



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

p. 117 8. Delivery, acceptance, and payment

Eric Baskind, Senior Lecturer in Law, Liverpool John Moores University Visiting Research Fellow, Oxford Brookes University

<https://doi.org/10.1093/he/9780192897206.003.0008>

Published in print: 05 August 2022

Published online: September 2022

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 focuses on the duty of the seller to deliver the goods and the duty of the buyer to accept them and to pay the price. It first explains the meanings of delivery, acceptance, and payment as well as the provision in the Sale of Goods Act 1979 in respect of these matters, and then considers the distinction between consumer and business buyers and cases where the wrong quantity of goods has been delivered. The chapter also discusses delivery by instalments, delivery to a carrier, and the right of the buyer not to return rejected goods.

Keywords: seller, goods, buyer, delivery, acceptance, payment, sale of goods, instalments, carrier, rejected goods

Key facts

- The seller is under a duty to deliver the goods.
- The buyer is under a duty to accept them and to pay the price.
- Delivery and payment are concurrent conditions.
- ‘Delivery’ has a specific legal meaning which is different from the colloquial meaning when the grocer delivers your groceries.
- In certain circumstances, the buyer will be ‘deemed’ to have accepted the goods.
- Note the differences that exist between consumer and business buyers.

Introduction

In this chapter, we will consider the duty of the seller to deliver the goods and the duty of the buyer to accept them and to pay the price. We will look at the meanings of 'deliver', 'accept', and 'pay'.

The parties to the contract are free to make whatever agreement they want to make in respect of **delivery** and payment. The provision in the **Sale of Goods Act 1979 (SGA)** in respect of these matters will apply in cases where the parties have not reached agreement themselves.

The duties explained: delivery, acceptance, and payment

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 (s 27 SGA)**.

Payment and delivery are concurrent conditions

Unless it is otherwise agreed, **delivery** of the goods and payment of the price are concurrent conditions. This means that the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods (s 28 SGA).

Looking for extra marks?

Section 28 SGA only requires the seller to be ready and willing to give possession of the goods to the buyer and the buyer to be ready and willing to pay the price in exchange for possession. There is no requirement for the seller actually to tender **delivery** before they become entitled to sue the buyer for the price or for damages provided they can show that the buyer would have refused to accept the goods if delivery had been tendered. All the seller needs to do in such circumstances is to show that they were ready and willing to give possession (*Levey & Co v Goldberg (1922)*).

Delivery

Delivery has a special meaning. It is defined in **s 61(1) SGA** and means the 'voluntary transfer of possession from one person to another'. It must not be confused with its colloquial meaning, when the grocer delivers your groceries.

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The definition of 'delivery' is rather misleading as it does not require the seller to hand over the goods to the buyer, although in many cases this is what happens. In the case of **hire purchase**, for example, the buyer will already have possession of the goods at the time they ↩ exercise their option to purchase them at the end of the term of hire. 'Delivery' is satisfied because of the different capacity in which the buyer now possesses the goods. Initially, they possessed the goods in the capacity of hirer, but when they exercise their option to purchase, they possess them as owner. Conversely, goods may be 'delivered' even though the seller retains possession, provided, as above, the capacity in which they are in possession changes. This would occur, for example, in a typical hire purchase 'triangle' where the seller sells the goods to the finance company but delivers them directly to the customer. The goods in this example are never physically delivered to the finance company yet are deemed to have been delivered for the purpose of s 27. A further example of delivery is where the seller hands over control of the goods, for example, by handing over the keys to the premises where they are held. In this example, although actual delivery does not occur, control of the goods is transferred to the buyer, which satisfies the legal definition of delivery.

In any event, as we will see, s 29 makes clear that, unless otherwise agreed, it is not the seller's responsibility to convey the goods to the buyer but it is for the buyer to collect them. 'Delivery' has a very specific meaning!

Place and time of delivery

As noted earlier, unless the parties have otherwise agreed, it is not the seller's responsibility to convey the goods to the buyer but it is for the buyer to collect them. This can be seen from s 29(1) and (2):

ss 29(1) and (2) SGA:

- 9(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.
- 29(2) Apart from any such contract, express or implied, the place of delivery is the seller's place of business if he has one and, if not, his residence; except that if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

Within a reasonable time

In cases where the seller is bound to send the goods to the buyer but no time for sending them has been agreed, the seller is bound to send them within a reasonable time (s 29(3) SGA).

