



### Commercial Law Concentrate: Law Revision and Study Guide (6th edn) Eric Baskind

## p. 146 10. Remedies of the buyer

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### Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter examines the various remedies that are available to a buyer under a contract of sale of goods where the seller is in breach of the sales contract. It considers the regime of remedies introduced by the Consumer Rights Act 2015 and discusses a range of remedies such as rejecting the goods, suing for non-delivery or late delivery of the goods, suing for damages following the seller's breach of warranty, requiring the seller to repair or replace the goods, claiming from the seller a reduction in the price, or rescinding the contract. The chapter then explains the difference between breach of condition of the contract and breach of warranty.

**Keywords:** remedies, buyer, sale of goods, seller, breach of contract, supply of goods, consumers, non-delivery, damages, breach of warranty

### Key facts

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- This chapter discusses the various remedies that are available to a buyer under a contract of sale of goods.
- A different regime of remedies applies where the buyer is a consumer.
- The remedies include (where applicable) the right to:
  - reject the goods;
  - sue for non-delivery or late delivery of the goods;
  - sue for damages following the seller's breach of warranty;

- where the buyer is a consumer, a short-term right to reject the goods; a right to have the goods repaired or replaced; a right to have the purchase price reduced; a final right to reject; and a right to recover certain costs.

### p. 147 Introduction

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This chapter sets out the remedies available to a buyer under a sale of goods contract. The buyer's harshest remedy in respect of the seller's breach of contract is to reject the goods, terminate the contract of sale, and, where applicable, sue the seller for damages.

A buyer will only be entitled to terminate the contract if the seller has committed a breach of **condition** of the contract. A mere breach of **warranty** will only entitle the buyer to sue for damages. As we will see, in certain circumstances a buyer will be obliged to (or may choose to) treat the seller's breach of condition as a breach of warranty.

If the seller's breach relates to the *quality* of the goods, then different rules as to damages apply. This kind of breach is known as a breach of warranty of quality.

Some of the remedies differ, depending upon the circumstances, such as whether the buyer was a consumer or whether the goods were bought for the purpose of resale.

## The buyer's right to reject the goods

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The buyer may reject the goods in the following circumstances.

### If the seller has breached a condition of the contract

If the term that has been breached is a condition (e.g. a breach of a statutory implied term as to the quality of the goods), the buyer may treat the contract as at an end and sue for damages, unless:

1. they have accepted the goods (see Chapter 8, 'Acceptance', p 125, for the rules on when a buyer is deemed to have accepted the goods). If the buyer has accepted the goods, then they will no longer be entitled to reject them for breach of condition but will be obliged to treat the breach as a breach of **warranty** only unless there is an express or implied term of the contract to that effect (**s 11(4) of the Sale of Goods Act 1979 (SGA)**). However, the right to reject goods after they have been accepted is still available for a breach of **s 12(1) SGA**;
2. they did not deal as a consumer (i.e. they are a commercial buyer) and the breach is so slight that it would be unreasonable for them to reject the goods. In such a case, they will have to treat the breach as a breach of **warranty** only (**s 15A SGA**). It is for the seller to show that the breach is so slight that they should be entitled to rely on this subsection (**s 15A(3)**); or
3. they have waived the condition or elected to treat the breach of the condition as a breach of **warranty** and not as a ground for treating the contract as repudiated (**s 11(2) SGA**).

### Where the buyer does not deal as a consumer

p. 148 Section 15A modifies the remedies available to a buyer for breach of condition in cases where the buyer does not deal as a consumer. It provides that, unless the parties agree otherwise, in the case of a contract of sale of goods, where the buyer would have the right to reject the goods by reason of the seller's breach of a term implied by s 13, 14, or 15 (see Chapter 2, 'Statutory implied terms') but where that breach is so slight that it would be unreasonable for the buyer to reject them, then, if the buyer does not deal as a consumer, the breach is not to be treated as a breach of **condition** but may be treated as a breach of **warranty**.

#### Example

An example of how s 15A operates might be helpful.

Sue owns a furniture shop. She buys her sofas from Wally, who is a wholesaler. One sofa is defective but the defect is so slight that it would be unreasonable for her to reject it. Sue then sells the sofa to Norman, who does not inspect it before purchase but notices the defect a short time later. The same breach occurs in both contracts but the remedies may be very different. Because Norman was a consumer, he may be entitled to reject the sofa. However, because Sue did not deal as a consumer when she purchased the goods from Wally, she cannot treat her contract with him as repudiated and may only bring a claim against him in damages for breach of **warranty**.

In Chapter 2 ('The description must amount to a term in the contract', p 21) we discussed *Re Moore and Landauer (1921)*, where the buyer was entitled to reject the goods even though the breach was extremely minor. At that time, there was no statutory equivalent of s 15A SGA. It seems very likely that had s 15A been in force at that time, the court would have held that the breach was so slight that it would have been unreasonable for the buyer to have rejected the goods.

#### Revision tip

Don't forget that s 15A SGA applies to ss 13, 14, and 15 but not to s 12(1) SGA. The rule is different in cases where the buyer deals as a consumer. Because s 15A does not apply to s 12(1), any buyer (whether or not they are dealing as a consumer) will be entitled to treat the seller's breach of condition as a repudiation of the contract. Also, don't forget that s 15A is irrelevant insofar as s 12(2)(a) or 12(2)(b) are concerned and that these sections imply warranties in any event.

