



Commercial Law Concentrate: Law Revision and Study Guide (6th edn)  
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## p. 134 9. Remedies of the unpaid seller

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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 considers the remedies that are available to a seller against the buyer for breach of contract and the position when the buyer refuses delivery of the goods. These are real remedies and personal remedies, which are set out in Parts V and VI of the Sale of Goods Act 1979. An example of a real remedy is a lien over the goods, whereas two examples of a personal remedy are an action for the price and damages for non-acceptance of the goods.

**Keywords:** seller, buyer, breach of contract, goods, real remedies, personal remedies, sale of goods, lien, non-acceptance, action for the price

### Key facts

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- This chapter examines the remedies that are available to a seller who is unpaid.
- There are two different types of remedies available to the unpaid seller: real remedies and personal remedies. Both will be discussed in this chapter.
- A real remedy is a remedy against the goods. An example of a real remedy is a lien over the goods.
- A personal remedy is a remedy against the buyer personally. An example of a personal remedy is an action for the price.

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p. 135 **Introduction**

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In this chapter, we will consider the specific remedies available to a seller who has not been paid by the buyer and the position when the buyer refuses delivery of the goods.

The remedies available to an unpaid seller are set out in **Parts V and VI of the Sale of Goods Act 1979 (SGA)**. **Part V** deals with the rights of the unpaid seller *against the goods* and **Part VI** deals with their remedies *against the buyer for breach of contract*.

### **Looking for extra marks?**

You should explain that:

- remedies that are sought against the goods in question are known as ‘real remedies’; and
- remedies that are sought personally against the buyer are known as ‘personal remedies’.

### **When is a seller unpaid?**

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Section 38(1) SGA defines an unpaid seller in the following terms:

- (a) when the whole of the price has not been paid or tendered;
- (b) when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

### **Revision tip**

The typical situation envisaged by s 38(1)(b) SGA is where the buyer tenders a cheque or other negotiable instrument to the seller in payment for the goods but that cheque or instrument has not been honoured. In this situation, s 38(1)(b) provides that the tendering of such instrument is to be treated as a ‘conditional payment’ which, until honoured, means that the seller is an unpaid seller.

Notwithstanding the conditionality of payment attached to payment by cheque, the situation with credit cards is entirely the opposite and is treated as absolute even if the credit card company fails to pay the seller. In such a case, the seller (although unpaid) will have no claim against the buyer (*Re Charge Card Services Ltd (No 2) (1989)*).

## Real remedies: the rights of the unpaid seller against the goods

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These are set out in **s 39 SGA** and exist notwithstanding that the property in the goods may already have passed to the buyer. These rights exist by implication of law and are:

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- a **lien** on the goods or right to retain them for the price while the seller is in possession of them;
  - in case of the insolvency of the buyer, a right of stopping the goods in transit after the seller has parted with possession of them;
  - a limited right of resale (limited by the **SGA**);
  - where the property in the goods has not passed to the buyer, the unpaid seller has (in addition to their other remedies) a right of withholding delivery similar to and coextensive with their rights of lien or retention and stoppage in transit where the property has passed to the buyer.

### The unpaid seller's lien

The unpaid seller's **lien** is set out in **s 41 SGA**. The unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following circumstances:

- where the goods have been sold without any stipulation as to credit;
- where the goods have been sold on credit but the term of credit has expired; or
- where the buyer becomes insolvent.

### Looking for extra marks?

You should explain that the seller may exercise their **lien** or right of retention notwithstanding that they are in possession of the goods as **agent**, **bailee**, or **custodier** for the buyer (**s 41(2) SGA**). But in order to exercise a **lien**, they must be in possession of the goods (**s 39(1)(a) SGA**). In a different context, the Court of Appeal has held that it is not possible to exercise a **lien** over intangible property such as an electronic database (*Your Response Ltd v DataTeam Business Media Ltd (2014)*).

### Revision tip

A problem might arise where the unpaid seller has already made part-delivery of the goods. The question then is do they need to deliver the remainder whilst money is still owing? **Section 42 SGA** answers this question by explaining that in this situation they may exercise their **lien** or right of retention on the remainder of the goods unless the part-delivery has been made in circumstances which show an agreement to waive the lien or right of retention (**s 42 SGA**).