Attornment: where the goods are in the possession of a third party

p. 120 Where the goods at the time of sale are in the possession of a third party, there is no **delivery** by the seller to the buyer unless the third party acknowledges to the buyer that they hold the goods on their behalf (s 29(4) SGA). This is known as 'attornment'. In such a case, delivery occurs at the moment of attornment. It might also be possible to establish a right to immediate possession of the goods even without an acknowledgement by the third party, for example, where the third party wrongfully refuses to attorn to the claimant (*Pendragon plc and Others v Walon Ltd and another* (2005)).

An example can be seen in cases where the goods are held to the order of the seller by a third party, such as a warehouseperson. In this example, the seller gives the buyer a delivery order or warrant for the goods that are held in a warehouse. Before possession or property can be transferred to the buyer, the warehouseperson must 'attorn' by accepting the delivery order or warrant (*Sterns Ltd v Vickers Ltd* (1923); *Wardar's (Import & Export) Co Ltd v W Norwood & Sons Ltd* (1968)). The role of a warehouse 'receipt' and the question of when delivery occurs was considered in *Mercuria Energy Trading Pte Ltd and another v Citibank NA and another* (2015). Phillips J stated that 'absent the transfer of a document of title to the goods (namely, a bill of lading), it is only when a warehouse operator themselves attorns to the buyer that delivery is effected. It is at that point that the third party becomes bailee for the buyer and the buyer acquires constructive possession of the goods. In particular, it is well established that the transfer by the seller to the buyer of a 'warrant' or 'receipt' issued by the warehouse operator in respect of the goods does not in itself effect delivery, even if that document promises delivery to the seller's order or to their assigns.

The goods in question must also be physically segregated or otherwise ascertained, although the fact of attornment itself may be sufficient to raise an estoppel against the warehouseperson (*Re London Wine Co (Shippers) Ltd* (1986)).

Cost of putting the goods into a deliverable state

Unless otherwise agreed, the expenses of, and incidental to, putting the goods into a deliverable state must be borne by the seller (s 29(6) SGA).

Delivery to a rogue

The seller's duty on physically delivering the goods to the buyer's premises is limited to handing them over to someone who appears to have the authority to receive them, taking care to see that no one unauthorised receives them. Therefore, once the seller has delivered the goods to such a person, they will not be liable if that person has gained access to the buyer's premises and later misappropriates the goods (*Galbraith and Grant Ltd v Block* (1922)).

Galbraith was followed in *Computer 2000 Distribution Ltd v ICM Computer Solutions plc* (2004), where a rogue managed to convince the parties to make a **delivery** of equipment to an address where they were signed for by a security guard and then handed over to the rogue, who disappeared. The Court of Appeal held that as the goods had been delivered in accordance with the contract, the buyer was liable to pay for them.

Looking for extra marks?

As well as stating when time for **delivery** shall be of the essence, you should explain what this means. A seller who has failed to deliver the goods within the stipulated period cannot then require the buyer to accept delivery after that period has expired. This is because they have themselves failed to fulfil the bargain (per McCardie J in *Hartley v Hymans* (1920)).

p. 121 Time of delivery

Although there is no presumption of law that stipulations as to the time of delivery are of the essence of a contract, it is often the case that commercial contracts are so construed (*Hartley v Hymans* (1920); *Bunge Corporation v Tradax Export SA* (1981)). It remains, however, a matter of construction (s 10(2) SGA). However, it can be seen from modern cases that unless the contract makes it clear that a particular stipulation is a condition or a warranty, it is to be treated as an innominate term (see, e.g. *Pharmapac (UK) Ltd v HBS Healthcare Ltd* (2022)).

Thus, subject to the usual construction of innominate terms, where the time of **delivery** is not met, the buyer may be entitled to sue for non-delivery and might also be entitled, if they so wish, to treat the contract as **repudiated**. The buyer may, of course, be content to accept late delivery of the goods. If they do so, then it must follow that they waive their right to treat the contract as repudiated and reject the goods but will still have the right to sue for damages (s 11(4) SGA): see Chapter 10, 'If the seller has breached a condition of the contract', p 147.

If the buyer chooses not to repudiate the contract but instead allows an additional specified time for delivery and the goods are still not ready when the additional time has elapsed, they may then treat the contract as repudiated. In effect, by allowing the further specified time for delivery by the giving of reasonable notice they have attached a condition to their waiver which revives their right to treat the contract as repudiated if the goods are still not ready (*Charles Rickards Ltd v Oppenheim* (1950)).

