Creditor may sue surety without first exhausting remedies against debtor.
<i>State Bank of India v</i>	Extent of liability	Decree enforceable against surety first; liability co-extensive.

<b>Case</b>	<b>Topic</b>	<b>One-line ratio</b>
<i>Indexport Registered (1992)</i>		

---

*End of Unit 1.*



# Contract-II — Special Contracts

---

*KSLU LL.B. — Question Bank · Model Answers (Essays & Problems)*

KSLU LL.B. Question Bank

**Medha-Academy**

[www.medha-academy.in](http://www.medha-academy.in)

Notes Version: **v1.0**

June 2026

**Read this first, then go to your unit.** This companion to the study notes gives a full, exam-ready **model answer** to every 16M essay, every 10M short / explanatory note, and every fact-pattern problem asked in past KSLU Contract-II papers (2011–2026, 80- and 100-mark sittings) — grouped by unit and topic in the same order as the notes. Sub-10-mark short notes (5M / 6M / 8M) are answered in the notes bundle, not here.

## How to Use This Question Bank

**What this is.** A rehearsal book. The study notes teach the concept; this bank shows you how to *write the marks* — a complete answer in the exact shape an examiner rewards.

**The 3-step drill.** (1) Read the question and try a 2-minute plan from memory. (2) Read the model answer; note the structure, the cases, the verdict. (3) For problems, re-do the IRAC in your own words under time.

**Priorities.** The ★ rating shows how often a question repeats — ★★★ (5+ times) is a near-certainty; do these first. The Priority Index below lists them ranked.

**House rules that win marks.** Lead with a definition + roadmap; name the case **and** the year; quote the exact section; for problems use the four IRAC headings and always give a definite verdict.

## Exam Pattern & Mark Weights

*KSLU Contract-II is examined as a 100-mark paper (older pattern: Q1–Q8 = 16 marks, Q9 = 20 marks of two problems × 10; answer Q9 + any five) and an 80-mark paper (five units; one 10-mark essay + one 6-mark short note/problem per unit). Always plan the answer before writing and attempt the compulsory problem question first.*

Mark slot	What it is	Where it's drilled
16M	Long essay (100-mark paper)	Section A of each unit
10M	Short / explanatory note (80-mark paper essay)	Section B of each unit
Problems	Fact-pattern, answered in IRAC	Section C of each unit

## Priority Index — Questions by Frequency

Rank	Question (short)	Type	Frequency	Unit
1	Define indemnity; rights of indemnity holder	16M	★★★	1
2	Define guarantee; rights & discharge of surety	16M	★★★	1
3	Define pledge; valid pledge by a non-owner	16M	★★★	2
4	Bailment / bailee's & bailor's rights & duties	16M	★★★	2
5	Rights & duties of agent	16M	★★★	3
6	Modes of termination of agency; ratification	16M	★★★	3
7	Dissolution of firm; registration & s.69	16M	★★★	4
8	Existence of partnership; rights & duties of partners	16M	★★★	4
9	Unpaid seller & his rights	16M	★★★	5
10	Caveat emptor & exceptions; conditions & warranties	16M	★★★	5
11	Nemo dat quod non habet & exceptions	16M	★★★	5

## Year Index — Questions by Paper

*Use this to rehearse a whole past paper under time. (Block numbers refer to the §A/ §B/§C IDs in each unit's bank; expanded as each unit's bank is completed.)*

<b>Year (paper)</b>	<b>Sample questions covered (by topic)</b>
Jun2011(100)	Guarantee vs indemnity; pawnee's rights; partners' rights; sale vs agreement to sell; hire-purchase
Jan2012(100)	Continuing guarantee/indemnity holder; bailment & finder; kinds of agents; partnership test; unpaid seller
Dec2015(100)	Continuing guarantee; non-owner pledge; unpaid seller's lien; registration; agent's rights
Dec2019(100)	Indemnity holder; pledgee rights; remedies for breach; partnership existence; minor-guarantee problem
Feb2025(80)	Guarantee & surety; bailment v pledge; agent's authority; registration; caveat emptor
Jan2026(80)	Indemnity & guarantee; bailment; agency; profit-sharing problem; caveat emptor



# UNIT 1 — Contract of Indemnity & Contract of Guarantee · Question Bank

Contract-II (Special Contracts) · KSLU LL.B. · Medha-Academy.in

**Scope of this unit's bank:** full model answers to every **16M essay** (§A), every **10M short / explanatory note** (§B), and every **fact-pattern problem** (§C) asked in past KSLU papers for this unit. Sub-10-mark short notes (5M / 6M / 8M) are answered in the study-notes bundle, not here.