### Termination of the unpaid seller's lien

The unpaid seller of goods will lose their **lien** or right of retention in respect of the goods in the following circumstances (**s 43**):

- when they deliver the goods to a carrier or other **bailee** or custodier for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
- when the buyer or their **agent** lawfully obtains possession of the goods; or
- by waiver of the lien or right of retention.

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### Looking for extra marks?

Notwithstanding any **lien** they might have, an unpaid seller still wants their money. They are, therefore, entitled to sue for the price. If they succeed, they will obtain judgment against the buyer. Their right to sue and their lien over the goods are coexisting rights. In practice, the seller, who must be in possession of the goods (see **s 41**), will simply keep hold of them. Having retained possession of the goods, if they then succeed in an action for the price and obtain judgment against the buyer, they **still** retain their lien or right of retention over the goods (**s 43(2)**). This can be very valuable in cases where, notwithstanding the judgment, the buyer still fails to pay the price, maybe because of insolvency.

### Stoppage in transit

If the buyer becomes insolvent, the unpaid seller who has parted with possession of the goods has the right of stopping them in transit. In other words, provided the goods are in the course of transit to the buyer, they may resume possession of them and may retain them until payment or tender of the price (**s 44**).

## Looking for extra marks?

You should be able to explain precisely when goods are deemed to be in transit. This is explained in **s 45 SGA**. Goods are deemed to be in transit from the time they are delivered to a carrier for the purpose of transmission to the buyer until the buyer or their agent takes delivery of them from the carrier. This is probably stating the obvious, but there are a number of additional points to consider and these are worth noting:

- If the buyer or their agent obtains delivery of the goods *before* their arrival at the appointed destination, the transit is at an end there and then (**s 45(2)**).
- If the buyer rejects the goods, and the carrier continues in possession of them, the transit is not deemed to be at an end, even if the seller refuses to receive them back (**s 45(4)**).
- If the carrier wrongfully refuses to deliver the goods to the buyer, the transit is deemed to be at an end (**s 45(6)**).
- Where a part-delivery of the goods has been made to the buyer, the remainder of the goods may be stopped in transit unless it was agreed that by making the part-delivery the seller was to give up possession of the whole of the goods (**s 45(7)**).

## How the unpaid seller stops the goods in transit

The unpaid seller may exercise their right of stoppage in transit in two different ways (**s 46(1)**):

1. either by taking actual possession of the goods; or
2. by giving notice of their claim to the carrier who has possession of the goods.

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## Revision tip

As the goods are already in transit to the buyer, the seller needs to act quickly if they are to stop delivery being made. Therefore, the notice referred to in **s 46(1)** may be given either to the person who is in actual possession of the goods (i.e. the driver) or to their **principal** (**s 46(2)**). If the notice is given to the principal, it will not be effective unless it was given at a time and in such circumstances that they may communicate it to their servant in time to prevent the delivery being made to the buyer (**s 46(3)**).

## **Where the buyer has already resold the goods**

Some buyers will purchase goods for the purpose of resale. In such circumstances, the unpaid seller's right of **lien** or retention or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has agreed to it (**s 47(1)**).

## **Where the seller rescinds the contract and resells the goods**

The first thing to note is that a **contract of sale** is not rescinded by the mere exercise by an unpaid seller of their right of **lien** or retention or stoppage in transit (**s 48(1)**).

However, **s 48(2)** provides that where an unpaid seller who has exercised their right of lien or retention or stoppage in transit then resells the goods, the (new) buyer acquires a good title to them as against the original buyer.

If the goods sold, but not paid for, are of a perishable nature or where the unpaid seller gives notice to the buyer of their intention to resell the unpaid goods and the buyer does not within a reasonable time pay or tender the price, then the unpaid seller will be entitled to resell the goods and recover from the original buyer damages for any loss occasioned by their breach of contract (**s 48(3)**).

### **Revision tip**

You should note that where the seller expressly reserves the right of resale to protect their position in case the buyer fails to pay for the goods, then if the buyer does fail to pay for the goods and the seller goes on to resell the goods, the original **contract of sale** is rescinded and this is without prejudice to any claim the seller may have against the defaulting buyer for damages (**s 48(4)**).

## **Personal remedies: the unpaid seller's remedies against the buyer for breach of contract**

Perhaps the most important remedies available to the unpaid seller are:

- an action for the price (**s 49**); and
- damages for non-acceptance of the goods (**s 50**).