Rickards has been considered in a number of subsequent cases. In *Virulite LLC v Virulite Distribution Ltd* (2015), Stuart-Smith J summarised the position in *Rickards* thus:

[It] is direct Court of Appeal authority for the proposition that where time is of the essence of a contract for the sale of goods and, on the lapse of the stipulated time, the buyer continues to press for delivery thus waiving his right to cancel the contract, he has a right to give notice fixing a reasonable time for delivery, thus making time again of the essence of the contract However, the giving of such notice does not entitle the buyer retrospectively to rely upon the seller's breach of contract in the period of the waiver or estoppel, since that is the breach which is waived or he is estopped from relying upon. To hold otherwise would retrospectively cancel the effect of equity's protection, which is unconscionable. The requirement that the buyer give notice fixing a reasonable time for delivery, thereby once again making time of the essence of the contract, has the practical effect that the time on which he is entitled to rely starts to run from the date on which notice is given, not from the date of the original and waived breach.

Guidance as to the effect of a notice purporting to make time of the essence and whether a failure to comply with such a notice will amount to a repudiatory breach of the contract was provided in *Alegrow SA v Yayla Agro Gida San Ve Nak AS (2021)*, where Henshaw J cited with approval a passage from the judgment of Mason J in the High Court of Australia in *Louinder v Leis (1982)*:

Delay beyond the stipulated date will give rise to a liability in damages. But because equity treats the time stipulation as non-essential, mere breach of it does not justify rescission by the innocent party. Unreasonable delay in complying with the stipulation in substance amounting to a repudiation is essential to justify rescission. It is to this end that, following breach, the innocent party gives notice fixing a reasonable time for performance of the relevant contractual obligation. The result of non-compliance with the notice is that the party in default is guilty of unreasonable delay in complying with a non-essential time stipulation. The unreasonable delay amounts to a repudiation and this justifies rescission.

Looking for extra marks?

Alegrow is a reminder that where the contractual stipulated time for delivery has passed, continuing to press for delivery can amount to a waiver of the initial right to terminate the contract. Following such waiver, the purchaser can again make time of the essence provided that the period fixed by the buyer allows the seller a further reasonable time period for fulfilling the contract. It also serves as a reminder of the importance of correctly identifying whether, why, and when a contracting party is in breach of contract sufficient to justify termination. The inadvertent premature termination of a contract could itself amount to repudiatory breach, ending any right for the originally innocent party to claim damages and itself giving rise to potential liability in damages.

Where the buyer is to collect the goods and the contract does not stipulate a time for delivery, then the seller must be ready to hand them over in return for payment on demand by the buyer at any time after the contract is made. However, the seller may treat any such demand as ineffectual unless it is made at a

reasonable hour; and what is a reasonable hour is a question of fact (s 29(5) SGA). If, following such a reasonable demand, the seller fails to hand over the goods, they are in breach of condition, which the buyer may treat as a repudiation of the contract and thus sue for non-delivery: see Chapter 10, 'Remedies of the buyer'.

Delivery of the wrong quantity

Section 30 SGA deals with the situation where the seller delivers the wrong quantity of goods to the buyer. This refers to both a quantity less than they contracted to sell (s 30(1)) and a quantity larger than they contracted to sell (s 30(2)).

Where the seller delivers less than they contracted to sell

Where the seller delivers to the buyer a quantity of goods less than they contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered, they must pay for them at the contract rate (s 30(1)).

In respect of the goods that were not delivered, the buyer is entitled to sue for non-delivery.

Where the seller delivers more than they contracted to sell

Where the seller delivers to the buyer a quantity of goods larger than they contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or they may reject the whole (s 30(2)).

p. 123 ↩ Where the seller delivers to the buyer a quantity of goods larger than they contracted to sell and the buyer accepts the whole of the goods so delivered, they must pay for them at the contract rate (s 30(3)).

Where the buyer rejects any of the goods under this section, then they are entitled to sue for non-delivery in respect of those goods.

Where the buyer does not deal as a consumer

Where the buyer does not deal as a consumer, s 30(2A) provides that the right of rejection set out in s 30(1) and (2) cannot be exercised by the buyer if the excess or shortfall is so slight that it would be unreasonable for them to reject them. The position where the **Consumer Rights Act 2015 (CRA)** applies is dealt with at the end of the chapter.