### Looking for extra marks?

The rules discussed earlier explain the circumstances when a buyer may be entitled to reject the goods. These rules naturally apply only to contracts of sale of goods. In other kinds of contract (e.g. **hire purchase** or contracts to provide a service), the buyer may also choose to accept the seller's breach of **condition** or repudiation and treat the contract as at an end. The buyer's right to treat the contract as terminated will be lost if they *affirm* the contract (just as it would be lost in a **contract of sale** where the buyer *accepts* the goods). Although there are no statutory rules on what amounts to affirmation, a buyer will be deemed to have affirmed the contract where, with full knowledge of the breach, they indicate to the supplier that they will not be treating the contract as repudiated. Once the buyer has done this, similar to the situation in a contract of sale, they will then only be entitled to sue the supplier for damages.

### p. 149 **If the seller delivers the wrong quantity of goods**

The buyer may reject the goods if the seller has delivered the wrong quantity (s 30), although a buyer who does not deal as a consumer will not be entitled to reject them if the breach is so slight that it would be unreasonable to reject (s 30(2A)). This was discussed in Chapter 8, 'Delivery of the wrong quantity', p 122.

### **Where a term in the contract of sale gives the buyer the right to reject**

Where the **contract of sale** expressly gives the buyer the right to reject the goods for a specific event, then upon the occurrence of that event the buyer may reject the goods.

### **Where the seller has committed a repudiatory breach of the contract**

If the seller commits a repudiatory breach of the **contract of sale**, the buyer may accept such breach as bringing the contract to an end.

### **Where the seller breaches an innominate term of the contract which deprives the buyer of substantially the entire benefit of the contract**

An **innominate term** is one where the *consequences or seriousness* of the breach determine whether or not it takes effect as a **condition** or a **warranty**. In this way, if the consequences of the breach are so fundamental that the innocent party has been deprived of substantially the entire benefit of the contract, they will be entitled to treat the contract as repudiated and sue for damages. If, on the other hand, the effects of the breach are only minor, it will be treated as a breach of warranty (see *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* (1962)).

### Damages for non-delivery

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#### Revision tip

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer will be entitled to purchase similar goods from another supplier. In general terms, if the replacement goods cost more, then the buyer can claim this difference from the seller in damages. Conversely, where the buyer pays the same price or less for the replacement goods, then, *prima facie*, their damages will be only nominal. In both situations, it is the market price of the goods at the time of the breach that is relevant.

p. 150 ↩ **Section 51(1)** provides that where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue them for damages for non-delivery. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract (s 51(2)).

#### Was there an available market for the goods?

Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time the goods ought to have been delivered or (if no time was fixed) at the time of the refusal to deliver (s 51(3)). The measure of damages in s 51(3) is just a special case of the general measure of damages in s 51(2) (*Euro-Asian Oil SA v Credit Suisse AG* (2019)). Where there is no available market for the goods, then the damages are calculated in accordance with s 51(2). This means that the damages will be assessed under common law in accordance with the first limb or rule in *Hadley v Baxendale* (1854). This provides that the damages which the buyer ought to receive in respect of the breach of contract should be the loss which would arise naturally 'according to the usual course of things' from the breach (per Alderson B). The buyer is, of course, under a duty to take reasonable steps to mitigate their loss and will only be entitled to recover damages for the loss actually suffered as a result of the seller's breach.

Normally, there is no market for damaged or defective goods (*Septo Trading Inc v Tintrade Ltd* (2020)) (appeal allowed on other grounds: *Septo Trading Inc v Tintrade Ltd* (2021)), although this is not the case where the goods are not damaged or defective but have a specification which fails to comply with the terms of the contract.

### Looking for extra marks?

You should point out that there will be no market in rare or unique one-off goods, such as a limited-edition Porsche 911 GT3 RS4, and therefore damages will be calculated in accordance with s 51(2) (*Hughes v Pendragon Sabre Ltd (2017)*).

The fact that the buyer bought the goods for the purpose of resale is generally ignored for calculating damages for non-delivery and the prima facie rule noted earlier prevails. However, in *R&H Hall Ltd v WH Pim Junior & Co Ltd (1928)*, the House of Lords made four exceptions, which, if all of them are present, will displace the prima facie rule; the court will instead take account of the buyer's resale of the goods and any loss which the buyer sustains in connection with the resale will be recoverable:

- the parties to the first contract must have contemplated that the buyer was to resell the goods. Therefore, the first seller will have known that their buyer would sustain loss in the event of non-delivery;
- the resale contract must have been made before the delivery due date on the first contract;
- the resale contract must be for the exact same (not just similar) goods as were to be supplied under the first contract; and
- the resale contract must be in accordance with the market and not be an extravagant or unusual bargain.

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### Revision tip

You should also refer to Chapter 9, 'Where there is an available market', p 140, for a discussion of the rules on available market. Also, don't forget the provisions of s 54 SGA, which provide that the buyer, in addition to claiming damages under the market rule, may also be entitled to claim *special damages* based on the loss arising from any special circumstances of which the parties were aware at the time the contract was made. This refers to damages under the second limb or rule in *Hadley v Baxendale*.

## Rejected goods and non-delivery

Where the buyer lawfully rejects the goods and treats the seller's breach as a repudiation of the contract, they must make the goods available for collection. Unless the parties have agreed otherwise, s 36 SGA provides that where goods are delivered to the buyer and they refuse to accept them, having the right to do so, they are not bound to return them to the seller, but it is sufficient if they intimate to the seller that they refuse to accept them. Even though the goods will already have been delivered to them, the buyer can claim damages for non-delivery under s 51 SGA. This is in addition to reclaiming the price paid. This might, at first glance,

appear to be rather odd but the reason for it is that any delivery that the seller has made will be deemed not to have been made because the buyer has treated the contract as repudiated as the goods contracted for were not delivered. However, the buyer's right to claim damages for non-delivery will not be available if they have waived the **condition** or elected to treat the breach of the condition as a breach of **warranty** rather than as a ground for treating the contract as repudiated (**s 11(2) SGA**), and in such a case their claim will be limited to a claim in damages for breach of warranty under **s 53 SGA**.