## A. Essay Questions (16M) — Model Answers

**Q1.1 — [16M] Define contract of indemnity. Explain the rights of an indemnity holder. (Also: how does Indian law differ from English law on indemnity?)**

Asked: Jan2012(100), Jun2013(100), Dec2013(100), Jun2017(100), Dec2019(100); Jun2019(80), Nov2022(80), Mar2022(80), Feb2025(80), Jun2025(80) · ★★ ★ ·  
Notes: Unit 1 → Contract of Indemnity

**Introduction.** A contract of indemnity is a promise to save another from loss. It is one of the two great “security” contracts in the Indian Contract Act, 1872. This answer defines indemnity under s.124, sets out the indemnity holder’s rights under s.125, explains when the indemnifier’s liability begins, and contrasts Indian and English law.

### Definition (Section 124)

1. “A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity.” The party who promises is the indemnifier and the party protected is the indemnity holder. Insurance contracts are the everyday example, though the Act’s words are narrower than insurance practice.
2. It must satisfy the s.10 essentials — free consent, lawful object and consideration, and capacity of parties. An indemnity given to do an unlawful act, such as to commit an assault, is void and unenforceable.
3. Indemnity may be express or implied. An implied indemnity arises where one person acts at the request of another, as in *Adamson v Jarvis (1827)*, where an auctioneer who

sold goods on a customer's instructions was held entitled to be indemnified when the goods proved to belong to a third party.

**Rights of the indemnity holder (Section 125)** — when he is sued in respect of the matter to which the indemnity applies, and he has acted within his authority, the holder may recover from the indemnifier:

1. All damages that he is compelled to pay in any suit on the matter indemnified against. This is the core protection — the money he loses by reason of the very risk that was insured against.
2. All costs that he is compelled to pay in bringing or defending such a suit, provided he acted as a prudent person would, or with the indemnifier's authority. He is not penalised for reasonably contesting a claim.
3. All sums paid under a compromise of such a suit, provided the compromise was prudent or authorised. This lets the holder settle sensibly without losing his right to be reimbursed.

### **Commencement of the indemnifier's liability**

1. The holder need not first pay out of his own pocket. Section 125 speaks of recovery after payment, but the courts have held that once the holder's liability has become absolute and certain, he may compel the indemnifier to put him in funds to meet it. As held in *Gajanan Moreshwar v Moreshwar Madan (1942)*, indemnity means being *saved* from loss, not merely reimbursed after suffering it.

### **Indian vs English law**

1. English law is wider. It covers loss arising from *any* cause, including accidents and events not traceable to any person's conduct.
2. Indian law (s.124) is narrower. Its words confine indemnity to loss caused by the *conduct* of the promisor or of some other person; the courts have supplied the wider equitable protection through decisions like *Gajanan Moreshwar*.

### **Leading cases**

- ***Adamson v Jarvis (1827)*** — one who acts on another's request is entitled to be indemnified against the consequences.
- ***Gajanan Moreshwar v Moreshwar Madan (1942)*** — the holder may be put in funds before he actually pays the loss.

**Conclusion.** Indemnity protects against loss; s.125 gives the holder damages, costs and compromise sums, and equity ensures he is saved before, not only after, he pays — Indian law being narrower in words than English law but supplemented by the courts.