An example of a case where the buyer attempted to reject an entire consignment of goods for a slight breach is *Shipton, Anderson & Co v Weil Bros & Co (1912)*, where the seller was entitled to deliver to the buyer 4,950 tons of wheat. They in fact delivered 55 lbs more than this maximum quantity which, at the contract price, would have added about four shillings to the overall price. The seller did not charge any additional money. The buyer sought to reject the entire consignment on the ground that the quantity tendered for **delivery** was

55 lbs greater than the contract quantity. Lush J held that as the excess quantity was so trifling and the seller had not even claimed the price of the excess wheat, the seller had substantially performed the contract and the buyer was not entitled to reject the whole consignment under s 30(2) of the 1893 SGA.

Delivery by instalments

Unless otherwise agreed, the buyer is not bound to accept **delivery** by instalments (s 31(1)).

Revision tip

Watch out for a problem where the seller delivers short and argues that they will make up the shortfall at a later stage. Unless the buyer agrees to this, s 31(1) will not excuse such short delivery.

Where only part of the goods that were ordered have been delivered and accepted, the buyer will be entitled to refuse to accept later deliveries of the balance of the goods and will only be liable to pay pro rata for the goods accepted (*Behrend & Co Ltd v Produce Brokers Co Ltd* (1920)).

p. 124 Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments or the buyer neglects, or refuses to take delivery of or pay for, one or more instalments, it is a question in each case, depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated (s 31(2)).

In the case of a severable contract, just because the buyer has accepted one or more of the instalments, it does not prevent them from rejecting later instalments for breach of condition (*Jackson v Rotax Motor and Cycle Co* (1910)).

But, in the case of a sale of goods under a severable contract and where only *some* of the instalments are defective, whether the buyer will be entitled to reject the *entirety* of the goods and regard the entire contract as repudiated will depend largely on the quantitative ratio of the breach to the contract as a whole and the likelihood of the breach manifesting itself in subsequent instalments (*Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd* (1934)).

Looking for extra marks?

Where **delivery** is to be made by instalments, parties will often contract on the basis that ‘each instalment is to be considered as a separate contract’. In this type of case, the courts are likely to hold that there is only one contract, although severable. This means that if there is a breach that is sufficiently serious, the entire contract might be repudiated (*Smyth & Co Ltd v TD Bailey Son & Co (1940)*).

Delivery to a carrier

Where the seller is authorised or required to send the goods to the buyer, **delivery** of the goods to a carrier (whether named by the buyer or not) for the purpose of transmission to the buyer is prima facie deemed to be a delivery of the goods to the buyer (s 32(1) SGA).

However, where the buyer deals as a consumer, s 32(1) will not apply, and delivery of the goods to a carrier will not be delivery to the buyer.

Looking for extra marks?

Rule 5(2), s 18 SGA (see Chapter 3, Appropriation by delivery to a carrier, p 50) has similar effect to the provision in s 32(1). You will recall that **Rule 5(2)** explains that, subject to contrary intention, where the seller delivers the goods to a carrier for the purpose of transmission to the buyer and does not reserve the right of disposal, they are to be taken to have unconditionally appropriated the goods to the contract.

Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller fails to do so and the goods are lost or damaged in the course of transit, the buyer may decline to treat the **delivery** to the carrier as a delivery to themselves or may hold the seller responsible in damages (s 32(2)). Whether or not the seller has made the contract with the carrier on reasonable terms for the buyer’s benefit will be a matter of fact, but the seller will not have satisfied this requirement where they contract with the carrier ‘at the owner’s risk’ where the same carrier would have contracted to deliver the goods at their own risk for the same price (*Thomas Young & Sons v Hobson & Partner (1949)*).

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The buyer is not bound to return rejected goods

Unless otherwise agreed, 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 (s 36).

Acceptance

It was explained earlier under 'The duties explained: delivery, acceptance, and payment' that s 27 SGA provides that 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**.

Revision tip

Don't confuse the buyer's duty to accept the goods with them taking **delivery** of them. **Acceptance** in law is far more complex than that!

Acceptance is explained in s 35 SGA. A buyer will be deemed to have accepted the goods when they do one of three things:

1. intimate to the seller that they have accepted them (s 35(1)(a)); or
2. when the goods have been delivered to them, they do any act in relation to them which is inconsistent with the ownership of the seller (s 35(1)(b)); or
3. when after the lapse of a reasonable time, they retain the goods without intimating to the seller that they have rejected them (s 35(4)).