### Revision tip

Just as a buyer who lawfully rejects the goods is entitled to sue the seller for damages for *non-delivery*, a seller will be entitled to terminate the contract and sue the buyer for damages for *non-acceptance* of the goods if the buyer wrongfully rejects the goods and thereby repudiates the contract.

## Damages for late delivery of the goods

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### Revision tip

The first thing to note is that the **SGA** does not provide any specific rules for late delivery of the goods.

p. 152    ↩ Late delivery of the goods usually amounts to a breach of condition entitling the buyer to reject the goods and sue for non-delivery under **s 51**.

The buyer may, however, choose to accept late delivery of the goods, or the late delivery may only be a breach of **warranty**. In this case, the damages for late delivery will be assessed under common law adopting the two limbs or rules in *Hadley v Baxendale*. We looked at the first of these rules under 'Was there an available market for the goods?', p 150. The second rule in *Hadley v Baxendale* provides that the damages should be the loss 'as may reasonably be supposed to have been in the contemplation of the parties at the time when they made the contract, as the probable result of the breach of it' (per Alderson B).

There will be a difference in the calculation of damages for late delivery depending on whether the goods were bought for the purpose of resale or not.

### Goods not bought for the purpose of resale

Where the buyer buys the goods for their own consumption, then their measure of damages will be the loss, if any, they have suffered as a result of the late delivery. The usual measure of damages will be the market value of the goods on the date the goods should have been delivered less the market price, if lower, on the date they were actually delivered. Of course, if the market value of the goods is higher on the date of actual delivery,

then the buyer has suffered no loss in this regard. In addition, the buyer ought to be able to claim damages to compensate them for any losses sustained as a result of their being deprived of the goods during the period of delay. They are, of course, under a duty to mitigate their loss and this might require them, where reasonably practicable, to hire similar goods until the arrival of the delayed goods. If they do hire goods during this period, they ought to be able to recover the reasonable cost of the hire.

### Goods bought for the purpose of resale

Where the buyer buys the goods for the purpose of resale, and their market value has decreased by the time they are eventually delivered compared to their value when they ought to have been delivered, then the buyer is entitled to be compensated for this loss. The general rule is that the buyer's entitlement to damages is calculated as the difference between the market price of the goods at the time they should have been delivered and their market price at the time they were in fact delivered. The contract price is irrelevant. However, in *Wertheim v Chicoutimi Pulp Co (1911)*, the Privy Council held that the buyer was entitled only to the difference between the market price at the time the goods ought to have been delivered and the price at which the buyer managed to resell the goods, which, in this case, was considerably less than the measure of damages noted earlier as being the general rule. This resulted in the original buyer receiving a much lesser sum than they would have been awarded had the general rule been followed.

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### Damages for breach of warranty

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#### Damages for 'breach of warranty' and 'breach of warranty of quality' distinguished

In Chapter 2, 'Classification of terms', pp 16–17, we discussed the difference between a breach of **warranty** and a breach of **condition**, and it is worth briefly looking over the difference again. In short, unless any of the exceptions discussed under 'If the seller has breached a condition of the contract', p 147, apply (in which case, what *would* have been a breach of condition will *then* be treated as a breach of warranty), a breach of condition entitles the innocent party to treat the contract as at an end, whereas a breach of warranty entitles them to sue for damages only.

#### Breach of warranty

Where the seller either commits a breach of **warranty** or where the buyer chooses (or is compelled) to treat a breach of a **condition** by the seller as a breach of warranty, then the buyer is not entitled to reject the goods. Instead, they may claim from the seller damages for breach of warranty or alternatively deduct the amount of these damages from the price either to reduce the price or to extinguish it (s 53(1) SGA).

Just because the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent them from suing the seller for the same breach of warranty if they have suffered further loss (s 53(4)).



The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty (s 53(2)). As noted earlier, this means that the damages will be assessed under common law in accordance with the first limb or rule in *Hadley v Baxendale*.

### Breach of warranty of quality

Section 53(3) introduces a different expression of 'breach of warranty of quality'. If the seller's breach relates to the *quality* of the goods, then s 53(3) provides that their loss is prima facie the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the **warranty** (i.e. conformed to the contract). In many cases, the value of the goods had they fulfilled the warranty (i.e. had there been no breach of warranty) would be the same as the contract price.

However, where any defect would not be detected until after the buyer had resold the goods to their own customers, damages should be assessed on the basis of the buyer's liability to the ultimate customer and not under the prima facie rule in s 53(3) SGA, which should be displaced (*Bence Graphics International Ltd v Fasson UK Ltd (1998)*).

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### Revision tip

At first glance, the term 'breach of warranty of quality' might appear to contradict the terms as to quality in the SGA which categorise them as conditions. They are, indeed, conditions and s 53(3) does not change that. **Section 53(3)**—and the entirety of s 53—only deals with remedies for breach of warranty. Therefore, a breach of **condition** (even one in respect of quality) is unaffected by s 53. What s 53(3) is referring to is the situation where the breach of condition is to be treated as a breach of **warranty** for one of the reasons discussed under 'If the seller has breached a condition of the contract', p 147.

### Summary of s 53 SGA

See Figure 10.1. The seller has either breached a **warranty** or the buyer is treating (or is required to treat) the seller's breach of **condition** as a breach of warranty.

