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L.L.B Part- 2nd

Subject- Insurance Law

Paper-8th

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Topic- Explanation of Insurance is a contact of Idemnity. Is it applicable in all types of Insurance.

Introduction- Indemnity insurance is a contractual agreement in which one party guarantees compensation for actual or potential losses or damages sustained by another party. Most commonly, it is an insurance policy designed to protect professionals and business owners when found to be at fault for a specific event such as misjudgment. They generally take the form of a letter of indemnity.

Typical examples of indemnity insurance include professional insurance policies like malpractice insurance and errors and omissions insurance. These special insurance policies indemnify or reimburse professionals against claims made as they conduct their business.

[Fast Fact: The word indemnity stems from the Latin root *indemnis*, meaning "unhurt," "undamaged," or "without loss."]

How Indemnity Insurance Works-

Indemnity is a comprehensive form of insurance compensation for damages or loss and, in the legal sense, it may also refer to an exemption from liability for damages.

Indemnity insurance, which is sometimes referred to as professional liability insurance, is a supplemental form of liability insurance specific to certain professionals or service providers. The professionals provide counsel, expertise, or specialized services. Indemnity insurance is unlike general liability or other forms of commercial liability insurance that protect businesses against claims of bodily harm or property damage.

Indemnity insurance protects against claims arising from possible negligence or failure to perform that result in a client’s financial loss or legal entanglement. A client who suffers a loss can file a civil claim, and in response, the professional’s indemnity insurance will pay litigation costs as well as any damages awarded by the court.

As with any other form of insurance, indemnity insurance covers the costs of an indemnity claim including but not limited to court costs, fees, and settlements. The amount covered by insurance depends on the specific agreement, and the cost of the insurance depends on many factors including the history of indemnity claims.

Key Takeaways-

- Indemnity insurance is a contractual agreement in which one party guarantees compensation for actual or potential losses or damages sustained by another party.
- Most commonly, it is an insurance policy designed to protect professionals and business owners when found to be at fault for a specific event such as misjudgment.
- Certain professionals must carry indemnity insurance. Examples include those involved in financial and legal services, such as financial advisors, insurance agents, accountants, mortgage brokers, and attorneys.

Applications of Contract of Idemnity- Indemnities are used in a wide variety of contexts and there is no general rule about when to give an indemnity. It depends mostly on the circumstances of the contract (ex- If the contract is a high risk contract), the parties' willingness to do so and their relative bargaining positions. A party who is in a stronger negotiating position is more likely to ask for an indemnity from the other party, whereas a party in a weaker position is less likely able to ask for an indemnity.

It may be useful to seek an indemnity when:

- One of the parties is likely to suffer a loss from a commercial transaction;
- The remedies available with a pure damage claim would not be sufficient to cover the loss suffered.

Examples of contracts where indemnities can be used include:

- **Assignment of intellectual property rights**: when assigning IP rights to someone, the assignor often gives the assignee an indemnity against loss they may suffer from defects in those rights.
- **Software licensing agreements:** when a software developer grants a company the right to use its software, there is usually an indemnity clause to protect the company against any liability arising from the use of the software, for example in the event of claims from third parties (eg if the company gets sued because the software was copied from a third party).
- **Share purchase agreements:** when buying shares, the buyer often seeks an indemnity against tax liabilities of the target company.

On the contrary, indemnities should be avoided in certain contracts:

- <u>**Confidentiality agreements:**</u> an indemnity for breach of contract in a confidentiality agreement should be resisted as it will potentially increase the liability of the party who's receiving confidential information, allowing the disclosing party to recover for all liabilities, costs, claims and expenses incurred in connection with the breach, as opposed to the loss it actually suffers.
- <u>**Consumer contracts:**</u> indemnities paid by a consumer to a business are generally deemed unfair and are prohibited.