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# DOCTRINE OF SUBROGATION



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## **EVOLUTION**

The doctrine of subrogation is normally arises in the contract of insurance. The term subrogation is derived from the Latin term sub which means “under” and rogate means “to ask”. The contract of insurance had the elements of subrogation which is the fundamental principle in case of loss. This doctrine is applicable to all property and liability but not applied to personal accident and life insurance policies though they are not the contract of indemnity.

## **MEANING**

Subrogation means the substitution of a person or group by another in respect of debt in an insurance claim, accompanies by the transfer of any associated rights and duties. Subrogation is the right or rights of the insurer to assure the insured.

Section 140 of the Indian Contract Act deals with the doctrine of subrogation. If the principal debtor had become due of the guaranteed debt and the guaranteed duty has taken place, the surety, upon payment or performance of all, he is liable for, is invested with all the rights with the creditor had against the principal debtor.

## **TYPES OF SUBROGATION**

### **1. Indemnity Insurance Subrogation Rights**

The Insurance company assumes the right to sue the tortfeasor for the amount of damages shall be repaid to the insured.

### **2. Surety's Subrogation Rights**

If a surety pays debt to another party, the surety is subrogated to the creditor's former claims and remedies against the debtor to recover the sum.



### **3. Trustee's Subrogation Rights**

The trustee who has entered into the transaction for the beneficiaries is entitled to be indemnified by the beneficiaries for the personal loss incurred and to lien over the trust to secure compensation.

### **4. Lenders Subrogation Rights**

Where the lender lends money to the borrower's debt to a third party, the lender is subrogated to the third party against the borrower to the extent of debt discharge.

### **5. Bankers Subrogation Rights**

Where a bank pays money to a third party which discharges the liability to the third party, the bank is subrogated to the third party's former remedies against the customer.

## **CATEGORIES OF SUBROGATION**

### **1. Subrogation Of Equitable Assignment**

The subrogation of equitable assignment arises when the insurer stands in the shoes of the assured i.e. on settling the claim of the assured.

### **2. Subrogation Of Contract**

This doctrine arises commonly in the contract of insurance. The doctrine of subrogation is the right of the insurer to receive the rights and remedies as the assured has against the third person on loss to the extent that the insurer has indemnified the loss.

### **3. Subrogation-Cum-Assignment**

In this category of subrogation, the insurer retains the entire amount recovered and is allowed to sue in the name of assured or in his own name by executing the Subrogation-cum-assignment.



## PRINCIPLES OF SUBROGATION

- Equitable doctrine arises when the insurer is in the shoes of the assured and sues the wrongdoer.
- The subrogation does not terminate the right of the assured on suing the wrongdoer. It gives rise to the insurer on behalf of the insured to sue the wrongdoer.
- The insurer and the assured shall be governed by the Letter of Subrogation on issuing by the assured.
- Any plain, complaint, or petition can be filed in the name of assured or his representation as subrogee-cum-attorney, or by the assured and insurer as co-plaintiff or co-complaints.
- On issuance of Letter of subrogation by the assured, the assured had no longer sued the wrongdoer for his benefit.

## CASE LAWS

### **Case 1.**

#### ***Amritlal Goverdhan Lalan V. State Bank of Travancore, AIR 1968 SC 1432.***

Held - The surety will be entitled to every remedy which the creditor had against the principal debtor, to enforce every security and all means of payments, to stand in the place of the creditor, to have the securities and to avail himself of all those securities against the debtor. The right of a surety stands not merely upon contract, but also upon natural justice. The language of sec.140 which employs the words "is invested with all the rights which the creditor had against the principle debtor" makes it plain that even "without the necessity of a transfer, the law vests those rights in the surety".



### **Case 2.**

#### ***Bank of Bihar Ltd V. Damodar Prasad, AIR 1969 SC 297.***

Held - where the principal debtor becomes insolvent, the surety cannot ask the creditor first to pursue his remedy against the principal debtor. The Supreme Court pointed out that even then the surety should pay. He will be subrogated to the rights of the creditor against the principle debtor. "The very object of guarantee is defeated if the creditor is asked to postpone his remedies against the surety".

### **Case 3.**

#### ***Aboobuucker V. Ayisha, 1999 3 KLT 530.***

Held - The principal had paid to a very large extent, only the balance allowed to be recovered from the surety, for which he was entitled to indemnity from the principal debtor.

### **Case 4.**

#### ***Krishna Pillai Rajasekharan Nair (Dead) By Lrs. v. Padmanabha Pillai (Dead) By Lrs. And Others, 2004 SCC 12 754***

These rights the subrogee exercises not as a mortgagee reincarnate but by way of rights akin to those vesting in the mortgagee. The co-mortgagor can be a co-owner too. A property subject to mortgage is available, as between co-mortgagors, for partition, of course, subject to adjustment for the burden on the property. One of the co-mortgagors, by redeeming the mortgage in its entirety, cannot claim a right higher than what he otherwise had, faced with a claim for partition by the other co-owner. He cannot defeat the legal claim for partition though he can insist on the exercise of such legal right claimed by the other co-owner-cum-co-mortgagor being made subject to the exercise of the equitable right to claim contribution vesting in him by subrogation.



## Case 5.

### ***New India Assurance Company Limited v. Genus Power Infrastructure Limited, 2015 SCC 2 572.***

Held - we are of the firm view that the discharge in the present case and signing of letter of subrogation were not because of exercise of any undue influence. Such discharge and signing of letter of subrogation was voluntary and free from any coercion or undue influence. In the circumstances, we hold that upon execution of the letter of subrogation, there was full and final settlement of the claim.

#### **DISCLAIMER**

*This write up has been sent to you for information purposes only and is intended merely to highlight legal maxim. The information and/or observations contained in this issue do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. The views expressed in this issue do not necessarily constitute the final opinion of M/s.Wallcliffs Law Firm and should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us on mail@wallcliffs.com.*



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