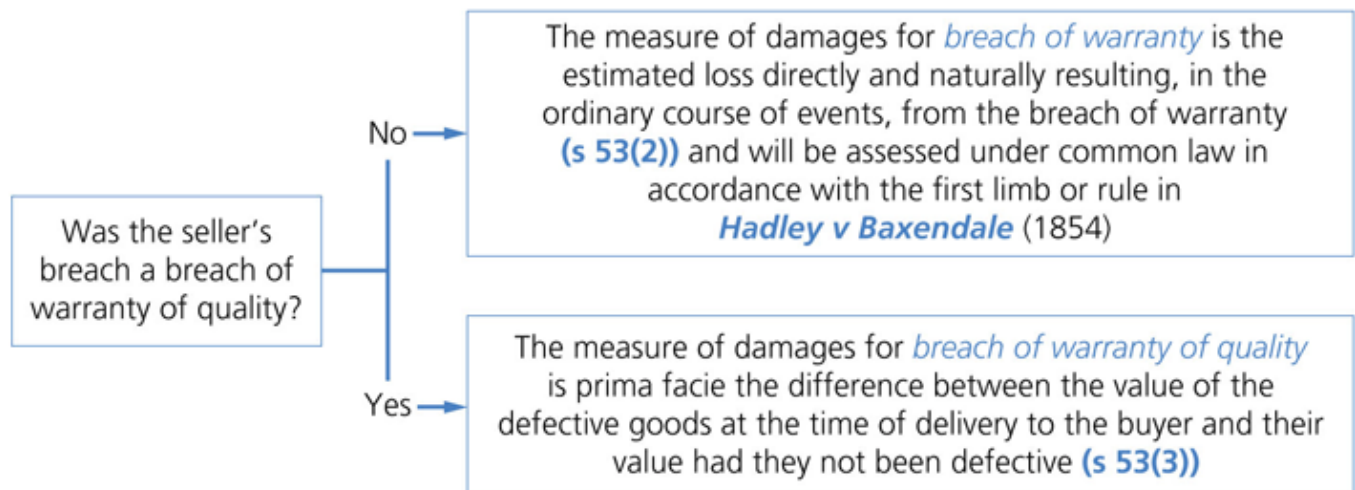


Figure 10.1 Summary of s 53 SGA

## Specific performance

### Revision tip

Don't forget that the usual remedy for breach of contract is rejection and/or an award of damages. There are, however, occasions where a monetary award will not provide the buyer with an adequate remedy. This gap is filled by an award of **specific performance**, which can be found in s 52 SGA.

**Specific performance** is only available to a buyer and is at the discretion of the court. Section 52 explains that the remedy is available only in respect of a breach of contract to deliver **specific** or **ascertained goods**. If successful, the court will order that the contract be performed specifically.

p. 155 Specific performance, therefore, compels the seller to complete their obligations under the contract. It is especially usual when the subject matter of the contract is unique (e.g. the sale of land or antiques), where an award of damages will clearly not compensate the buyer appropriately. It will not be awarded when an award of damages will suffice and will not be an easy remedy to secure.

### Looking for extra marks?

**Specific performance** is an equitable remedy and is, therefore, a discretionary remedy. The usual equitable maxims apply and it will be impressive to quote one or two of them ('He who comes to equity must come with clean hands' or 'He who seeks equity must do equity'). These maxims simply mean that the remedy will not be available if the party seeking it (in this case, the buyer) has not behaved appropriately as it is a general rule that equity does not aid a party at fault.

An award of **specific performance** ‘applies to all cases where the goods are specific or ascertained, *whether the property has passed to the buyer or not*’ (per Lord Hanworth MR in *Re Wait (1927)*). Therefore, even where the property in the goods has already passed to the buyer (but clearly not possession), a claim under s 52 can be made.

Although Lord Hanworth MR made it plain in *Re Wait* that specific performance applies whether or not the property in the goods has passed to the buyer, it seems that the courts are more likely to make the order for specific performance to protect the party that *owns* the goods rather than the party that merely has a *contractual right* in them (*Redler Grain Silos Ltd v BICC Ltd (1982)*).

Where there is insufficient practicality in granting a mandatory injunction, the application is likely to fail. Thus, in *Vibrant Doors Ltd v Rohden UK Ltd (2018)*, the court refused to make a mandatory injunction requiring a company to resume its supply of goods and services to its customer pending the determination of a contractual dispute. The court stated that it was not likely to be effective for it to write out the terms of a contract the existence of which was at the core of the dispute or to make unwilling parties work together.

## Where the buyer is a consumer

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A different regime of remedies applies where the buyer is a consumer. The key to understanding which regime might apply is to note the date of the contract: see Table 10.1.

**Table 10.1 Which regime of remedies applies?**

CONTRACT DATE	WHICH REMEDY
Prior to 31 March 2003	<b>Sale of Goods Act 1979 (SGA)</b>
31 March 2003–30 September 2015	<b>Sale and Supply of Goods to Consumers Regulations 2002</b> (amending the <b>SGA 1979</b> )
From 1 October 2015	<b>Consumer Rights Act 2015</b>

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## Sale and Supply of Goods to Consumers Regulations 2002: additional rights of buyers in consumer cases

The **Sale and Supply of Goods to Consumers Regulations 2002** came into force on 31 March 2003. They made amendments to the sale of goods legislation by inserting new **ss 48A–F** into the **SGA** and provided *additional* remedies to a buyer who ‘deals as a consumer’. *It is important to appreciate that these remedies are additional to the pre-existing regime contained in the SGA that is available to all buyers.*

For the purposes of the 2002 Regulations, a consumer is ‘... any natural person who ... is acting for purposes which are outside his trade, business or profession’ (**reg 2**). Clearly, a company cannot be a consumer as it is not a natural person. In most cases, it will be fairly obvious whether or not this definition has been satisfied,

the focus being on whether the predominant purpose for the purchase was private or otherwise. Some cases will be more difficult to determine, for example, a sole trader who purchases goods such as a computer for his work and private use.