**p. 139 Action for the price**

Where, under a **contract of sale**, the property in the goods has passed to the buyer and they wrongfully neglect or refuse to pay for the goods according to the terms of the contract, the seller may commence an action against them for the price of the goods (**s 49(1)**).

Where, under a **contract of sale**, the price is payable on a **day certain** irrespective of **delivery** and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed and the goods have not been appropriated to the contract (**s 49(2)**).

In Chapter 4 ('The unintended consequences', p 61) we discussed the effects of the Court of Appeal's decision in *FG Wilson (Engineering) Ltd v John Holt & Co (Liverpool) Ltd (2014)*, where the seller was denied a claim for the price because of a **retention of title** clause whereby the seller had retained ownership of the goods until payment. The court held that the seller could not bring an action for the price under **s 49(1)** because that remedy is only available where property in the goods has passed to the buyer. Furthermore, the court held that **s 49(1)** provided an exclusive (rather than a permissive) remedy for the price, which meant that no claim for the price could be brought unless **s 49** applied. Sellers should, therefore, consider the effect of **s 49(2)** and make the price payable on a **day certain**, irrespective of delivery, so as to ensure they do not fall foul of the protection they thought they had secured when incorporating a **retention of title** clause into their contract of sale. It would also be prudent for sellers to provide expressly in the contract that the price is payable even though property has not passed.

The decision in *FG Wilson* was somewhat troubling for an unpaid seller in these circumstances. Some relief, however, came from the Supreme Court in *PST Energy 7 Shipping LLC v OW Bunker Malta Ltd (2016)*, where Lord Mance stated that although courts should be cautious about recognising claims to the price of goods in cases not falling within **s 49**, this leaves at least some room for claims for the price in other circumstances. For example, the price may be recovered in respect of goods undelivered which remain the seller's property but are at the buyer's risk and are destroyed by perils of the seas or by fire. His Lordship declined to set the precise limits for the circumstances in which the price may be recoverable outside **s 49**. He stated that had the contract in *PST Energy* been one of sale, he would have overruled *FG Wilson* on this point, holding that **s 49** is not a complete code of situations in which the price may be recoverable under a contract of sale.

This decision has not been universally adopted. For example, in *Mitsubishi Corp RTM International Pte Ltd v Kyen Resources Pte Ltd (2019)*, the Singapore High Court, although not having to decide on whether or not actions for the price could be sustained outside of the Singapore Sale of Goods Act, expressed the view that it would have been slow to adopt, without greater reflection, the radical change in the law brought about by *PST Energy*.

### Looking for extra marks?

**Section 49(2)** applies in cases where the parties have agreed that payment will be made upon the occurrence of a specific event rather than on a particular date. This is known as a **payment on a day certain**. ↗ The event might be something like the completion of the manufacturing stage of the goods or some other stage in the process that the parties have agreed should be the **day certain** for the purpose of payment (*Workman Clark & Co Ltd v Lloyd Brazileno (1908)*).

Because an action for the price is a debt claim, it has a distinct advantage over a claim in damages. This is because concepts such as remoteness, causation, and mitigation do not arise in debt claims; neither do questions of assessment or contributory negligence.

### Damages for non-acceptance of the goods

The unpaid seller is entitled to commence an action against the buyer for damages if they wrongfully neglect or refuse to accept and pay for the goods (**s 50(1)**). This is known as an action in damages for non-acceptance.

#### The measure of damages: the general rule

The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract (**s 50(2)**).

#### Where there is an available market

The method used for calculating the seller's loss 'directly and naturally resulting in the ordinary course of events from the buyer's breach of contract' is explained in **s 50(3)**. This provides that 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 at the time or times when the goods ought to have been accepted or (if no time was fixed for acceptance) at the time of the refusal to accept.

**Section 50(3)** is concerned with the loss of the bargain with the buyer rather than the loss of profits which the seller might have anticipated (*Glencore Energy UK Ltd v Cirrus Oil Services Ltd (2014)*).

#### Looking for extra marks?

Don't forget the provisions of **s 54 SGA**, which provides that the seller 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.

What amounts to an 'available market' for the purpose of **s 50(3)** is more difficult to explain. At one time, it was said to refer to something like a Corn Exchange or Cotton Exchange where 'there was a fair market where they could have found [another] purchaser' (*Dunkirk Colliery Co v Lever (1878)*). But times have now moved on and Upjohn J stated in *Thompson Ltd v Robinson (Gunmakers) Ltd (1955)* that had the matter been *res integra* (a point not governed by an earlier decision or by a rule of law), he would have found that an 'available market' merely meant that the situation in the particular trade in the particular area was such that

p. 141 the particular goods could freely be sold and that there was a demand sufficient to absorb readily all the goods that were thrust on it so that if a purchaser defaulted, the goods in question could readily be disposed of. This now appears to be how an available market will today be defined.