However, where goods are delivered to the buyer and they have not previously examined them, they are *not* deemed to have accepted them until they have had a reasonable opportunity of examining them for the purpose either of ascertaining whether they are in conformity with the contract or, in the case of a contract for sale by sample, of comparing the bulk with the sample (s 35(2)).

Section 34 extends to the buyer, on request to the seller, a right to examine the goods for the purpose of ascertaining whether they are in conformity with the contract and, in the case of a contract for sale by sample, of comparing the bulk with the sample.

Repairs

A buyer will not be deemed to have accepted the goods merely because they ask for, or agree to, their repair (s 35(6)(a)). You should not assume that s 35(6)(a) has the effect of ‘stopping the clock’ for the purpose of determining what is a reasonable time, although the courts are more likely to treat it that way where the buyer has acted reasonably and especially where they are awaiting information from the seller as to the problem and the likelihood of remedying the same.

J&H Ritchie Ltd v Lloyd Ltd [2007] UKHL 9

A farmer bought some equipment which, on its first use, was found to be faulty. He returned it to the seller for inspection and possible repair. After a few weeks, the seller informed the farmer that the equipment had been repaired and was ready for collection. The seller would not tell the farmer what had been done but insisted that the equipment was now to ‘factory-gate specification’. The farmer wanted to know what had been done to the equipment and was concerned because he would have been unable to test it properly until the following season. As a result of his concern, the farmer sought to reject the equipment.

The House of Lords noted that prior to the introduction of s 35(6)(a), it was questionable whether asking the seller to repair defective goods might amount to an implied intimation of **acceptance** by the buyer or to an inconsistent act that would prevent them from rejecting the goods. Parties will often attempt to have defective goods remedied but the very informality of this kind of arrangement gives rise to a problem in identifying the legal situation with regard to the right of rejection. When the buyer took the goods to the seller for inspection and repair, the parties entered into a separate ‘inspection-and-repair’ agreement.

Their Lordships, therefore, felt it appropriate to imply a term into that agreement that so long as the seller was performing their obligations under that agreement, the buyer was not entitled to exercise their right to rescind the **contract of sale**. Although the right to reject is lost when a buyer decides to accept the goods or is deemed to have accepted them, such election cannot reasonably be expected to be made until the buyer has received the necessary information to enable them to make an informed decision and the seller cannot refuse to provide that information. The seller was under an implied obligation to provide the buyer with the necessary information requested and, in the absence of this information, the buyer was entitled to reject the goods even though they had, in fact, been repaired to a satisfactory standard. The seller’s refusal to supply the information amounted to a material breach of the inspection-and-repair agreement, which entitled the buyer to rescind it and to refuse to collect the repaired equipment. Once the buyer had rescinded the inspection-and-repair agreement, there was nothing to prevent him from exercising his right to rescind the sale contract and reclaim the purchase price of the goods bought.

Revision tip

It is important to appreciate that, in respect of a contract of sale of goods, a buyer will lose the right to reject the goods if they are deemed to have accepted them within the meaning of s 35.

Lapse of reasonable time

We saw under 'Acceptance', p 125, that a buyer will be deemed to have accepted the goods when, after the lapse of a reasonable time, they retain the goods without intimating to the seller that they have rejected them (s 35(4)).

p. 127 ↩ But what is a reasonable time? Section 59 tells us that what is a reasonable time is a question of fact. Unfortunately, the cases are not much more helpful and it is very difficult to predict from them the outcome as most cases turn on their own specific facts. Some examples might assist (see Table 8.1).

Table 8.1 A reasonable time to reject goods?

CASE	TIME BEFORE REJECTING GOODS
<i>Bernstein v Pamson Motors (Golders Green) Ltd (1987)</i>	Three weeks was held to be too long before rejecting a new car that had been driven just 140 miles
<i>Clegg v Andersson (2003)</i>	A delay of seven months was not too long to wait before rejecting a yacht
<i>Jones v Callagher (2004)</i>	17 months was held to be too long before rejecting kitchen units
<i>Fiat Auto Financial Services v Connelly (2007)</i>	Nine months and 40,000 miles was not too long to wait before rejecting a taxicab

Goods purchased for the purpose of resale

Goods will often be purchased for the purpose of resale. Where the goods have been purchased for resale, it will often be the case that a particular defect will only be discovered when the goods have been resold. Therefore, a reasonable time in which to intimate rejection for the purpose of s 35(4) would usually be the time taken to resell the goods together with a further period of time during which the ultimate purchaser would have the opportunity to test the goods and determine their fitness for purpose (*Truk (UK) Ltd v Tokmakidis GmbH (2000)*).