**Section 48A SGA** applies to a buyer (who must deal as a consumer) if the goods do not conform to the **contract of sale** at the time of **delivery**. Goods will not conform to the contract if there is, in relation to the goods, a breach of an express term of the contract or a term implied by s 13, 14, or 15 SGA (s 48F).

### Looking for extra marks?

One remedy is likely to be disproportionate in comparison to another if the one chosen by the buyer imposes costs on the seller which, in comparison to those that might be imposed on them by another remedy, are unreasonable, taking into account the value which the goods would have if they conformed to the contract, the significance of the lack of conformity, and whether the other remedy could be effected without significant inconvenience to the buyer. Any question as to what constitutes a reasonable time or significant inconvenience is to be determined by reference to the nature of the goods and the purpose for which the goods were bought.

It is important to note the effect of s 48A(3) as this reverses the burden of proof in relation to these new remedies. Goods which do not conform to the contract at any time within six months from the date of delivery will be presumed not to have conformed at the date of actual delivery, unless (s 48A(4)):

1. it is established that the goods did so conform at that date; or
2. the presumption is incompatible with the nature of the goods or the nature of the lack of conformity. The presumption will be incompatible with the nature of the goods if the goods are not intended to survive six months such as with perishable foodstuffs. The nature of the lack of conformity relates to the circumstances which show that the lack of conformity is inconsistent with the application of the six-month presumption because it is more likely that the thing complained about was caused by the consumer. This would occur if, for example, the consumer complained about a dent in the goods after, say, five months of ownership.

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- ↪ If s 48A applies, then the buyer will have the right to:
- require the seller to repair the goods (s 48B(1)(a)); or
  - require them to replace the goods (s 48B(1)(b)); or
  - require them to reduce the purchase price of the goods by an appropriate amount (s 48C(1)(a)); or
  - **rescind** the contract (s 48C(1)(b)).

If the buyer requires the seller to repair or replace the goods, then the seller must repair or replace them within a reasonable time without causing significant inconvenience to the buyer. The seller must also bear any necessary costs incurred in doing so, including the cost of any labour, materials, or postage (ss 48B(2)(a) and 48B(2)(b)). However, the buyer will not be entitled to the repair or replacement remedies if such remedies are either impossible to perform or disproportionate in comparison to any of the other remedies not chosen (including price reduction or **rescission** (s 48B(3) SGA)).

### Revision tip

Two requirements must be satisfied in order for a buyer to rely on these additional remedies:

1. the buyer must be dealing as a consumer; and
2. the goods must fail to conform to the contract in respect of a term implied by s 13, 14, or 15 SGA or in respect of an express term of the contract. If the breach relates to a different implied undertaking (e.g. the implied term as to title in s 12 SGA), then these additional remedies will not apply.

If the buyer requires the seller to repair or replace the goods, then, until they have given the seller a reasonable time in which to repair or replace them, they will not be able to reject the goods and terminate the contract for breach of **condition** or choose a different remedy—for example, requiring the seller to replace the goods when they first required them to repair them (s 48D; *Lowe v W Machell Joinery Ltd (2011)*). In cases where the consumer has successfully rescinded the contract, the seller may reduce the amount of the price reimbursed ‘to take account of the use he has had of the goods since they were delivered to him’ (s 48C(3) SGA).

### Revision tip

The additional remedies available to a buyer by virtue of the amendments to the SGA made by the 2002 Regulations coexist with, and are *alternatives* to, those contained in the pre-amended parts of the SGA. They also operate in a *hierarchical* manner (repair, replacement, price reduction, then **rescission**) but also note the rules in relation to time, impossibility, etc. The buyer may choose to enforce one regime of remedies or the other. The pre-amended parts of the SGA do not require the buyer to allow the seller the opportunity to repair or replace the goods. This means that where

↪ there is a breach of **condition** and the buyer has decided they do not want the goods, they are best advised (provided they are entitled so to do) to reject the goods under the pre-amended parts of the SGA. Because of the hierarchical manner of the newer remedies, it is not possible for the buyer to do this straightaway under s 48A. We have seen (Chapter 8, ‘Lapse of reasonable time’, pp 126–127) that a buyer only has a short time in which to reject the goods for a breach of condition and that there

is great uncertainty about the length of time they have before the right to reject is lost. Therefore, this additional right of rescission will, in appropriate cases, provide the buyer with a final chance of ‘rejecting’ the goods where the repair and replacement route has either failed, taken too long, or caused significant inconvenience to them. Finally, don’t forget that the reverse burden of proof does not apply to the pre-amended remedies of damages and rejection.

### The Consumer Rights Act 2015

The **Sale and Supply of Goods to Consumers Regulations 2002** were repealed when the **Consumer Rights Act 2015 (CRA)** came into force on 1 October 2015. However, as they applied from 31 March 2003 until 1 October 2015, they will continue to be of relevance to consumer sales made during this period.

**Part 1 of the CRA 2015** applies ‘where there is an agreement between a trader and a consumer for the trader to supply goods, digital content or services, if the agreement is a contract’ (s 1(1)). For these purposes, a consumer is ‘an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession’ (s 2(3)). **Part 1** sets out the standards that goods must meet. It consolidates and aligns the previously inconsistent remedies available to consumers for goods supplied under different contract types such as sale, work and materials, conditional sale, or hire purchase.

