

# **THE SALE OF GOODS ACT**

Formation of contract

Essentials of contract of sale

Conditions and warranty

Performance of Contract

Rights of an unpaid seller

Auction sales

The law relating to this statute was contained in **Chapter VII of Indian Contract Act 1872.**

Subsequently it was separated with the Indian sale of goods bill, and it came into force on  
**1<sup>st</sup> July 1930.**

In the due course the word Indian was omitted and it became

**“THE SALE OF GOODS ACT 1930”**

THE SALE OF GOODS ACT is the **most common of all commercial contracts.**

Contracts for sale of goods are **subject to general legal principles applicable to all contracts, such as offer and its acceptance, capacity of parties, free and real consent, consideration and legality of object.**

A contract of sale of goods Is a **contract** whereby **the seller transfers or agrees to transfer the property in goods to the buyer for a price.**

There may be a contract of sale between one part - owner and another.

It may be may be **absolute or conditional**

## DEFINITIONS:

"**buyer**" means a person who buys or agrees to buy goods ;

"**seller**" means a person who sells or agrees to sell goods

"**delivery**" means voluntary transfer of possession from one person to another ;

- **Actual** delivery
- **Constructive** delivery (eg. A warehouseman holding the goods of A agrees to hold them on behalf of B on A's request)
- **Symbolic** Delivery (when there is a deliver of a thing in token, eg. When a key to warehouse holding the goods are handed over to the buyer)

goods are said to be in a "**deliverable state**" when they are in such state that the buyer would under the contract be bound to take delivery of them.

**"document of title to goods"** includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, [multimodal transport document,] warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented ;

**"fault"** means wrongful act or default ;

**"goods"** means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale ;

**"future goods"** means goods to be manufactured or produced or acquired by the seller after the making of the contract of sale ;

**"specific goods"** means goods identified and agreed upon at the time a contract of sale is made

**"quality of goods"** includes their state or condition ;

a person is said to be **"insolvent"** who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not ;

**"mercantile agent"** means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods ;

**"price"** means the money consideration for a sale of goods ;

**"property"** means the general property in goods, and not merely a special property ; (ownership) (eg. If A who owns certain goods pledges them to B, he has general property in goods, whereas B has special property in goods to the extent of the amount of advance made)

**Earnest:** in a contract of sale the buyer may give some tangible thing as a token of good faith as a guarantee or security for the due performance of the contract.

## **SALE AND AGREEMENT TO SELL**

- where under a contract of sale, the **property in the goods is transferred from the seller to the buyer**, the contract is called a **sale**.

A sells his house to B for Rs. 25 lacs.

- where the **transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled**, the contract is called **agreement to sell**.

A agrees to buy certain goods from B on 15<sup>th</sup> of next month.

**an agreement to sell becomes a sale when the time elapses or the conditions subject to which the property in the goods is to be transferred are fulfilled.**

## ESSENTIALS OF A CONTRACT OF SALE

- **two parties**
- The subject matter of contract must necessarily be **goods**
- **price** in money should be paid or promised
- **transfer** of general property from seller to buyer must take place.
- a contract of sale must be **absolute or conditional**
- **essential elements of a valid contract**

## **CONTRACT OF SALE HOW MADE**

A contract of sale is **made by an offer to buy or sell goods** for a price **and the acceptance of such offer.**

The contract may provide for the **immediate delivery** of the goods **or immediate payment** of the price **or both**, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed

Subject to the provisions of any law for the time being in force, a contract of sale **may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties**

## **FORMALITIES OF CONTRACT OF SALE**

Except when specifically required by any law, **No particular form is necessary to constitute a valid contract.**

The agreement may be **express or implied** from the conduct of the parties.

## **A CONTRACT OF SALE MAY BE MADE IN ANY OF THE FOLLOWING MODES:**

- there may be an **immediate delivery** of goods, or
- there may be **immediate payment** of price but it may be agreed that the **delivery is to be made at some future date**, or
- there may be **immediate delivery of goods and an immediate payment of price**, or
- it may be agreed that the delivery or payment or both are to be made **in installments**, or
- it may be agreed that the delivery or payment or both are to be made **at some future date**

## **SUBJECT MATTER OF CONTRACT OF SALE**

The subject matter of sale is always goods.