---

## Q1.2 — [16M] Define contracts of indemnity and guarantee and discuss their differences.

Asked: Jun2011(100), Jun2014(100), Dec2014(100), Dec2018(100); Aug2024(80), Jan2026(80) · ★★★ · Notes: Unit 1 → Indemnity vs Guarantee

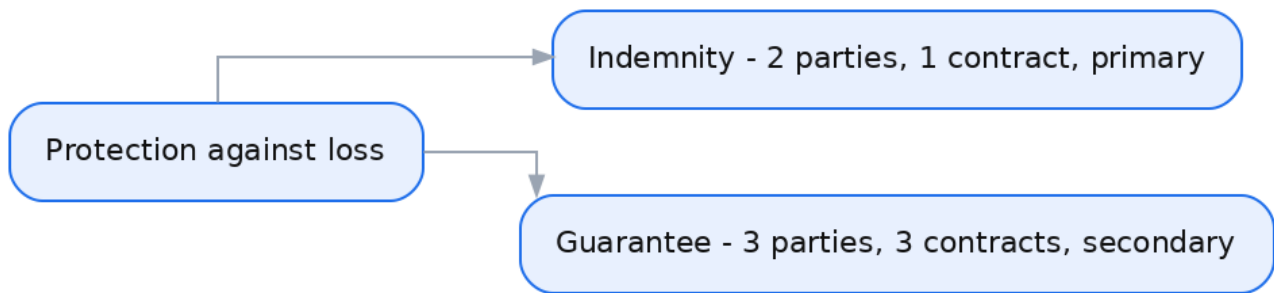
**Introduction.** Both indemnity and guarantee are contracts that protect a person against loss, but they are built quite differently. Indemnity (s.124) is a two-party promise to bear loss; guarantee (s.126) is a three-party promise to answer for another's default. This answer defines each and sets out the differences.

### Definitions

1. Indemnity (s.124) — a promise to save another from loss caused by the conduct of the promisor himself or of any other person. There is one contract and the indemnifier's liability is his own and primary.
2. Guarantee (s.126) — a contract to perform the promise, or discharge the liability, of a third person in case of his default. The three parties are the surety (who guarantees), the principal debtor (whose default is guaranteed), and the creditor (to whom the guarantee is given).

### Points of difference

Basis	Indemnity	Guarantee
<u>Number of parties</u>	Two	Three
<u>Number of contracts</u>	One	Three (creditor-debtor, creditor-surety, surety-debtor)
<u>Nature of liability</u>	Primary and independent	Secondary and collateral
<u>Existence of a debt</u>	No prior debt needed	A recoverable principal debt must exist
Purpose	To reimburse a loss	To give security for a debt
Request	Indemnifier acts in his own interest	Surety acts at the debtor's request
Right against third party	Indemnifier cannot sue a third party in his own name	On paying, surety steps into the creditor's shoes (subrogation, s. 140)



Sketch this in the exam — the 30-second version earns presentation marks.

### Explaining the core distinction

1. In indemnity the liability is primary — it arises the moment the contemplated loss occurs, independent of anyone else's default. The indemnifier promises to bear the loss himself.
2. In guarantee the liability is secondary — the surety is liable only when the principal debtor defaults; until then his promise lies dormant. This is why a guarantee always presupposes a valid, recoverable principal debt.

### Leading cases

- ***Birkmyre v Darnell (1704)*** — a promise to answer for another's default, the principal debtor remaining liable, is a guarantee and not an indemnity.
- ***Punjab National Bank v Sri Vikram Cotton Mills (1970)*** — the surety's liability is collateral and arises only on the principal debtor's default.

**Conclusion.** Indemnity is a primary, two-party promise to bear one's own loss; guarantee is a secondary, three-party security that depends on a principal debt and gives the surety a right of subrogation on payment.

## Q1.3 — [16M] Define contract of guarantee and analyse its essential features. (Also: is guarantee a tri-partite contract? Effect of misrepresentation and concealment.)

Asked: Dec2016(100), Apr2022(100), Nov2022(100), Jun2013(100) · ★★★★★ · Notes: Unit 1 → Contract of Guarantee

**Introduction.** A contract of guarantee is a contract to perform the promise or discharge the liability of a third person on his default (s.126). Because it brings three parties into a single security arrangement, it is rightly described as **tri-partite**. This answer defines guarantee, analyses its essentials, and explains the effect of misrepresentation and concealment.

## Definition & the three parties (Section 126)

1. The surety is the person who gives the guarantee; the principal debtor is the person in respect of whose default it is given; the creditor is the person to whom it is given. All three relationships are engaged at once.
2. A guarantee may be either oral or written. This is a deliberate departure from English law, which (under the Statute of Frauds) requires a guarantee to be in writing.

