THE DOCTRINE ON NON-ACCEPTANCE (MORA ACCIPIENDI)

BY

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1. In the Anglo-American law of sale there has been much confusion about the meaning of the word "acceptance".[1] Uncertainty has prevailed not only about the characterization of different kinds of acceptance, such as acceptance of title, acceptance of quality and acceptance of possession, but also about the conditions under which acceptance may be said to have taken place and about the effect that acceptance has in different cases.[2]

A great many of the problems dealt with in connection with acceptance in Anglo-American law, such as loss of possible right to damages because of failure to claim, are treated in Scandinavian law without special regard to any notion of acceptance. Thus, for example, in cases of failure to claim damages for goods of faulty quality, the notion of acceptance has not been interpolated. On the other hand, there is a closer connection between non-acceptance in, for example, the Sale of Goods Act, sec. 50, the Uniform Sales Act, sec. 64 (cf. the Uniform Commercial Code, sec. 2–708) on the one hand, and *mora accipiendi* in Scandinavian law on the other. What is meant by *mora accipiendi* in Scandinavian law is a situation where the obligee (for example, the buyer) does not receive the goods in accordance with the agreement in due time, and thus does not release the obligor (for example, the seller) from holding or storing the object of the performance (for example, the goods). Broadly, therefore, the question is partly under what conditions *mora accipiendi* occurs and partly what rights the obligor has by virtue of the delay.

At first sight, there seems to be only a slight connection between the *mora accipiendi,* or delay in accepting, of Scandinavian

[1] See, for instance, Williston, *The Law Governing Sales of Goods,* Vol. 3, rev. ed. New York 1948, pp. 30 ff., and Rabel, *Das Recht des Warenkaufs,* Vol. 2, Berlin 1958, pp. 218 ff.

[2] In this study, acceptance by formation of contract will not be discussed. For this question, see, for instance, Chitty, *On Contracts,* Vol. 1, 21st ed. London 1955, pp. 25 ff., and for the Sale of Goods Act, sec. 4, Chalmers, *Sale of Goods Act,* 12th ed. London 1945, pp. 28 f.

law and the Anglo-American doctrine on acceptance. However, if one looks deeper into the theoretical processes of thought behind the doctrine on *mora accipiendi* and that on acceptance as it has been built up on the basis of common law, Sale of Goods Act and Uniform Sales Act, one finds several striking similarities.

2. In describing the rules on *mora accipiendi,* the basic idea in Scandinavian writings on the subject has been that the obligee has only the right, not the duty, to accept the obligor's performance. *Mora accipiendi,* therefore, is not considered to be a breach of contract but only a failure to exercise a right.[3] From this it follows that, in cases of the buyer's *mora accipiendi,* the seller has no recourse to the usual remedies in breach of contract cases, viz. either action for performance or, in cases of essential delay, rescission of contract and full damages. In spite of the delay, the seller is still obliged to store the goods, but in return the risk for the goods is transferred to the buyer, provided that the goods are specified in detail. In order to protect the seller from being unduly burdened by his obligation to store the goods, he has the right to claim compensation for the resultant expenses. Furthermore, he is entitled to resell the goods, for the buyer's account, if they are perishable or if the storage costs are disproportionately high or if storage is burdensome for the seller, or even generally if the buyer does not comply with the seller's request that he receive the goods within a reasonable time.

In certain exceptional cases, however, it has been held that the seller has the right to get rid of the goods, or, in other words, a duty is imposed on the buyer to remove the goods. Examples which are often cited concern cases where someone buys stones from a field, unwanted building material from a building site, remnants sold to make space in a stockroom, etc. These exceptions have been justified by the argument that in general the buyer undertakes to do a job of work—to remove certain property —and in payment receives the property in question.