### Disapplication of the available market rule

Section 50(3) only lays down a 'prima facie' rule for the measurement of damages. This prima facie rule refers to an available market. The available market rule could, in certain circumstances, result in an incorrect or unfair assessment of damages and it can therefore be displaced when there is no means of readily disposing of the goods that were contracted to be sold or otherwise where it would be unjust to apply the rule (*Thompson Ltd v Robinson (Gunmakers) Ltd (1955)*). *Thompson* can be contrasted with *Charter v Sullivan (1957)*, a case similar to *Thompson* except that the car in question was a Hillman Minx, which the seller acknowledged they could sell as many as they could get hold of. They were, therefore, only entitled to nominal damages.

### Revision tip

Section 50(3) sets out the prima facie measure for the calculation of damages in an available market. It should go without saying that if there is no available market, then s 50(3) will not apply. In such a situation, the measure of damages will depend on whether the seller had, at the time the buyer wrongfully refused to take delivery of the goods, already manufactured or procured the goods in question. If they had, then the prima facie measure of damages will likely be the difference between the contract price and the value of the goods at the time of the buyer's breach (*Harlow & Jones Ltd v Panex (International) Ltd (1967)*).

### The available market rule and unique goods

The market price rule in s 50(3) will not apply to unique goods. This is because with unique goods the seller can only sell them once and they will not be allowed to make more than one profit. The sale of second-hand cars has been held to fall into the unique goods rule where no available market within the meaning of s 50(3) exists and the damages recoverable will be limited to the particular loss sustained on the particular transaction (*Lazenby Garages Ltd v Wright (1976)*).

### Looking for extra marks?

We saw earlier ('Damages for non-acceptance of the goods', p 140) that s 50(1) provides that the unpaid seller is entitled to commence an action against the buyer for damages if they wrongfully neglect or refuse to accept and pay for the goods. You should also consider the position if the buyer

refuses to take delivery of the goods. **Section 37 SGA** provides that when the seller is ready and willing to deliver the goods and requests the buyer to take delivery of them, and the buyer does not within a reasonable time after such request take delivery of the goods, they are liable to the seller for any loss occasioned by their neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

## Key cases

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CASE	FACTS	HELD/PRINCIPLE
<i>Charter v Sullivan [1957] 2 QB 117</i>	The buyer failed to accept delivery of a Hillman Minx car which he had contracted to buy from the seller. Shortly after the buyer's breach, the seller resold the car for the same price to another purchaser, the retail price having been fixed by the manufacturer. The seller claimed the loss of profit on the repudiated sale. Demand for Hillman Minxes exceeded the supply which the seller was able to obtain. In other words, the number of sales of Minxes the seller could make was limited to the number of the cars he could obtain. He, therefore, did not lose a sale or any profit.	The Court of Appeal held that on the facts of the case the seller had failed to prove any loss arising from the buyer's breach. The case was one to which <b>s 50(2)</b> of the <b>(1893) SGA</b> should be applied in preference to <b>s 50(3)</b> . <b>Section 50(2)</b> explains that the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract. The seller was entitled to recover only nominal damages. Sellers LJ explained that where a seller can prove that a profit has been irretrievably lost on a sale of goods by the buyer's default, it would be recoverable as damages in accordance with <b>s 50(2)</b> . But where there has been a resale of the goods, the seller has the burden of proving a loss of profit beyond that which, on the face of it, has been recouped by the resale.
<i>FG Wilson (Engineering) Ltd v John Holt &amp; Co (Liverpool) Ltd [2014] 1 WLR 2365</i>	Wilson was a manufacturer and seller of generators and parts. Wilson's standard terms included a <b>retention of title</b> clause providing that title to the purchased goods did not pass until Holt had paid in full. When Holt failed to pay a number of invoices, Wilson brought proceedings for the price.	The Court of Appeal held that a claim for the price under the contract meant a claim falling within <b>s 49 SGA</b> . Wilson could not have a claim for the price independently of that section. Wilson's claim had to comply with the condition in <b>s 49(1)</b> that property in the goods had to have passed to Holt. The court observed that if an action for the price could be maintained whenever the obligation to pay had arisen, <b>s 49</b> would be largely otiose, which indicated that the section was intended to specify the only circumstances in which a seller could maintain an action for the price. Thus, unless Wilson could establish that property in the goods had passed to Holt, it

