**Chapter 14**

**1. Section 27 of the SGA 1979 imposes on the seller a duty to deliver the goods. Critically evaluate this duty.**

Section 27 makes clear that the seller is under a duty to deliver the goods. The word ‘delivery’ has a very specific legal meaning, which is wholly different from its colloquial meaning (e.g. when the supermarket delivers the goods ordered by its customer). The definition of ‘delivery’ can be found in s 61(1): “‘Delivery’ means voluntary transfer of possession from one person to another”. However, in relation to ss 20A and 20B it includes such appropriation of goods to the contract as results in property in the goods being transferred to the buyer. This exception was added by the Sale of Goods (Amendment) Act 1995.

For such a simple word, the concept of ‘delivery’ is rather confusing, not least because it does not in fact require the seller to hand over the goods to the buyer (although in many cases this is what happens). You should explain in your introduction that as s 29 makes clear, 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.

Actual delivery

Where the seller does transfer physical possession of the goods to the buyer (or his agent) this is known as actual (or physical) delivery. This is the common form of delivery in consumer transactions.

Constructive delivery

Constructive delivery occurs where the seller who does not have physical possession of the goods transfers control (or the right to possession) of those goods to the buyer. Constructive delivery may occur in a number of ways:

1. Where the buyer continues in possession of the goods although in his own right

2. Where there is delivery of something that provides physical control of the goods

3. Where the seller transfers to the buyer the document of title to the goods

4. Delivery to a carrier

Reference in any answer should also be made to s 29(4) and to the rules on attornment.

Place of delivery

You will also need to discuss the place of delivery. Section 29 makes it clear that, 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 and that, unless the parties have agreed otherwise, the expenses of, and incidental to, putting the goods into a deliverable state must be borne by the seller (s 29(6)). The place of delivery is that which the parties have agreed. In the absence of any such agreement, then the place of delivery is the seller’s place of business if he has one, or otherwise his place of residence. If the contract is for specific goods which, when the contract was made, were known by the parties to be in some other place, then that other place is the place of delivery. Given that, in the absence of agreement, the default place of delivery is that of the seller, he is perfectly entitled to levy a charge for delivering the goods to his customer. Delivery charges are frequently set out in the parties’ contract of sale, or implied from previous course of dealing, although given that the seller will be providing a service beyond his legal obligation, he will be entitled to make such a charge in any event. If the seller agrees to deliver the goods at his own risk at a place other than that where they were when sold, then, unless the parties agree otherwise, the buyer remains liable for any deterioration in the goods necessarily incident to the course of transit (s 33).

Time of delivery

Next, you should discuss time of delivery. With consumer contracts, time for delivery will not be of the essence unless a date for delivery has been agreed and is construed as a condition of the contract. Conversely, with regard to commercial contracts, 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] 3 KB 475; *Bunge Corporation v Tradax Export SA* [1981] 1 WLR 711). It remains, however, a matter of construction (SGA 1979, s 10(2)). However, it can be seen from modern cases such as *Pharmapac (UK) Ltd v HBS Healthcare Ltd* [2022] EWHC 23 (Comm) 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. Thus, subject to the innominate term principle, where the time of delivery is not met, the buyer may be entitled to sue for non-delivery and might also be entitled, if he so wishes, to treat the contract as repudiated. The buyer may, of course, be content to accept late delivery of the goods (i.e. affirm the seller’s breach).

Where the time of delivery is not met, the buyer is entitled to sue for non-delivery and, if he wishes, treat the contract as repudiated. The buyer may, of course, be content to accept late delivery of the goods (i.e. affirm the seller’s breach). If he does so, then it must follow that he waives his right to treat the contract as repudiated and reject the goods, but he will still have the right to sue for damages (s 11(4)). 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, he may then treat the contract as repudiated. In effect, by allowing the further specified time for delivery by the giving of reasonable notice, he has attached a condition to his waiver which revives his right to treat the contract as repudiated if the goods are still not ready (*Charles Rickards Ltd v Oppenheim* [1950] 1 KB 616).

Where the buyer is to collect the goods and no time for delivery has been stipulated in the contract, 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)). If, following such a reasonable demand, the seller fails to hand over the goods, he will be in breach of a condition, which the buyer may treat as a repudiation of the contract and sue for non-delivery. 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)).

**2. What is meant by the ‘concurrent conditions’ in s 28 of the SGA 1979 in respect of payment of the price and delivery?**

This is a straightforward question examining the meaning of s 28. Section 28 provides that unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, 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.

Crucial to your understanding of this question is the wording in s 28 which 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. The section imposes no requirement for the seller actually to tender delivery before he becomes entitled to sue the buyer for the price or for damages, provided he 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 he was ready and willing to give possession of the goods in question (*Levey & Co v Goldberg* [1922] 1 KB 688).

You should then explain and apply the rules and cases that have already been discussed in question 1.