## Essential features

1. Tri-partite agreement — there are three parties and, in substance, three contracts: between creditor and debtor, between creditor and surety, and an implied one between surety and debtor. This structure is what makes a guarantee genuinely tri-partite.
2. Existence of a principal debt — there must be a recoverable liability owed by the principal debtor. If there is no enforceable principal debt, there is nothing for the surety to guarantee.
3. Consideration (s.127) — anything done, or any promise made, for the benefit of the principal debtor is sufficient consideration for the surety's promise; the surety himself need receive no benefit.
4. Secondary liability — the surety is liable only on the principal debtor's default; this is not the primary obligation. Until the debtor defaults, the surety's promise lies dormant, which is precisely what distinguishes a guarantee from an indemnity.
5. Free consent and good faith — the surety's consent must be free; a guarantee tainted by the creditor's misrepresentation or concealment is invalid (see below).

## Effect of misrepresentation & concealment

1. Section 142 — misrepresentation. A guarantee obtained by means of a misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
2. Section 143 — concealment. A guarantee obtained by the creditor's keeping silence as to material circumstances is invalid, because the surety's consent is then not free.

## Leading cases

- ***London General Omnibus Co v Holloway (1912)*** — concealment of the employee's known past dishonesty invalidated the fidelity guarantee.
- ***Birkmyre v Darnell (1704)*** — establishes the collateral, secondary nature of the surety's promise.

**Conclusion.** A guarantee is a genuinely tri-partite security contract resting on a recoverable principal debt and the surety's free consent; misrepresentation or concealment by the creditor (ss.142-143) renders it invalid.

---

## Q1.4 — [16M] What are the rights of the surety against the principal debtor, the creditor and the co-sureties?

Asked: Dec2012(100), Dec2017(100), Jun2012(100), Jun2018(100), Dec2020(100), Apr2021(100); Jun2019(80), Feb2025(80) · ★★★ · Notes: Unit 1 → Rights of Surety

**Introduction.** The surety is, in the old phrase, a “favoured debtor”, because he undertakes the risk for another’s benefit, often for nothing. When he finally pays, the law gives him a bundle of rights in three directions — against the principal debtor, against the creditor, and against co-sureties.

### Against the principal debtor

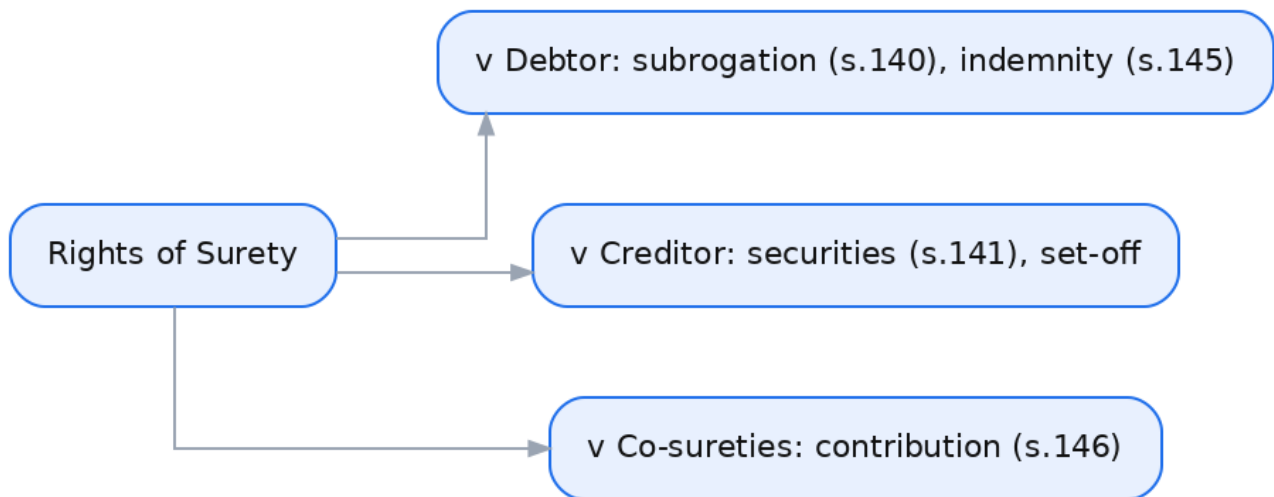
1. Right of subrogation (s.140) — once the guaranteed debt is due and the surety has paid all he is liable for, he is invested with all the rights the creditor had against the principal debtor. He effectively steps into the creditor’s shoes.
2. Right to indemnity (s.145) — in every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; the surety may recover from the debtor whatever sums he has rightfully paid under the guarantee. The debtor cannot complain, since the surety paid a debt that was the debtor’s own.