- **Goods perishing before making of contract .**

Where there is a contract for the sale of **specific goods**, the contract is void if the goods **without the knowledge of the seller** have, at the time when the contract was made, **perished or become so damaged** as no longer to answer to their description in the contract. (**void an initio**)

Eg. A agrees to buy certain goods from B. it turns out the goods were destroyed at time of bargain.

- **Goods perishing before sale but after agreement to sell .**

Where there is an agreement to sell **specific goods**, and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement **before the risk passes to the buyer**, the agreement is thereby void.

Eg. A took certain goods from B for a trial of 10 days, on the condition that if found suitable the bargain would become absolute. On 5<sup>th</sup> day the goods were destroyed without any fault of either party.

Here the contract, which was in form of an agreement to sell, becomes void and the seller shall bear the loss.

**(generally risk passes with the property)**

## ASCERTAINMENT OF PRICE .

Price may be :

- fixed by **contract**
- agreed to be fixed in a **manner provided by the contract** (eg. By a valuer)
- determined by the **course of dealings** with the parties

Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a **reasonable price**.

What is a reasonable price is a question of fact **dependent on the circumstances of each particular case**.

## **DUTIES OF SELLER AND BUYER**

It is the duty of the seller **to deliver the goods** and  
of the **buyer to accept and pay for them,**

in accordance with the terms of the contract of sale.

## **PAYMENT AND DELIVERY ARE CONCURRENT CONDITIONS**

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say,

- the **seller** shall be **ready and willing to give possession** of the goods to the buyer **in exchange for the price,** and
- The **buyer** shall be **ready and willing to pay the price in exchange for possession** of the goods.

## **DELIVERY .**

Delivery of goods sold may be made by doing anything which the **parties agree shall be treated as delivery** or which has the **effect of putting the goods in the possession** of the buyer or of any person authorised to hold them on his behalf.

## **EFFECT OF PART DELIVERY**

- A delivery of part of goods, **in progress of the delivery of the whole**, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole;

## **BUYER TO APPLY FOR DELIVERY**

Apart from any express contract, **the seller of goods is not bound to deliver them until the buyer applies for delivery.**

## **DELIVERY OF WRONG QUANTITY**

- Where the seller delivers to the buyer a quantity of goods **less than he contracted to sell**, the **buyer may reject them, but if the buyer accepts** the goods so delivered **he shall pay** for them at the contract rate.
- Where the seller delivers to the buyer a quantity of goods **larger than he contracted to sell**, the **buyer may accept the goods included in the contract and reject the rest**, or **he may reject the whole**. If the buyer **accepts the whole** of the goods so delivered, he shall **pay for them at the contract rate**.
- Where the seller delivers to the buyer the goods he contracted **to sell mixed with goods of a different description not included in the contract**, the **buyer may accept** the goods which are in accordance with the contract and **reject the rest, or may reject the whole**.

The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties

## **BUYER'S RIGHT OF EXAMINING THE GOODS**

Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a **reasonable opportunity of examining** them for the purpose of ascertaining whether they are in conformity with the contract.

Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

## **LIABILITY OF BUYER FOR NEGLECTING OR REFUSING DELIVERY OF GOODS**

When the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, **he is liable to the seller FOR ANY LOSS OCCASIONED BY HIS NEGLIGENCE OR REFUSAL to take delivery and also for a reasonable charge for the care and custody of the goods :**

**Provided** that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

## CONDITIONS AND WARRANTIES

### CONDITION:

**Section 12(2)** defines condition as a **stipulation essential to the main purpose** of the contract, the breach of which gives the aggrieved party a right to repudiate the contract itself.

Its non fulfillment upsets the very basis of contract

### WARRANTY:

**Section 12(3)** defines warranty as a **stipulation collateral to the main purpose** of the contract, the breach of which gives the aggrieved party a right to sue for damages and not to avoid the contract itself.