### The remedies

**Sections 19–24** set out the remedies that might apply if the consumer’s statutory rights contained in ss 9–17 are not met. **Sections 9–17** were discussed in Chapter 2, Table 2.2, p 34.

The consumer’s rights to enforce terms about goods are explained in s 19. Depending on the statutory right breached, the consumer may have:

- a short-term right to reject;
- a right to have the goods repaired or replaced;
- a right to have the purchase price reduced (and keep the goods);
- a final right to reject; and
- a right to recover certain costs.

The above rights are set out in s 19(1). **Section 19(3)–(6)** signposts the relevant sections that detail the remedies and their application.

Table 10.2 shows the statutory remedies that are potentially available to a consumer for a breach of their statutory rights.

**Table 10.2 The statutory remedies**

STATUTORY RIGHT BREACHED	STATUTORY REMEDIES THAT MAY APPLY
Goods to be of satisfactory quality ( <b>s 9 CRA</b> )	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Goods to be fit for particular purpose ( <b>s 10 CRA</b> )	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Goods to be as described ( <b>s 11 CRA</b> ), including conforming to information regarding material characteristics under the <b>Consumer Rights Directive</b>	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA 2015</b>)</li> </ul>
Conformity with contract information provided pursuant to the <b>Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (s 12)</b>	<ul style="list-style-type: none"> <li>• Right to recover costs incurred, up to the contract price (<b>s 19(5) CRA</b>)</li> </ul>
Goods to match a sample ( <b>s 13 CRA</b> )	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Goods to match a model seen or examined ( <b>s 14 CRA</b> )	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Incorrect installation of goods (by trader or under trader's responsibility) ( <b>s 15 CRA</b> )	<ul style="list-style-type: none"> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> </ul>

STATUTORY RIGHT BREACHED	STATUTORY REMEDIES THAT MAY APPLY
	<ul style="list-style-type: none"> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Goods not conforming to contract if digital content does not conform ( <b>s 16 CRA</b> )	<ul style="list-style-type: none"> <li>• Short-term right to reject (<b>ss 20–22 CRA</b>)</li> <li>• Right to repair or replacement (<b>s 23 CRA</b>)</li> <li>• Right to a price reduction or the final right to reject (<b>s 24 CRA</b>)</li> </ul>
Trader to have right to sell or transfer the goods or to transfer possession ( <b>s 17(1) CRA</b> )	<ul style="list-style-type: none"> <li>• Right to reject (<b>s 20 CRA</b>)</li> </ul>
Goods to be free from any charge or encumbrance not disclosed or known ( <b>s 17(2)</b> and <b>(5) CRA</b> )	<ul style="list-style-type: none"> <li>• Statutory remedies do not apply but consumer may claim damages (<b>s 19(9)</b> and <b>(10) CRA</b>)</li> </ul>
Consumer to enjoy quiet possession of the goods ( <b>s 17(2), (3), (6), and (7) CRA</b> )	<ul style="list-style-type: none"> <li>• Statutory remedies do not apply but consumer may claim damages (<b>s 19(9)</b> and <b>(10) CRA</b>)</li> </ul>

p. 169 ↩ ↩ The following points about s 19 should be noted:

- if a statutory right is breached due to the goods failing to conform to the relevant term (such as to be of satisfactory quality), then, if the non-conformity is due to the materials supplied by the consumer, this will not amount to a failure to conform to the contract (**s 19(2)**);
- if the trader is in breach of any of the pre-contract information that is required to be treated as part of the contract by virtue of s 12, the consumer has the right to recover any costs which they incur as a result of such breach. The consumer can recover the amount of these costs up to the full price of the goods or, if they had only paid in part for the goods, the full amount they had already paid. This applies also where there is other consideration given instead of a price so that the cap on the recoverable costs would be the value of that consideration (**s 19(5)**). In the event the consumer incurs costs or losses above this amount, they may be able to seek damages for breach of contract (**s 19(9)**);
- if the breach relates to the requirement for the trader to have the right to sell or transfer the goods or possession of them under s 17(1), the consumer has a right to reject the goods (**s 20**). Importantly, because the right to reject in this instance is neither a short-term right to reject nor a final right to reject, **ss 22 and 24**, respectively, do not apply (**s 19(6)**);



- the other rights provided by s 17 (namely, that no other person should have rights over the goods unless the consumer is made aware of this before making the contract and that the consumer's possession of the goods should not be disturbed by anyone with rights over the goods) are dealt with by s 19(9) and 19(10). Breach of these rights does not give rise to a right to reject or the other statutory remedies, but the consumer may instead seek damages;
- the availability of remedies specified in s 19(3)–(6) is subject to the particular rules for delivery of the wrong quantity and instalment deliveries in ss 25 and 26. If a trader delivers the wrong quantity of goods, then the remedies will be determined by s 25. If the parties agree that the goods will be delivered in instalments, any entitlement to exercise the short-term right to reject or the right to reject under s 19(6) will be determined in accordance with s 26 (s 19(7));
- the remedies for a breach of a term in the contract about the time or period for the delivery of goods are set out in s 28 (s 19(8));
- the statutory remedies set out in s 19 do not mean that the consumer cannot pursue other remedies (as an alternative or in addition to the statutory remedies), but the consumer may not recover more than once for the same loss (s 19(9) and (10));
- the other remedies that the consumer may be able to pursue in the circumstances of the case are set out in s 19(11). These are:
  - claiming damages;
  - seeking specific performance (or, in Scotland, an order for specific implement);
  - relying on the breach against a claim by the trader for the price; and
  - for breach of an express term, exercising a right to treat the contract as at an end;
- the consumer is only entitled to treat the contract as at an end for breach of one of the statutory rights in s 9–11, 13–16, or 17(1) by exercising a right to reject under **Chapter 2** of the **CRA 2015**. This overrides any common law right to terminate the contract for breach of the terms which these sections require to be treated as included in the contract (s 19(12));
- for the purposes of **Part 1** of the **CRA 2015**, a reference to treating a contract as 'at an end' will have the same meaning as treating a contract as 'repudiated'. This means that, where a consumer treats a goods contract as at an end under the **CRA**, they may also be entitled to recover damages for non-performance of the whole contract by the trader (s 19(13));
- if a breach of the statutory rights arises in the first six months from delivery, it is presumed to have been present at the time of delivery unless the trader proves otherwise or this presumption is incompatible with the nature of the goods or the particular breach or fault. This applies where the consumer exercises their right to a repair or replacement or their right to a price reduction or the final right to reject but not where the consumer exercises their short-term right to reject (s 19(14) and (15)). These subsections correspond to s 48A(3) and (4) **SGA 1979** and to s 11M(3) and (4) **SGSA 1982**; and
- in certain situations the consumer has the right to terminate the contract and receive a refund from the trader. Where the contract is a mixed contract with a goods element, then, unless the contract is severable, the consumer has the right to terminate the whole contract (both the goods and non-goods