The principles now mentioned are not prescribed by statute,

[3] In Scandinavian doctrine, *mora accipiendi* has not generally been gone into deeply. Assertions made by legal writers about principles on the one hand and details on the other are by no means entirely uniform. The account given in the text above, however, corresponds to the general attitude of legal writers. For further information, see Portin, *Om köpares dröjsmål,* Helsinki 1962, pp. 147 ff. and 160 ff.

and since the Scandinavian countries lack comprehensive codifications of private law, no general rules on *mora accipiendi* can be said to exist. All the same, legal doctrine has quite generally embraced the corresponding ideas in the past, and statutes like the Scandinavian Sale of Goods Acts contain rules on non-acceptance which are undoubtedly based on ideas of the sort described above.[4, 5]

The theoretical construction of *mora accipiendi* in Scandinavian law has been influenced to a great extent by German law.[6] According to the general principles of German civil law, BGB sec. 293, the obligee's behaviour falls into the *mora* ("Annahmeverzug") category as soon as he does not accept an offered performance. On the other hand, he is under no duty to accept it. Acceptance ("Annahme") is here seen in the light, not of receipt of the goods, but of an act which terminates the obligor's duty. The rules on "Annahmeverzug" are also applicable to sales. The consequences of *mora accipiendi,* purely objective as they are, are defined in BGB secs. 294–304 and are essentially the same as in Scandinavian law. The right to resale for the obligee's account is, except in cases of commercial sale (HGB sec. 373), more limited, but instead the obligor has wider rights to deposit the goods for the obligee's account.

The situation in German law in regard to sales, however, is more complicated, because, according to BGB sec. 433(2), the buyer is not only in the position just described but is also under an obligation to receive the goods. Therefore, failure to receive the goods ("Abnahmeverzug") is not *mora* of the obligee but of the obligor—provided that the general conditions for *mora solvendi,* such as negligence, do in fact apply. The consequences of failure to receive are therefore in principle the same as those of breach of contract. As the duty of receiving the goods is as a rule held to be a "secondary" obligation, the buyer normally lacks the right to rescind the contract.

[4] The Swedish Sale of Goods Act dates from 1905, the Danish Act from 1906 and the Norwegian Act from 1907. Finland lacks a Sale of Goods Act, and therefore her law of sale, apart from certain outmoded rules in the Code of 1734, is based on case law and the writings of jurists. However, the Finnish law of sale corresponds in all essentials to that which obtains in the other Nordic countries.

[5] See note 3 above, and for the *travaux préparatoires* of the Danish, Norwegian and Swedish Sale of Goods Acts, Portin, *op. cit.,* pp. 146 f.

[6] See, for instance, the exposition in Portin, *op. cit.,* p. 293.

Despite the original differences in principle between the rules of *mora accipiendi* ("Annahmeverzug") and the rules on failure to receive the goods ("Abnahmeverzug"), the practical differences are in fact rather small. The most essential difference consists in the requirement of negligence on the part of the buyer in "Abnahmeverzug".[7]

3. In Scandinavian doctrine, there is general agreement that any action for specific performance is excluded if the buyer refuses to accept the goods. Many weighty practical reasons speak in favour of this point of view, and accordingly there is no need to resort to theoretical arguments about right and duty. A realistic justification might run in brief as follows: If the seller attains a judgment on performance but yet the buyer does not remove the goods, the next step will have to be to grant the seller a judgment entitling him to remove (usually to sell) the goods at the expense of the buyer. Thus, a judgment which imposed performance on the buyer would not give the seller any right beyond the right to resale which the seller has without recourse to an action for performance against the buyer.[8]

The right of rescission, as mentioned previously, is considered in principle to be excluded in cases of *mora accipiendi*. This has been justified by the fact that *mora accipiendi* is not considered to be a breach of contract. A general precondition for rescission is that the contracting party's breach of contract can be characterized as essential. A more natural explanation of the absence of the right of rescission would be that *mora accipiendi* seldom leads to serious delay. Only in those cases where it is clear from the agreement or circumstances in general that the seller has an essential interest in being released from the obligation to hold the goods would rescission be permitted on the basis of the general principles.[9]

However, one can go a stage further.[1] The right of rescission,

[7] As regards German law, see, for instance, Larenz, *Lehrbuch des Schuldrechts*, 2nd ed. Munich and Berlin 1957, Vol. 1, pp. 231 ff., and Vol. 2, pp. 57 f.

[8] See Portin, *op. cit.*, pp. 267 f.