It is not of such vital importance as a condition

## Case Law:

### **Baldry v. Marshall:**

Baldry consulted the car dealer, and told him that he wanted to purchase a car for the purpose of touring. The Car dealer, Mr. Marshall suggested that a Bugati car would be fit for the purpose. Baldry bought the car as he believed the car dealer. However, the car was found to be unsuitable for touring purposes.

The Court ruled that the suitability of the car for the purpose of touring was a Condition because that was the very purpose for which Baldry has purchased it. Thus, Baldry could return the car to the dealer and receive the refund for the same.

### **Illustration:**

'A' goes to a cosmetic shop to buy an eyeliner. The shopkeeper states that the eyeliner was waterproof and would not get washed off, unless it was removed with cotton. However, later on when 'A' used the eyeliner she found that it was not waterproof.

Here a breach of warranty took place and 'A' is entitled to claim damages only.

<p style="text-align: center;"><b>CONDITION</b></p>	<p style="text-align: center;"><b>WARRANTY</b></p>
<p>It is a stipulation which is essential to the main purpose of the contract</p>	<p>It is a stipulation which is only subsidiary or collateral to the main purpose of the contract</p>
<p>Breach of condition gives the aggrieved party <b>the right to repudiate the contract and also claim damages</b></p>	<p>Breach of warranty gives the aggrieved party <b>right to claim damages only</b></p>
<p>Breach of condition may be treated as a breach of warranty</p>	<p>Breach of warranty cannot be treated as a breach of condition</p>
<p><b>A contract of sale cannot be fulfilled unless conditions, are fulfilled</b></p>	<p><b>The main contract can be fulfilled even if the warranty is not fulfilled.</b></p>

## **‘CAVEAT EMPTOR’ – LET THE BUYER BEWARE**

according to it

**It is the duty of the buyer to be careful while purchasing goods.**

**In the absence of any enquiry from the buyer, the seller is not bound to disclose the defects in the goods.**

It is the **buyer who must examine the goods** thoroughly and must see that the goods that he buys are suitable for the purpose of which he wants them.

If the goods turn out to be defective, the buyer cannot sue the seller, as there is no implied undertaking by the seller that he shall supply goods to suit the buyers purpose.

## **Exceptions to CAVEAT EMPTOR**

- **when the seller makes false representation of facts, regarding the product**

**EG.** 'A' bought a house from 'B' who showed 'A' the documents of the house. He represented himself as the rightful owner when the house did not actually belong to him. 'A' believing the documents made the initial payment for the purchase of the house.

In this case, there is a misrepresentation by 'B' and 'A' has the right to be refunded the payment that she made to 'B'. She can cancel the Contract

- **when the seller actively conceals a defect in goods which could not be revealed by ordinary examination**

**EG.** 'A' bought a bottle of glue from a stationery shop. The shopkeeper did not disclose the fact that the glue was defective. When 'A' used the glue, she discovered that it was defective and could not be used for sticking the stamps.

Here 'A' can return the bottle of glue to the shopkeeper because the defect was not visible

- **where goods are supplied by description and they do not correspond with the description given by the seller**

**EG.** 'A' bought a Television from an Electronics dealer. The dealer informed 'A' that although the TV was a few years old, it was in an excellent condition. Later, 'A' found that the Television set did not work properly.

He was entitled to reject the TV and recover his money. This was a contract of sale by description and the dealer had described the TV to be in an excellent condition whereas it was not.

- **where goods are supplied by description and they are not of merchantable quality**

**EG.** 'A' agreed to sell to 'B' a some oil described as foreign refined groundnut oil and a sample of the oil was given to 'B'. When the oil was supplied, 'B' found that the oil was not of the same quality. 'B' rejected the oil supplied by 'A'.

Here 'B' can reject the oil as the oil had been sold by Sample.

## **EXPRESS AND IMPLIED CONDITIONS AND WARRANTIES**

- Express conditions and warranties are those which are **expressly provided in the contract**
- Implied conditions and warranties are those **which the law implies into the contract** unless the parties stipulate to the contrary.

