## Difference between Contracts of Indemnity and Guarantee

| Basis of Difference | Contract of Indemnity | Contract of Guarantee |
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| 1. Function | Indemnifier promises to **protect** the indemnified **against the consequences** of the conduct of the indemnity holder or a third party | Surety **promises to perform the** obligation or **promise of a third party**, |
| 2. Parties to the Contract | There are only **two parties** to the contract-the **indemnifier** and the **indemnity holder** | There are **three parties** to the contract the **principal debtor**, the **creditor** and the **surety** |
| 3. Object | The purpose is a safety from an **uncertain future event**. | The purpose is to **assure the other party** of the performance of an obligation |
| 4. Number of contracts | There is only **one contract between** the **indemnifier** and the **indemnity holder** | There are **three contracts**: <br> - between the **principal debtor** and the **creditor**. <br> - between the **creditor** and the **surety**. <br> - an **implied contract** between the **principal debtor** and the **surety**. |
| 5. Scope | Scope is **limited** and **does not include** contracts of **guarantee** | Scope is **wide** and **includes** contracts of **indemnity**. |
| 6. Nature | The contract is a **security against loss** | The contract is an **assurance to the creditor** |
| 7. Liability | Liability of the **indemnifier is primary** | Liability of **surety is secondary** - i.e. it arise only in case of default of the principal debtor. |
| 8. Consideration | Indemnifier **receives a consideration** from the indemnity-holder **at the beginning of the contract**. | Surety **does not receive** any **consideration**. The **only consideration** for the surety **is the expected gain of the principal debtor** |
| 9. Right to Sue | Indemnifier **cannot sue a third party** for loss **in his own name**. He can only **sue on behalf of the indemnified**. | Surety, on discharging a debt due by the principal debtor, **can only sue the principal debtor** in his own right. |
| 10. Request | In the case of a contract of indemnity it is **not necessary** for the indemnifier **to act at the request of the indemnified**. | In the case of a contract of guarantee **it is necessary that** the **surety should give the guarantee at the request of the debtor**. |
| 11. Competency of Parties | **All parties** in a contract of indemnity must be **competent to contract**. | As a **special case**, when a **minor is principal debtor**, the contract of **guarantee is still valid**. |

## Guarantee Without Knowledge of Principal Debtor

| **Case : Periamaran Mararkkayar vs. Banians and Co.** |
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| In this case, A made a contract to buy some goods from B. C was not a party to the contract between B and A and A never went to C for giving guarantee on his behalf. C paid damages to B when A defaulted in his performance of the contract, and C filed a suit against A. The court, when giving the verdict, observed that the surety can only assume the obligation of performance at the express or implied request of the principal debtor and, only if he does so, can he sue the debtor for the reimbursement of the amount that he has paid to the creditor. The court observed that there was no contract of guarantee because there were no three parties in the contract. The court, therefore, held the contract void. |