Partial acceptance/rejection

Finally, you should note that s 35A (which was added to the SGA by the **Sale and Supply of Goods Act 1994**) gives a buyer a right of 'partial rejection'. This might be of assistance to a buyer where the seller delivers a consignment of goods where only some of them are defective or where some of the goods delivered were not contracted for. Section 35A applies, unless there is a contrary intention, to cases where a buyer has the right to reject the goods by reason of a breach on the part of the seller that affects some or all of the goods. In such a case, where they accept some of the goods, they do not by accepting them lose their right to reject the remainder.

Payment

p. 128 We have seen ('Payment and delivery are concurrent conditions', p 118) that s 28 provides that in the absence of agreement to the contrary, **delivery** of the goods and payment of the price ↵ are concurrent conditions. This means that the buyer does not need to make payment until delivery is made. It also means that a buyer is not entitled to credit terms (unless, of course, the seller agrees).

Where the buyer has paid the price and the seller has not delivered the goods, then the buyer will be entitled to recover the price paid plus interest. This is because the consideration for their payment will have failed (s 54 SGA).

However, where the goods have been destroyed at a time they were at the buyer's risk, then the buyer remains under a duty to pay the price and they will not be able to escape payment by arguing that delivery in these circumstances will be impossible. Risk was discussed in Chapter 3, 'Passing of risk', pp 54–56.

How is the price ascertained?

Section 8(1) SGA sets out how the price is ascertained:

- it may be fixed by the contract; or
- it may be left to be fixed in a manner agreed by the contract; or
- it may be determined by the course of dealing between the parties.

Where the price is not determined under s 8(1), the buyer must pay a reasonable price (s 8(2)). What is a reasonable price is a question of fact dependent on the circumstances of each particular case (s 8(3)).

Looking for extra marks?

If the contract says nothing about the price and there have been no previous dealings between the parties, you should consider whether there is any binding contract at all or whether it is void for failure to agree an essential term (*May and Butcher Ltd v The King (1934)*). See also *RTS Flexible Systems*

Ltd v Molkerei Alois Müller GmbH & Co KG (2010)). Further, in *Wells v Devani (2019)*, the Supreme Court has held that it is possible to imply a term into an agreement to render it sufficiently certain to constitute a binding contract.

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not 'of the essence' of a **contract of sale (s 10(1) SGA)**. Therefore, late payment of the price will be a breach of **warranty** only and will not entitle the seller to treat the contract as repudiated. However, it is open to the parties to agree that payment of the price is 'of the essence' of the contract, denoting that timely payment is a condition. In such a case, late payment will amount to a repudiatory breach of the contract (*Lombard North Central plc v Butterworth (1987)*). However, the requirement to pay a deposit, including the time for payment, will ordinarily be a **condition** of a contract for sale of land and time will be 'of the essence' in relation to the date for payment. Failure to make timely payment of a deposit will, in this context, amount to a repudiatory breach of contract (*Samarenko v Dawn Hill House Ltd (2013)*).

p. 129 The Consumer Rights Act 2015

Separate rules apply to contracts where the **CRA 2015** applies. Where the **CRA** applies to the contract, reference should be made to **s 28(2)–(4)** of that Act, which provides that unless the trader and the consumer have agreed otherwise, the contract is to be treated as including a term that the trader must deliver the goods to the consumer. 'Delivery', for the purposes of the **CRA**, means the 'voluntary transfer of possession from one person to another' (**s 59**). Further, unless there is an agreed time or period, the contract is to be treated as including a term that the trader must deliver the goods without undue delay and, in any event, not more than 30 days after the day on which the contract is entered into (**s 28(3)**). For these purposes, an agreed time or period means a time or period agreed by the trader and the consumer for delivery of the goods and if there is an obligation to deliver the goods at the time the contract is entered into, that time counts as the agreed time (**s 28(4)**).

Where the trader delivers a quantity of goods less than they contracted to supply, the consumer may choose to reject them or to accept them. If the consumer chooses the latter, they must pay for them at the contract rate (**s 25(1)**).

Conversely, where the trader delivers a quantity of goods larger than they contracted to supply, the consumer may choose to accept only the contracted quantity and reject the remainder or they may choose to reject the entirety of the goods (**s 25(2)**). If the consumer decides to accept all of the goods, they must pay for them at the contract rate (**s 25(3)**).