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elements) and receive a refund of the price of the contract (or for money already paid towards the full price of the contract) (ss 19 and 20). For example, if a consumer contracts with a trader to supply and install a bathroom suite and, upon installation, the consumer notices that the bath is badly damaged, they are entitled to a refund of the money paid both for the bath and the fitting.

Table 10.3 sets out the remedies that apply to **digital content** contracts for breach of the consumer's statutory rights.

**Table 10.3 The statutory remedies for digital content**

CONSUMER'S STATUTORY RIGHTS BREACHED	STATUTORY REMEDIES THAT MAY APPLY
<p>↩ Digital content to be of satisfactory quality (<b>s 34 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The right to repair or replacement (<b>s 43 CRA</b>)</li> <li>• If repair or replacement is not possible or does not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer, the right to a price reduction (<b>s 44 CRA</b>)</li> </ul>
<p>Digital content to be fit for particular purpose (<b>s 35 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The right to repair or replacement (<b>s 43 CRA</b>)</li> <li>• If repair or replacement is not possible or does not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer, the right to a price reduction (<b>s 44 CRA</b>)</li> </ul>
<p>Digital content to be as described (<b>s 36 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The right to repair or replacement (<b>s 43 CRA</b>)</li> <li>• If repair or replacement is not possible or does not resolve the fault within a reasonable time or without causing significant inconvenience to the consumer, the right to a price reduction (<b>s 44 CRA</b>)</li> </ul>
<p>Other pre-contractual information (<b>s 37 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The right to recover costs incurred as a result of the breach (<b>s 42 CRA</b>)</li> </ul>
<p>Trader's right to supply digital content (<b>s 41 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The right to a refund (<b>s 45 CRA</b>)</li> </ul>
<p>Remedy for damage to device or other digital content (<b>s 46 CRA</b>)</p>	<ul style="list-style-type: none"> <li>• The trader must either repair the damage; or compensate the consumer with an appropriate payment (<b>s 46 CRA</b>)</li> </ul>

## Conclusion

The remedies available to a buyer in the event of a seller's breach of the contract of sale will depend on a number of factors, including whether the term breached is a condition or a warranty and whether the buyer is a consumer.

A buyer's statutory remedies can be found in ss 51–53 SGA 1979 and encompass damages for non-delivery of the contract goods, specific performance, and damages for breach of warranty. Where the seller breaches a condition of the contract, the buyer generally has the right to reject the goods and repudiate the contract. Since many of the terms implied by ss 12–15 SGA are conditions, this will be the buyer's primary remedy for breach of these implied terms. Where the term is a warranty, such as appears in s 12(2)(a) and (b), or where the buyer has either waived the condition or elected to treat the breach of condition as a breach of warranty and not as a ground for treating the contract as repudiated, then the buyer's remedy is a claim in damages.

From 31 March 2003, when the **Sale and Supply of Goods to Consumers Regulations 2002** came into force by amending the SGA 1979, a buyer who deals as consumer has available to them the additional remedies of repair, replacement, reduction in price, or rescission. This was the position until 1 October 2015, when the CRA came into force and introduced separate provisions for trader-to-consumer transactions.

## Key cases

CASE	FACTS	HELD/PRINCIPLE
<p>p. 163</p> <p>↩ <b>Bence Graphics International Ltd v Fasson UK Ltd [1998] QB 87</b></p>	<p>F manufactured a vinyl product, which was sold to B, who printed identification marks on it for resale to customers for use in labelling bulk containers. It was a condition of the contract that the vinyl would remain in good condition for five years. However, owing to a defect it degraded, resulting in the marks becoming illegible. B sought to recover the whole of the purchase price or, alternatively, an indemnity against claims from customers.</p>	<p>The Court of Appeal held that in the circumstances of the case, where F would have known that any defect would not be detected until after B had sold on the subject matter of the contract, it was appropriate that damages should be assessed on the basis of B's liability to the ultimate consumer and not under the prima facie rule in s 53(3) SGA, which should be displaced. Where the buyer sustains no loss, then damages will not be awarded.</p>
<p><b>Re Moore and Landauer [1921] 2 KB 519</b></p>	<p>The seller contracted to sell a quantity of tinned fruit which was to be packaged in cases each containing 30 tins. The overall correct quantity was delivered but some of the tins were packed in cases containing 24 tins. The Court of Appeal held that this was a sale of goods by description and that the statement in the contract that the goods were to be packed 30 tins to a case was part of the description. As some of the</p>	<p>This case was discussed in Chapter 2, 'The description must amount to a term in the contract', p 21. The breach was exceptionally minor. It seems very likely that had s 15A SGA been in force at that time, the court would have held that the breach was so slight that it would have been unreasonable for the buyer to have rejected the goods.</p>