### Against the creditor

1. Right to securities (s.141) — the surety is entitled to the benefit of every security the creditor holds against the principal debtor at the time the guarantee is entered into, whether or not the surety knew of it. If the creditor loses or parts with the security without the surety’s consent, the surety is discharged to the extent of its value.
2. Right of set-off — the surety may, when sued by the creditor, claim the benefit of any set-off or counter-claim that the principal debtor possessed against the creditor.

### Against co-sureties

1. Right to contribution (ss.146-147) — where the same debt is guaranteed by several sureties, they are bound, as between themselves, to contribute equally (or rateably, where the sums differ) to a co-surety who has paid more than his share. This prevents the creditor’s choice of which surety to sue from falling unfairly on one alone.



Sketch this in the exam — the 30-second version earns presentation marks.

### Leading cases

- ***Duncan Fox & Co v North & South Wales Bank (1880)*** — the surety is entitled to all securities held by the creditor, even those he did not know of.
- ***Amrit Lal Goverdhan Lalan v SB of Travancore (1968)*** — loss of a security by the creditor discharges the surety pro tanto.

**Conclusion.** The surety who pays is protected in three directions — subrogation and indemnity against the debtor, securities and set-off against the creditor, and equal contribution from his co-sureties. Together these rights ensure that the loss, having been borne by the surety in the first instance, is ultimately shifted to the person who truly owes it.

## Q1.5 — [16M] Explain the circumstances in which a surety is discharged from his liability.

Asked: Jan2011(100), Jun2014(100), Jun2016(100), Jun2019(100), Apr2022(100), Jan2012(100), Dec2015(100), Jun2018(100); Jun2019(80), Nov2022(80), Mar2022(80), Jan2026(80) · ★★★ · Notes: Unit 1 → Discharge of Surety

**Introduction.** A surety's promise is binding, but the Act provides several exits — most of which open because of something the creditor did. The modes of discharge group into revocation, the conduct of the parties, and the creditor's acts impairing the surety's remedy.

### By revocation

1. Revocation of a continuing guarantee (s.130) — the surety may revoke a continuing guarantee as to future transactions by giving notice to the creditor, though he stays liable for transactions already entered into.

2. Death of the surety (s.131) — the surety's death operates as a revocation of a continuing guarantee for future transactions, in the absence of a contrary contract.

### **By conduct of the parties**

1. Variance in terms (s.133) — any variation made in the terms of the contract between the creditor and the principal debtor, without the surety's consent, discharges the surety as to transactions after the variance (*Bonar v Macdonald (1850)*).
2. Release or discharge of the principal debtor (s.134) — the surety is discharged if the creditor makes a contract releasing the debtor, or does any act or omission whose legal consequence is the debtor's discharge.
3. Composition, extension of time or promise not to sue (s.135) — a binding composition with, extension of time to, or promise not to sue the principal debtor, made without the surety's consent, discharges the surety.

### **By the creditor's act or omission**

1. Impairing the surety's remedy (s.139) — if the creditor does any act inconsistent with the surety's rights, or omits an act which his duty to the surety requires, and the surety's eventual remedy against the debtor is thereby impaired, the surety is discharged.
2. Loss of security (s.141) — parting with or losing a security held against the debtor, without the surety's consent, discharges the surety to that extent.

### **What does NOT discharge the surety**

1. Mere forbearance to sue (s.137) — the creditor's simple delay in suing the principal debtor, or in enforcing any other remedy, does not discharge the surety, because the surety could himself have paid and proceeded against the debtor.
2. Release of one co-surety (s.138) — does not discharge the others, who remain liable, though the released surety stays answerable for his share by way of contribution.