With regard to instalments, **s 26(1)** makes it plain that the consumer is not bound to accept delivery of the goods by instalments unless agreed between the consumer and the trader.

Key cases

CASE	FACTS	HELD/PRINCIPLE
<i>Behrend & Co Ltd v Produce Brokers Co Ltd</i> [1920] 3 KB 530	The parties entered into two similar contracts for the supply of cotton seed to be shipped from Alexandria and delivered in London. Payment was made in exchange for shipping documents. On the arrival of the ship in London, and after payment for the goods by the buyer, only a portion of the seed was delivered. The ship then left with the remainder of the seed on board in order to discharge other cargo. The ship returned to London two weeks later and the balance of the seed was tendered to the buyer, but it refused to accept it. The buyer retained the portion which had been delivered and claimed repayment of the price paid for the rejected portion.	The court held that when the delivery had begun, the buyer was entitled to receive the whole quantity that they had ordered before the ship left the port. In the circumstances, the buyer was entitled to keep the part actually delivered and to reject the balance and to be repaid the price of the balance that had been prepaid. Unless the parties agree that delivery can be made by instalments, then the buyer is not bound to accept delivery by instalments.
p. 130 <i>Charles Rickards Ltd v Oppenheim</i> [1950] 1 KB 616	In August 1947, O placed an order with CR to build a body onto the chassis of a car. It was understood that CR could obtain it within six or seven months at the latest. From the following March, O pressed for delivery. In June, O wrote to CR telling them that he would not accept delivery after 25 July. When O was informed by CR that the body of the car would not be ready by that date, he cancelled his order. CR completed the car in October, but O refused to accept delivery. CR sued for the price.	The Court of Appeal held that although the initial stipulation making time of the essence was waived by O's requests for delivery after March 1948, this did not disentitle him from giving, at a later time, a reasonable notice, making time for delivery of the essence. O's June letter constituted a reasonable notice and was, therefore, valid so as to make time of the essence of the contract. The result was that CR's claim against O failed. If the buyer chooses not to repudiate the contract but instead allows an additional specified time for delivery and the goods are still not ready when this additional time has elapsed, they may then treat the contract as repudiated. In effect, by allowing the further specified time for delivery by the giving of reasonable notice, they have attached a condition to their waiver which revives their right to treat the contract as repudiated if the goods are still not ready.
<i>Computer 2000 Distribution Ltd v ICM Solutions</i>	A rogue, purportedly acting on behalf of a reputable company, placed three substantial orders with ICM for electrical goods. ICM acted on the orders and in turn placed orders with its suppliers for the	The Court of Appeal held that as the goods had been delivered in accordance with the contract, the buyer was liable to pay for them. The terms of the contract showed that the goods were to be delivered to the named individual. As the goods

CASE	FACTS	HELD/PRINCIPLE
Computer plc [2004] EWCA Civ 1634	goods. In accordance with the fraudster's instructions, ICM requested that the suppliers deliver the goods to a named individual at a given business address. A security guard at the business address signed for the goods. The goods were later collected by the named individual.	had been collected by that named individual, it followed that the suppliers had delivered the goods in accordance with the terms of ICM's contract. The fact that they had been signed for by the security guard did not matter. It was found that the security guard had authority to receive goods on behalf of persons carrying on business at the business address and there was no reason for the carrier to suspect that the named individual and the reputable company were not carrying on business at the business address.
p. 131 ← Galbraith and Grant Ltd v Block [1922] 2 KB 155	<p>The seller, who was a wine merchant, sued a licensed victualler for the cost of a case of champagne which it had sold to him on terms that it should be delivered at the buyer's premises. The buyer argued that the champagne was never delivered to him. The seller engaged a carrier to deliver the champagne to the buyer's premises. The delivery driver said that he delivered the goods to a man at a side entrance at the buyer's premises and that someone on the premises signed the delivery note in the name of the buyer.</p> <p>The buyer argued that his premises were closed at the time this delivery was meant to have occurred, that he had never received the goods, and that the signature was not his, nor had he authorised anyone to sign for it.</p>	The court held that a seller who is told to deliver goods at the buyer's premises discharges their obligations if they deliver them there without negligence to a person apparently having authority to receive them. They cannot know what authority the actual recipient has. Their duty is to deliver the goods at the proper place and to take all proper care to see that no unauthorised person receives them. They are under no obligation to do more. If the buyer has been unfortunate enough to have had access to their premises obtained by some apparently respectable person who takes their goods and signs for them in their absence, the loss must fall on them and not on the innocent carrier or seller.
Jackson v Rotax Motor and Cycle Co [1910] 2 KB 937	The buyer purchased a large number of motor horns of different descriptions and prices. The horns were delivered in several instalments. After accepting the first instalment, the buyer rejected the later instalments on the ground that they were not of (what was then referred to as) merchantable quality. At first instance, it was found that a large proportion of the horns were dented and badly polished owing to defective packing and careless workmanship but that they could easily and cheaply have been made merchantable. As	The Court of Appeal held that acceptance of the first instalment of the goods did not preclude the buyer from rejecting the later instalment and that on the facts of this case the buyer was justified in rejecting the later instalments as they were not of merchantable quality. The earlier decision was reversed.