CASE	FACTS	HELD/PRINCIPLE
		would have no claim for the price. That was an inherent result of a <b>retention of title</b> clause, and it showed the dangers, as well as its benefits, of such clauses. As title in the goods had not passed to Holt, Wilson did not have a valid action for the price. This could have been avoided by the seller stipulating that the price is payable on a <b>day certain</b> irrespective of delivery, thereby bringing it within the scope of <b>s 49(2)</b> and giving it an entitlement to bring an action for the price. <b>Section 49(2)</b> applies irrespective of whether or not delivery has been made or title has passed.
<b>Harlow &amp; Jones Ltd v Panex (International) Ltd [1967] 2 Lloyd's Rep 509</b>	The buyer agreed to buy 10,000 tons of steel. The goods were to be delivered free-on-board (FOB) during August/September at the seller's option. The seller notified the buyer in July that the goods would be ready at the beginning of August and requested him to arrange a vessel. The buyer failed to reply but on 1 August notified the seller that they would be calling forward half the goods in mid-August with the remainder to be loaded by the end of August. On 3 August, the buyer told the seller that due to non-confirmation the mid-August stem vessel had been missed and that as a consequence the buyer could not now ship in August. On 11 August, the buyer demanded a reply within 24 hours as to whether the seller could guarantee all the goods ready for loading between 20 and 27 August. On 22 August, the buyer informed the seller that they accepted the seller's conduct as repudiation of the contract. The seller claimed against the buyer, alleging wrongful failure to accept the goods on or before 30 September.	Roskill J held that the buyer was liable. The only term that was necessary to imply was that the seller would notify the buyer when the seller expected to load and then the buyer would be under the normal duty under a FOB contract to provide the vessel at the correct time. The seller's only obligation was to give the notice they had given but which the buyer had ignored. As there was no available market in the steel, the measure of damages was, according to <b>s 50(2)</b> of the <b>(1893) SGA</b> , the difference on 30 September between the contract price of the goods and the then value to the seller. The seller had taken back 1,500 tons of the steel and the measure of damages would be the loss of profit equal to the difference between the price at which the seller bought and the price he would have got from the buyer.
<b>Lazenby Garages Ltd v Wright [1976] 1 WLR 459</b>	The claimant car dealer bought a second-hand BMW car in February 1974 for £1,325. A few days later, W agreed to buy it from them for £1,670 and to take delivery on 1 March. He then told the dealer that he did not wish to proceed	The Court of Appeal held that where the subject matter of a repudiated sale was a unique article like a second-hand car, for which there was no available market within the meaning of <b>s 50(3)</b> of the <b>(1893) SGA</b> , the seller could recover as damages only the particular loss sustained on the

CASE	FACTS	HELD/PRINCIPLE
	<p>with the purchase and refused to accept delivery. About six weeks later, the dealer sold the same car to another buyer for £1,770. Despite that more profitable sale, the dealer claimed damages from W for what they described as their 'loss of profit' of £345, being the difference between the £1,325 they had paid and the £1,670 agreed with the defendant. W's defence was that the dealers had not suffered any loss by his refusal to accept delivery.</p>	<p>transaction and nothing more. In this case, as the seller had resold the very car at a higher price, they had not suffered any loss and therefore were not entitled to recover any damages.</p>
<p>p. 144</p> <p>↳ <b>Re Charge Card Services Ltd (No 2) [1989] Ch 497</b></p>	<p>The company operated a charge card scheme with garages whereby the garages accepted its credit cards and charged the company the price of petrol and other products supplied to its cardholders. In return, the company undertook to pay the garages the price of the goods less its commission. The company issued cards to account holders, who authorised the company to pay for fuel and debit them accordingly. The company went into voluntary liquidation owing sums to the garages and being owed debts from cardholders. Transactions involving credit or charge cards involved pre-existing schemes of separate bilateral contracts between the company and the suppliers and the company and the cardholders whereby the suppliers agreed to accept cards in payment for goods and the cardholders were entitled to use the cards to commit the company to honour its obligation to pay the suppliers. In turn, the cardholders were liable to pay the company the price charged by the suppliers.</p>	<p>The Court of Appeal held that since it could not have been intended that the cardholder was liable to pay twice (to the company and the garage), payment by card was an absolute discharge of the cardholder's liability to the garage. Browne-Wilkinson LJ explained that 'the cardholder is liable to pay the company whether or not the company has paid the garage .... Payment by credit card is normally to be taken as an absolute, not a conditional, discharge of the buyer's liability.' Subject to the terms of the contract, the buyer ordinarily discharges their obligation to the seller fully on paying by credit or charge card, and if the credit company cannot pay the seller, the seller has no redress against the buyer. The cardholders discharged their obligations absolutely to the garages when they obtained fuel using their cards.</p>
<p><b>Thompson Ltd v Robinson (Gunmakers) Ltd [1955] Ch 177</b></p>	<p>The buyer contracted to purchase a new Standard Vanguard car from the seller but wrongfully failed to take delivery when it was available. The price of the car was fixed by the manufacturers. The seller mitigated their loss by persuading their</p>	<p>Upjohn J held that an 'available market' in s 50(3) is not limited to a market such as the Cotton Exchange or Baltic or Stock Exchange but merely means that the situation in the trade in the particular area is such that the goods can freely be sold if a purchaser defaults. If there is not a</p>