### **Leading cases**

- ***Bonar v Macdonald (1850)*** — a material variance without the surety's consent discharges him.
- ***M.S. Anirudhan v Thomco's Bank (1963)*** — an immaterial or beneficial alteration does not discharge the surety.

**Conclusion.** The surety is discharged whenever the creditor alters the bargain or weakens the surety's remedy without consent (ss.130-141), but not by the mere delay in suing the principal debtor.

---

## Q1.6 — [16M] What is a continuing guarantee? When and how is it revoked or terminated?

Asked: Dec2012(100); Jun2025(80); [SN years] Dec2014(100), Jun2014(100), Dec2018(100), Jun2019(80), Nov2022(80), Feb2025(80) · ★★★ · Notes: Unit 1 → Continuing Guarantee

**Introduction.** A guarantee which extends to a series of transactions is a continuing guarantee (s.129), as distinct from a specific guarantee that covers a single transaction and is exhausted by it. This answer explains its meaning and the modes by which it is revoked or terminated.

### Meaning (Section 129)

1. It covers a series of transactions. A typical example is a guarantee given for all the goods a wholesaler may supply to a retailer over a year, or a fidelity guarantee for an employee's honest conduct in a continuing employment. The guarantee keeps attaching to each fresh transaction in the series.
2. Contrast with a specific guarantee. A specific guarantee answers for a single, identified transaction; once that transaction is completed and paid for, the guarantee is spent and cannot be revived for later dealings. Whether a guarantee is specific or continuing turns on the intention of the parties, gathered from the words used and the surrounding circumstances.
3. Liability for past transactions survives. Even after a continuing guarantee is revoked, the surety remains liable for transactions already entered into before the revocation took effect.

### Revocation and termination

1. By notice (s.130) — the surety may at any time revoke a continuing guarantee, as to future transactions, by giving notice to the creditor. He remains liable for transactions that have already taken place before the notice.
2. By death of the surety (s.131) — the death of the surety operates, in the absence of any contract to the contrary, as a revocation of the continuing guarantee so far as regards future transactions.
3. By the general modes of discharge (ss.133-139) — a continuing guarantee is also brought to an end by a variance in the contract, the release of the principal debtor, the grant of time, or the loss of a security, in the same way as any guarantee.

### Leading cases

- **Offord v Davies (1862)** — a continuing guarantee may be revoked as to future transactions before they are acted upon.
- **Lloyd's v Harper (1880)** — death does not revoke a continuing guarantee where the contract discloses a contrary intention.

**Conclusion.** A continuing guarantee covers a series of transactions until it is lawfully revoked — by the surety’s notice (s.130) or death (s.131), or by the general modes of discharge — but liability for transactions already entered into survives. The distinction between a specific and a continuing guarantee is therefore decisive, because it fixes how far into the future the surety’s exposure runs.

## B. Short Notes (10M) — Model Answers

### S1.1 — [10M] Explain the extent of a surety’s liability and the position of co-sureties.

Asked: Jun2019(80); [related SN] Dec2013(100), Apr2023(80); [Prob] Jun2017(100) · ★★ · Notes: Unit 1 → Co-Surety & Extent of Liability

**Introduction.** The reach of a surety’s liability is fixed by a single word in s.128 — “co-extensive” — and where several sureties stand together for the same debt, the law requires them to contribute equally among themselves.

#### Extent of the surety’s liability (Section 128)

1. The liability of the surety is co-extensive with that of the principal debtor, unless the contract provides otherwise. This means the surety is liable for exactly what the principal debtor is liable for — the same amount, on the same conditions — neither more nor less.
2. The creditor may proceed directly against the surety without first suing or exhausting his remedies against the principal debtor. As held in *Bank of Bihar v Damodar Prasad (1969)*, the liability arises immediately on default, and the creditor need not chase the debtor first.