### **Express Conditions and Warranties**

These are always clearly stated in the contract of sale.

**EG.** 'A' buys a Nokia Cellphone , model No.1500. Here, the Model No. is an express condition. If the Nokia Dealer gives a warranty for one year and that is stated in the sale document then the Warranty for one year is considered as an Express Warranty.

Whether any express condition is made or not **law presumes certain standards** which are to be ensured by the seller before selling the any product.

These presumptions as to nature, quality, and rightful ownership of the product are termed as **implied conditions.**

**Implied Conditions and Warranties:** Such Conditions and Warranties are implied by law in every contract of sale of goods unless these are specifically excluded from the terms of the contract. There are several kinds of implied Conditions and implied Warranties.

### **IMPLIED CONDITIONS:**

- CONDITIONS AS TO TITLE
- SALE BY DESCRIPTION
- CONDITION AS TO QUALITY OR FITNESS
- CONDITION AS TO MERCHANTABILITY
- CONDITION IMPLIED BY CUSTOM
- SALE BY SAMPLE
- CONDITION AS TO WHOLESOMENESS

## CONDITION AS TO TITLE

the seller has the right to sell the Goods, and in the case of an agreement to sell the, the seller will have the right to sell the goods at the time of sale

The term “right to sell” infers that the seller should have a **valid title to the Goods**.

EG. B bought a second hand car from S a car dealer. After few months the car was taken away by the police as it was a stolen one. The court observed that it was a breach of condition as to title as S had no right to sell the car.

It was held that B could recover full price from S

## **SALE BY DESCRIPTION**

where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description

“If you contract to sell peas, you cannot oblige a party to take beans.”

### **Case Law:**

#### **Moore & Co. v. Landaver & Co.:**

A sold to B, 3000 tins of Australian fruits, which were agreed to be kept in cases each containing 30 tins. A delivered the substantial portion of the fruits in cases containing 24 tins.

It was held that the method of packing was a part of the description. Therefore, B was entitled to reject all the goods

Sale of goods by description may include following situations:

- **Where the buyer has not seen the goods and relies on their description given by the seller.**

EG. W bought a reaping machine which he had never seen V the seller described “ to have been new the previous year and used to cut only 50 to 60 acres” .W found the machine to be extremely old .It was held that W could return the machine as it did not answer to the description.

- **Where the buyer had seen the goods but relies not on what he had seen but on what was stated to him by the seller**

EG. in an auction sale of a set of Napkins and table clothes, these were described as dating from the seventh century; the buyer bought the set after seeing it. Subsequently it was found that the set was not of the seventh century but of the eighteenth century, it was held that he could reject the goods

- **Packing of goods may sometimes be part of the description**

EG. M sold to L 300 TINS OF Australian Apple packed in cases containing 30 tins.M tendered a substantial portion in case containing 24 tins. It was held that l could reject all the tins as the goods were not packed according to the description given in the contract as the method in which the fruit was packed was an essential part of the description.

## CONDITION AS TO QUALITY OR FITNESS

Ordinarily there is no implied condition that the goods supplied by the seller should be fit for the particular purpose of the buyer. **The rule Caveat emptor applies** instead. It means that while buying it is the responsibility of the buyer to ensure that the goods corresponds to the particular purpose he want to meet.

## CONDITION AS TO MERCHANTABILITY

Where goods are bought by description from a seller who deals in goods of that description whether he is not the producer or manufacturer or not, **there is an implied condition that the goods shall be of merchantable quality**

EG. B wanted to purchase some glue. The glue was stored in the seller's warehouse in barrels. B was given every facility to open the barrels and inspect them but B did not open the barrels. Later the glue was found to have defects which B could have noted if he had opened the Barrels.

The court held that there is no breach of implied condition as to merchantability in this case and B was not entitled to any relief.

## **CONDITION AS TO WHOLESOMNESS**

In the case of food products the condition of fitness or merchantability requires that the goods should be wholesome, **that is it should be fit for consumption**

EG. C brought a Bun from a baker's shop .The bun contained a stone which broke of C's teeth.

