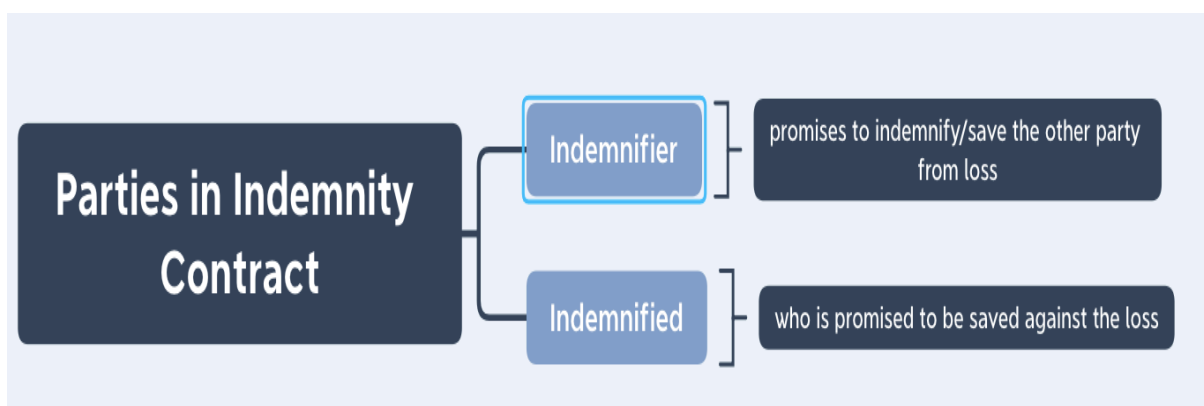


## **CONTRACT OF INDEMNITY**

The term “**Indemnity**” means to make good the loss or to compensate the party who has suffered some loss. The term “**Contract of Indemnity**” is defined under **Section 124** of the Indian Contract Act, 1872. It is “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.”

**Example:-** Mr. P contracts with the Government to return to India after completing his studies at University of Cambridge and serve the Government for a period of 5 years. If Mr. P fails to return to India, he will have to reimburse the Government. It is a contract of indemnity.

There are **two parties** in this form of contract. The party who promises to indemnify/ save the other party from loss is known as ‘**indemnifier**’, whereas the party who is promised to be saved against the loss is known as “**indemnified**” or “**indemnity holder**”.



To indemnify means to compensate or make good the loss. Thus, under a contract of indemnity the “existence of loss” is essential. Unless the promisee has suffered a loss, he cannot hold the promisor liable on the contract of indemnity.

However, the above definition of indemnity restricts the scope of contracts of indemnity in as much as it covers only the loss caused :

- (i) By the conduct of the promisor himself, or
- (ii) By the conduct of any other person.

Thus, loss occasioned by the conduct of the promisee, or accident, or an act of God is not covered.

**Mode of contract of indemnity:** A contract of indemnity like any other contract may be express or implied.

- a) A contract of indemnity is said to be express when a person expressly promises to compensate the other from loss
- b) A contract of indemnity is said to be implied when it is to be inferred from the conduct of the parties or from the circumstances of the case

A contract of indemnity is like any other contract and must fulfil all the **essentials of a valid contract** which includes:

- a) Offer and acceptance
- b) Intention to create legal obligation
- c) Consideration
- d) Competency to contract
- e) Free consent
- f) Lawful object
- g) The agreement must not be expressly declared to be void- e.g.: an agreement in restraint of trade/ marriage etc.
- h) The terms of the agreement must not be vague or uncertain
- i) The agreement must be capable of performance- An agreement to do an impossible act is void.
- j) Legal formalities

**Example:** A asks B to beat C promising to indemnify him against the consequences. The promise of A cannot be enforced. Suppose, B beats C and is fined Rs. 1,000, B cannot claim this amount from A because the object of the agreement is unlawful.

A contract of Fire Insurance or Marine Insurance is always a contract of indemnity. But there is no contract of indemnity in case of contract of Life Insurance.