#### Position of co-sureties (Sections 146-147)

1. Equal contribution (s.146) — where two or more persons are co-sureties for the same debt, they are liable, as between themselves, to contribute equally to the whole of the debt (or so much as remains unpaid by the debtor), in the absence of a contrary contract. A surety who pays more than his share may recover the excess from the others.
2. Different sums guaranteed (s.147) — where the co-sureties have guaranteed different amounts, they contribute equally subject to the limit of their respective guarantees.

**Leading case.** *Bank of Bihar v Damodar Prasad (1969)* — the creditor may sue the surety without first exhausting his remedies against the principal debtor.

**Conclusion.** A surety’s liability mirrors the principal debtor’s (co-extensive under s.128), and as between themselves co-sureties ultimately bear the burden in equal shares.

---

## C. Problems — Model Answers (IRAC)

---

### P1.1 — [Prob] A advances a loan to B, a minor, on the guarantee of C; B refuses to repay, pleading minority. Can A recover from C?

Asked: Dec2015(100), Jun2019(80), Dec2019(100), Nov2021(80), Jan2026(80) · ★★★ · Notes: Unit 1 Risk Alert

**Issue.** Is a surety liable on a guarantee where the principal debtor is a minor whose own contract is void for incapacity?

**Rule.** Under s.128 the surety's liability is co-extensive with the principal debtor's. A minor's agreement is void under s.11. Where a person guarantees a loan advanced to a minor, the accepted view (followed in Mulla's treatment of guarantees for an incompetent principal, and in *Manju Mahadeo v Shivappa Manappa Kuchanur*) is that the surety is liable as a principal debtor, because the parties must have intended that someone should be answerable for the advance — otherwise the guarantee would be meaningless. (A stricter contrary line argues that, there being no valid principal debt, there is nothing to guarantee; but the KSLU-preferred answer holds the surety liable.)

**Application.** Here C guaranteed the loan knowing (or taken to know) that B was a minor; the minority of the principal debtor is the planted decoy. That decoy does not free C, because the guarantee was in substance an undertaking to be primarily liable for the sum advanced; if the surety escaped, the creditor would be left wholly without remedy despite having taken a guarantee precisely to guard against the debtor's failure to pay. C cannot shelter behind B's incapacity.

**Conclusion.** A can recover the amount from C, who is liable as a principal debtor for the loan advanced to the minor.

---

### P1.2 — [Prob] A guarantees payment to B for the price of five sacks of flour delivered to C, payable in a month; five sacks are delivered and paid for; later B delivers four more sacks which C does not pay for. Is A liable?

Asked: Jan2012(100), Dec2019(80), Mar2022(80), Nov2022(80) · ★★★ · Notes: Unit 1 → Continuing Guarantee

**Issue.** Was the guarantee a specific guarantee (exhausted by the first five sacks) or a continuing guarantee (covering the later four)?

**Rule.** Under s.129 a guarantee which extends to a series of transactions is a continuing guarantee, but a guarantee for a single, quantified supply is a specific guarantee that is exhausted once that supply is delivered and paid for. The illustration to s.129 draws exactly this line.

**Application.** A's guarantee was confined to the price of *five* sacks of flour. Once those five sacks were delivered and C paid for them, the guarantee was fully performed and spent. The later delivery of four further sacks fell outside the guarantee altogether. The repetition of deliveries is the decoy — it makes the guarantee look continuing — but a fixed quantity guaranteed does not become a series merely because the seller chose to supply more.

**Conclusion.** A is not liable for the price of the four later sacks; his guarantee ended once the original five were delivered and paid for.

---

### **P1.3 — [Prob] A is surety for the good conduct of B, a bank employee; B misappropriates money; the bank retains B without informing A; B misappropriates again; the bank sues A. Decide.**

*Asked: Jun2012(100) · ★ · Notes: Unit 1 → Discharge of Surety*

**Issue.** Is the surety discharged where the creditor, after the debtor's first default, retains him and conceals the default, and a further loss follows?

**Rule.** Under ss.139 and 141, a creditor's act inconsistent with the surety's rights, or an omission of a duty owed to the surety, that impairs the surety's eventual remedy, discharges the surety. The concealment of the debtor's known dishonesty also offends the good-faith requirement (s.143) in a fidelity guarantee.