CASE	FACTS	HELD/PRINCIPLE
	<p>supplier to take the car back without penalty. The seller then brought a claim against the buyer for their loss of profit amounting to £61. The buyer argued that as there was no difference between the market price of the car and the selling price, the seller was only entitled to nominal damages. Their case was that <b>s 50(3) SGA</b> applied because there was an available market for that particular car and that the price for the car had been fixed by the manufacturer. The seller had mitigated their loss and therefore had suffered no loss. The court rejected this argument.</p>	<p>demand which can readily absorb all the goods available for sale, so that if a purchaser defaults the sale is lost, there will not be an ‘available market’ within the meaning of the subsection. In such a case, the seller’s loss is the loss of their bargain, and they will be entitled by way of damages to the profit which they would have made but for the buyer’s wrongful failure to take delivery. The judge stated that even if there had been an available market, <b>s 50(3)</b> provided only a <i>prima facie</i> rule and, if it was unjust to apply it, it was not to be applied. As a result, the measure of damages was the seller’s loss of profit amounting to £61.</p>
p. 145  ← <b>Workman Clark &amp; Co Ltd v Lloyd Brazileno [1908] 1 KB 968</b>	<p>The seller contracted with the buyer for the construction of a steamer, the price for which was to be paid by the buyer by five instalments, which were respectively to become due at different stages of the construction of the vessel. The contract provided for the hull and materials of the vessel to become the absolute property of the buyer upon payment of the first instalment, subject only to the seller’s lien for any unpaid sums. When the first payment instalment remained unpaid, the seller sued the buyer.</p>	<p>The Court of Appeal held that this case fell within the meaning of <b>s 49(2)</b> of the <b>(1893) SGA</b> and that all the seller had to show in order to entitle them to payment of the instalment claimed was that they had fulfilled the conditions upon which this instalment was, by the contract, payable.</p>

## Key debates

Topic	Damages and the available market
<b>Viewpoint</b>	Examines the definition of an available market within the meaning of <b>s 50(3) SGA</b> and assesses how the appropriate level of damages might be calculated where the market price of the goods is inapplicable.
<b>Source</b>	(2004/5) Dec/Jan, <i>Buyer 1</i>

Topic	Liability for loss of goods
<b>Viewpoint</b>	Considers whether the burden of proof of a loss of profits claim was on the seller to show that they could not have obtained a re-order from the buyer or on the third party to show that the seller could have done so.
<b>Source</b>	(2008/9) Dec/Jan, <i>Buyer 1</i>

## Exam question

Questions on the remedies available to a seller and buyer will frequently be asked together. For this reason, please see Chapter 10, 'Exam questions', p 165.

## Online resources

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

- multiple-choice questions <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-9-multiple-choice-questions?options=showName>;
- key facts checklists <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-9-key-facts-checklists?options=showName>;
- interactive flashcards of key cases <https://iws.oupsupport.com/ebook/access/content/baskind-concentrate6e-student-resources/baskind-concentrate6e-chapter-9-interactive-flashcards-of-key-cases?options=showName>.

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