The court held that the seller was liable to pay damages as he breached the condition of wholesomeness.

## **CONDITION IMPLIED BY CUSTOM**

there are instances where the purpose of purchasing goods may be ascertained from the conduct of parties to the sale. Or from the nature of description of the thing purchased.

For, example if a water bottle is purchased the purpose for which it is bought is implied in it; in that case the buyer need not tell the seller the purpose for which he buys it.

## **SALE BY SAMPLE**

In the case of contract of sale by sample, there is an implied condition –

1. That the **bulk shall correspond to the sample** in quality.
2. That the buyer shall have a reasonable **opportunity of comparing the bulk with the sample.**
3. That the goods shall be **free from any defect**, rendering them unmerchantable. The defect should not however be apparent on a reasonable examination of the sample.

EG. A agreed to buy some rubber material from B. The sample of the rubber was shown to A. On receiving the rubber material, A found that the measurement of the rubber material was different from that of the sample.

The court held that measurement of the rubber material was part of its quality. It was held that the goods did not correspond to the sample.

## **REMEDY FOR BREACH OF CONDITION.**

On breach of a condition by the seller, **the buyer's remedy is that he can reject the transaction and return the goods to the seller.**

On the breach of a warranty by the seller the **buyer is provided with a remedy to claim damages** suffered because of the goods bought under the transaction, but he cannot return the goods.

When certain condition is not fulfilled, the buyer may not put an end to the contract by rejecting the goods and recover damages from the seller for breach of warranty.

**But once the buyer exercises his option to treat a breach of condition as a breach of warranty, he cannot afterwards insist on the fulfillment of the condition.**

This rule is laid down in Section 13 (1) of the Act.

Where the contract of sale is not severable and the buyer has accepted the goods or any part of the goods the breach of any condition by the seller can only be treated as a breach of a warranty, unless there is a term of the contract, express or implied to the contrary.

This rule is laid down in Section 13(2) of the Sale Goods Act.

## **IMPLIED WARRANTIES:**

- **Warranty of quite possession**

If the buyer is in anyway disturbed by any person having superior rights than the seller, the buyer can claim damages from the seller

### **Case Law:**

#### **Mason v. Birmingham:**

Birmingham sold a second hand radio to Mason, who spent Rs.100 on the repairs of this radio. This radio was seized by the police as it was a stolen one. Mason filed a suit against Birmingham including the cost of repairs. It was held that Mason was entitled to recover the same.

- **Warranty of freedom from encumbrances**

The goods must be **freed from any charges in favour of third party** not declared or known to the buyer before or at the time the contract is made.

**Illustration :** 'A' borrowed Rs.5000 from 'B' and hypothecated his radio with 'B' as a security. Later on, 'A' sold his radio to 'C' who bought the same in good faith. Here, 'C' can claim damages from 'A' because his possession is disturbed since the radio had been kept with 'B'

- **Warranty as to quality or fitness by usage of trade**

**EG.** 'A' buys 100 shares through a share broker. Later he requests for those shares to be registered in his name. However, the shares are received by him without registration and are marked as 'bad delivery'. 'A' can claim the damages from the broker, because in accordance with the trade usage, it is the responsibility of the broker to ensure that there is no loss caused as a result of 'bad deliveries' of the shares purchased through him

- **Warranty to disclose dangerous nature of goods**

In case the goods are of dangerous nature, **seller has to warn the ignorant buyer of the probable danger,**

If there is breach of this warranty the buyer is entitled to claim damages for injury.

**Case Law:**

**Clarke v. Army and Navy Cooperative Society Ltd.:**

Clarke purchased a tin of disinfectant powder which required that it be opened with special care. Clarke's wife while opening the tin was injured as the powder flew into her eyes. Held, the seller was liable for the injury sustained by Clarke's wife because of breach of warranty.