**Application.** By keeping B in service and saying nothing about the first misappropriation, the bank deprived A of the opportunity to revoke the continuing guarantee and so worsened the risk he had undertaken. Had A been told, he could have revoked the guarantee for the future and avoided the second loss altogether. The "mere forbearance" argument is the decoy: s.137 protects a creditor who merely delays suing, but this is not mere delay — it is a positive omission of the duty owed to the surety, impairing his position, which falls squarely under s.139.

**Conclusion.** A is discharged from liability for the second misappropriation that followed the bank's concealment.

---

## P1.4 — [Prob] B owes C a debt guaranteed by A; the debt becomes payable; C does not sue B for a year. Is A discharged from his suretyship?

Asked: Apr2021(80) · ★ · Notes: Unit 1 → Discharge of Surety

**Issue.** Does the creditor's mere delay in suing the principal debtor discharge the surety?

**Rule.** Under s.137, mere forbearance on the creditor's part to sue the principal debtor, or to enforce any other remedy against him, does not, in the absence of a contrary provision, discharge the surety. Discharge requires a positive act falling under ss.133-139 — a variance, a release, a binding grant of time, or an impairment of the surety's remedy.

**Application.** Here C did nothing but wait for a year before suing. He did not vary the contract, release B, bind himself to give time, or part with any security held against B. The year-long delay is the decoy: it looks like neglect that should benefit the surety, but s.137 expressly says forbearance alone is not a discharge. The reason is that the surety's own remedy is unaffected — A could at any time have paid C and then sued B himself under his right of subrogation (s.140); the creditor's patience takes nothing away from him.

**Conclusion.** A is not discharged; he remains fully liable on the guarantee despite the creditor's year-long delay in suing the principal debtor.

## P1.5 — [Prob] A, B and C are co-sureties to D for Rs. 9,000 lent to E; E defaults. Discuss the liability of A, B and C as sureties.

Asked: Jun2017(100) · ★ · Notes: Unit 1 → Co-Surety

**Issue.** What is each co-surety's liability to the creditor, and what is their liability as between themselves?

**Rule.** Under s.128 each surety's liability is co-extensive with the principal debtor's, so to the creditor each is liable for the whole debt. Under s.146 co-sureties are, as between themselves, bound to contribute equally to the debt (or the part unpaid by the debtor), and under s.147 only up to the limit of their respective guarantees where these differ.

**Application.** On E's default, D may recover the entire Rs. 9,000 from any one of A, B or C, or from all of them in any proportion; the "each liable only for his own one-third" argument is the decoy, and it fails as against the creditor because the sureties' liability is joint and several under s.128. As between A, B and C, however, the burden is shared equally — Rs. 3,000 each — so a surety who is made to pay the whole Rs. 9,000 may recover Rs. 3,000 from each of the other two by way of contribution under s.146. The right of contribution exists precisely so that the creditor's free choice of whom to sue does not leave the loss resting on one surety alone.

**Conclusion.** D may recover Rs. 9,000 from any one surety; as between themselves, each ultimately bears Rs. 3,000.

---

**P1.6 — [Prob] Mrs. V buys a bus on a bank loan; her husband S stands surety; S later divorces V; V defaults; the bank asks S to clear the dues. Since he is no longer her husband, is S discharged from suretyship?**

Asked: Jun2016(100) · ★ · Notes: Unit 1 → Discharge of Surety

**Issue.** Does a change in the surety's personal relationship with the principal debtor discharge his suretyship?

**Rule.** A surety is discharged only by one of the recognised modes in ss.130-141 — revocation, death, variance, release of the debtor, grant of time, impairment of remedy or loss of security. A change in the personal relationship between the surety and the principal debtor is not among the statutory grounds of discharge.

**Application.** S guaranteed the bus loan, and his liability arose from that contract, not from his marriage. The subsequent divorce altered nothing in the loan agreement, varied no term, released no security, and impaired no remedy of S against V. The "no longer her husband" plea is the decoy: the surety contract is independent of the marital tie, so the change in relationship leaves S's obligation untouched. A surety cannot walk away merely because his personal motive for standing surety has disappeared; only the statutory grounds of discharge can release him.

**Conclusion.** S is not discharged; he remains liable as surety for V's default on the loan.

---

*End of Unit 1 Question Bank.*