CASE	FACTS	HELD/PRINCIPLE
	a result, the court refused to hold that the consignment as a whole was unmerchantable but made an allowance to the buyer in respect of the defective goods.	
Maple Flock Co Ltd v Universal Furniture Products (Wembley) Ltd [1934] 1 KB 148	There was a severable contract for the sale of 100 tons of flock to be delivered by instalments. The first 15 instalments of the flock were satisfactory but the sixteenth was defective. This was followed by four more satisfactory instalments. The buyer sought to repudiate the entire contract. The Court of Appeal held that it could not do so.	The Court of Appeal said that where there is a sale of goods under a severable contract and only some of the instalments are defective, whether the buyer will be entitled to reject the entirety of the goods and regard the entire contract as repudiated will turn on the true meaning of s 31(2) , with the main tests to be considered being, first, the quantitative ratio which the breach bears to the contract as a whole and, second, the degree of probability that such a breach will be repeated.
Thomas Young & Sons v Hobson & Partner (1949) 65 TLR 365	The seller sold seven electric engines to the buyer. It was a term of the contract that the engines should be delivered by rail. The seller sent the engines at the buyer's risk. The seller loaded the engines onto the railway in box wagons but failed adequately to secure them, which resulted in them arriving in a damaged condition. The buyer refused to accept them from the railway. There was no difference in the freight costs as between 'owners' risk' and 'company's risk'.	The Court of Appeal held that the seller had failed in its duty under s 32(2) of the (1893) SGA to make such contract with the carrier on behalf of the buyer as was reasonable, having regard to the nature of the goods and the other circumstances of the case, and that the buyer was accordingly entitled to refuse to treat the delivery to the railway company as delivery to itself and was therefore entitled to reject the goods.

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Key debates

TOPIC	REPAIR, REJECTION, AND RESCISSION: AN UNEASY RESOLUTION
Author/academic	Kelvin Low
Viewpoint	Comments on the House of Lords ruling in J&H Ritchie Ltd v Lloyd Ltd on whether the buyer of defective agricultural equipment was entitled to reject the goods as materially defective after they had been returned to the vendor for inspection and repair and where the vendor refused to disclose the nature of the problem.

TOPIC	REPAIR, REJECTION, AND RESCISSION: AN UNEASY RESOLUTION
Source	(2007) 123 <i>Law Quarterly Review</i> 536
TOPIC	SALE OF GOODS—DELIVERY
Author/ academic	Paul Dobson
Viewpoint	Considers the Court of Appeal judgment in <i>Computer 2000 Distribution Ltd v ICM Computer Solutions plc</i> on whether the defendant was liable to pay the cost of goods it had ordered from three suppliers, which had been correctly delivered according to its instructions to an individual who was found to be a fraudster, or whether it was relieved of this liability by the fact that it had never received the goods.
Source	(2005) 45 <i>Student Law Review</i> 12

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Exam question

Essay question

Although the seller is under a duty to deliver the goods, this obligation might not be as straightforward as it might first appear.

Critically evaluate the seller's duty to deliver the goods in respect of sales to consumer and non-consumer buyers.

Online resources

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-8-multiple-choice-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-multiple-choice-questions?options=showName>);
- key facts checklists [_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-key-facts-checklists?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-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-8-interactive-flashcards-of-key-cases?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-interactive-flashcards-of-key-cases?options=showName>);
- outline answers to essay questions [_<https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-outline-answers-to-essay-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-8-outline-answers-to-essay-questions?options=showName>).

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