## **RIGHTS OF AN UNPAID SELLER**

A seller of goods is deemed to be an unpaid seller when:

- **the whole of the price has not been paid or tendered**
- **a bill of exchange or other negotiable instrument has been dishonored**

Following conditions must be fulfilled before seller of goods can be termed as unpaid seller

- **he must be unpaid and the price must be due**
- **he must have an immediate right of action for the price**
- **a bill of exchange or other NI was received but has been dishonored**

**Example: A sells good to B on 5 months credit period and B turns insolvent after 5 months.**

**- A sells TV set to B on the same day cheque basis, the cheque is dishonored due to insufficient funds. A is unpaid seller.**

# **RIGHTS OF AN UNPAID SELLER**

## **I AGAINST THE GOODS**

- ❖ Where the property in the goods has passed
  - Lien
  - Stoppage in transit
  - Re-sale
  
- ❖ Where the property in the goods has not passed
  - withholding delivery
  - stoppage in transit

## **II AGAINST THE BUYER PERSONALLY**

- Suit for price
- Suit for damages
- Repudiation of contract
- Suit for Interest

# I            **Rights of an unpaid seller against the goods**

## ❖ **RIGHT OF LIEN**

lien is a right to **retain possession of goods until payment of the price.**

It is available to the unpaid seller of the goods who is in possession of them where:

- the goods have been **sold without any stipulation as to credit**
- the goods have been **sold on credit, but the term of credit has expired**
- the **buyer becomes insolvent**

## **TERMINATION OF LIEN:**

The unpaid seller of goods loses his lien thereon

- when he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer **without reserving the right of disposal of the goods;**
- when the buyer or his agent **lawfully obtains possession of the goods;**
- by **waiver** (express / implied)

Example: Seller S sells a TV to B and delivers it to B and since the TV was not working properly, B delivered it back to S for the repairs. It was held that S cannot exercise his right of lien over TV set.

## ❖ RIGHT OF STOPPAGE IN TRANSIT

Right of stopping the goods in transit after the unpaid seller has parted with the possession of the goods.

It is available to unpaid seller when:

- the buyer becomes insolvent
- the goods are in transit

Duration of transit

From the time they are delivered to a carrier, until the buyer takes the delivery of them.

Example: A sells TV to B. A delivers the TV to the carrier to carry it to B. later on gets news that B has become insolvent. A can stop delivery.

**Transit comes to an end if:**

- if the buyer obtains delivery of goods **before they arrive at the appointed destination**
- if after the arrival of the goods at the destination, carrier **acknowledges to the buyer** that he holds the goods.
- where the carrier **wrongfully refuses to deliver the goods to the buyer**
- where part delivery is made and remaining part delivery may be stopped in transit

## **Stoppage in transit**

The unpaid seller may exercise his right of stoppage in transit either –

- **by taking actual possession of the goods** or
- **by giving notice of his claims** to the carrier in whose possession the goods are.

When the notice of stoppage in transit is given by the seller to the carrier, the latter must re-deliver the goods to or accordingly to the directions of the seller.

**The expenses of such re-delivery are to be borne by the seller**

## ❖ **RIGHT OF SALE**

The unpaid seller can **resell the goods** –

- where the goods are of **perishable nature or**
- where he **gives notice** to the buyer of his intentions to re sell the goods and the buyer does not within a reasonable time pay or tender the price.
- where the seller **expressly reserves a right of re sale in case the buyer should make default**

## ❖ **RIGHT OF WITHHOLDING DELIVERY**

Where the property in goods has not passed to the buyer, an unpaid seller has in addition to other remedies a right to withhold delivery similar to and co extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

## **II RIGHTS OF UNPAID SELLER AGAINST THE BUYER PERSONALLY**

### **❖ Suit for price**

- where property has passed
- where property has not passed

### **❖ Suit for damages for non acceptance**

### **❖ Cancellation of contract before due date**

Where the buyer cancels the contract before the date of delivery, seller may either

- treat the contract as subsisting and wait till delivery date
- treat the contract as cancelled and sue for damages. (this rule is known as ‘rule of anticipatory breach of contract’)

### **❖ Suit for interest**

## **AUCTION SALES**