CASE	FACTS	HELD/PRINCIPLE
	goods tendered did not correspond with that description, the buyer was entitled to reject the entire consignment.	
<b><i>R&amp;H Hall Ltd v WH Pim Junior &amp; Co Ltd [1928] All ER Rep 763</i></b>	The buyer bought a consignment of corn. Before the due date for delivery, he resold the corn at a profit. When the vessel arrived with the delivery of corn, the market price of corn had fallen and the seller refused to deliver. Under the normal prima facie rule for calculating damages for non-delivery of goods, it is the market price itself that determines loss and the fact that the buyer buys the goods for the purpose of resale is generally ignored for the purpose of calculating damages for non-delivery.	The House of Lords made four exceptions to the prima facie rule which, if all are present, will see it displaced, the court will instead take account of the buyer's resale of the goods and any loss which the buyer sustains in connection with the resale will be recoverable. (a) The parties to the first contract must have contemplated that the buyer was to resell the goods. Therefore the first seller will have known that their buyer would sustain loss in the event of non-delivery. (b) The resale contract must have been made before the delivery due date on the first contract. (c) The resale contract must be for the exact same (not just similar) goods as were to be supplied under the first contract. (d) The resale contract must be in accordance with the market and not be an extravagant or unusual bargain.
<b>← <i>Wertheim v Chicoutimi Pulp Co [1911] AC 301</i></b>	The contract of sale was to deliver 3,000 tons of moist wood pulp to the buyer between 1 September and 1 November 1990. The contract price of the goods was 25s per ton. The buyer had resold the goods for 65s per ton. The market price of the goods when delivery should have been made was 70s per ton but had dropped to 42s 6d by the time delivery had actually been made. The buyer claimed 27s 6d a ton, which was the difference between the market price at the due date of delivery (70s) and the market price at the date of actual delivery (42s 6d).	The general intention of the law in giving damages for breach of contract is that C should be placed in the same position as they would have been in if the contract had been performed. In the case of late delivery, the measure of damages in order to indemnify the purchaser is the difference between the market price at the respective dates of due and actual delivery of the goods purchased. However, in cases where the purchaser has resold them at a price in excess of that prevailing at the date of actual delivery, then they must give credit for that excess when estimating their damages. The Privy Council held that since they had sold the goods at 65s a ton, their loss was only 5s a ton and that was all they were entitled to recover.

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## Key debates

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<b>Topic</b>	<b>Specific performance—a regular remedy for consumers?</b>
<b>Author/ academic</b>	Chris Willett, Martin Morgan-Taylor, and Andre Naidoo
<b>Viewpoint</b>	Discusses the <b>Sale and Supply of Goods to Consumers Regulations 2002</b> and considers the implications of taking into account public statements in assessing satisfactory quality; the conformity with <b>Council Directive 1999/44</b> ; amendments to the rules on risk; and remedies, including repair, replacement, price reduction, and <b>rescission</b> .
<b>Source</b>	[2004] <i>Jan Journal of Business Law</i> 94
<b>Topic</b>	<b>The Sale and Supply of Goods to Consumers Regulations</b>
<b>Author/ academic</b>	D Harris
<b>Viewpoint</b>	Discusses the amendments to the <b>SGA</b> providing the buyer with four remedies where goods fail to conform to the <b>contract of sale</b> at the time of <b>delivery</b> , including <b>specific performance</b> . Examines the power of the court under <b>s 48E(2)</b> to make an order requiring specific performance, including the court's discretion to make an order. Discusses the scope of the power and the use of specific performance to compel the seller to repair.
<b>Source</b>	(2003) 119 <i>Law Quarterly Review</i> 541

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## Exam questions

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### Problem question

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Helen recently acquired the following items and now seeks your advice about any remedies she might have, and any legal issues that might arise, as a result of the following problems:

1. a plasma television set bought from a High Street store for which she paid £600. The TV never worked but because of pressure of work she only managed to return it to the store 12 months later;
2. a new PlayStation, which she exchanged for an old one. She bought this at the same time and from the same store as the television. This never worked;
3. a second-hand wristwatch, which she bought from a car boot sale, paying £30 by cheque. It was described as 'waterproof' and the leaflet advertising it claimed it kept excellent time. When she got it home, she found that it was not waterproof and also that it lost more than one minute in time every week;
4. a skirt for a dinner party she was planning. In a rush, she picked up the wrong size from the shelf;

5. some roofing tiles from a local builders' merchant. The tiles were mostly cracked and unusable. Helen was in a hurry when she bought them and only had a quick look at them. She hadn't noticed they were cracked.

## Essay question

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Critically evaluate the extent to which the **Consumer Rights Act 2015** has improved the consumer's rights.

## Online resources

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This chapter is accompanied by a selection of online resources to help you with this topic, including:

- multiple-choice questions [\\_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-multiple-choice-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-multiple-choice-questions?options=showName);
- key facts checklists [\\_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-key-facts-checklists?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-key-facts-checklists?options=showName);
- interactive flashcards of key cases [\\_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-interactive-flashcards-of-key-cases?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-interactive-flashcards-of-key-cases?options=showName);
- problem question guidance [\\_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-problem-question-guidance?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-problem-question-guidance?options=showName);
- outline answers to essay questions [\\_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-outline-answers-to-essay-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-10-outline-answers-to-essay-questions?options=showName).

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