[9] The common opinion has been criticized by, among others, Klæstad, "Medfører mora accipiendi i gjensidige skyldforhold et erstatningsansvar?", *N.Rt.* 1921, pp. 625 ff.; Ussing, *Dansk Obligationsret, Almindelig Del*, 4th ed. Copenhagen 1961, pp. 207 f.; Augdahl, *Den norske obligasjonsretts almindelige del*, 2nd ed. Oslo 1958, pp. 350 ff.; Portin, *op. cit.*, pp. 274 ff.

[1] See Portin, *op. cit.*, pp. 281 ff.

which is excluded *in principle,* is given to the seller *de facto* in the form of the far-reaching right to resale. As the seller can generally resort to resale after requesting the buyer to receive the goods, even the requirement of essentiality has largely been given up, at any rate formally. The theoretical construction of *mora accipiendi* as being only the buyer's abstention from his right can thus bring about, in certain situations, the clearly undesirable result that the consequences are more severe for the buyer than if the right of rescission had been admitted according to general rules.

In addition, it may be pointed out that the right of rescission has not, in all circumstances, been considered excluded in case of *mora accipiendi,* but in certain situations a "real" obligation for the buyer to receive the goods has been found to exist. The justification, mentioned earlier, that it was primarily a question of doing a job of work does not seem to be tenable. An often-cited example of a case where "a real obligation" to receive the goods exists is that in which goods are sold in order to free space in the stockroom. If, on the other hand, the motive of the sale had not been lack of space in the stockroom, the buyer would not have been under any obligation to receive the goods. No differences in the buyer's actions are supposed in either case, and therefore one has no greater right to talk about doing a job of work in the first case than in the second. The only difference consists in the intentions of the seller, or more accurately, in the buyer's cognizance of them.

What I have said above would seem to justify the assertion that no real reasons exist for the exclusion in principle of rescission in *mora accipiendi.*

Finally, *mora accipiendi* has been held to be different from breach of contract in that it gives no entitlement to full damages but only to compensation for certain extra expenses.

When examining this matter, it may be as well to deal separately with cases where the buyer receives the goods late and cases where the buyer does not receive the goods at all. In what follows, it is assumed that the seller has received payment.[2] As the seller has thus received the equivalent of the goods, there is no question of damages for delayed receipt of the payment arising from any difference in value of the currency which may possibly occur owing

[2] On what follows, see Portin, *op. cit.,* pp. 277 ff.

to a delay. On account of the delay, the seller may have suffered loss in the form of expenses for storing the goods and keeping them in good condition, for offering the goods without result, for rising costs of performance, etc. According to the rules which are held to apply to compensation for expenses, the seller is entitled to compensation for the expenses enumerated above, among others.

In cases where the buyer does not receive the goods, it may happen that the goods are destroyed after the risk has been transferred to the buyer, or that the goods are resold by the seller. If the goods have been destroyed, it follows from the general rule implicit in the definition of transfer of risk that the buyer has to pay the price. Equally, it is indisputable that in cases of resale the seller may keep the price which he then receives for the goods, or in any case the value of the goods. In this case, the seller will receive an amount of money corresponding to the agreed equivalent of the goods. In addition, he is entitled both to compensation according to the same principles as apply to delayed receipt and to compensation for resale expenses. The proceeds of the goods are deducted from the price plus compensation.

From the foregoing, it appears that the generally accepted consequences of *mora accipiendi* by the buyer do not justify a sharp distinction in principle between breach of contract—as, for example, in cases of delayed payment—and delayed receipt of goods. The rules worked out for *mora accipiendi,* based on the idea that this is only a failure to exercise a right, lead in practice largely to the same result as if *mora accipiendi* had been constructed like a breach of contract with recourse to rescission and full damages for the seller.[3]

Once this fact is established, it seems reasonable to subject the theoretical construction of *mora accipiendi* to a closer scrutiny.

4. I have previously mentioned that the theoretical construction of *mora accipiendi,* as it is usually understood in Scandinavian law, finds its precedent in German law.[4] The doctrine on *mora accipiendi* was developed in German law by, among others, Kohler,

[3] Among those who have pointed this out are Ussing, *op. cit.,* p. 205; Almén, *Om köp och byte av lös egendom,* 4th ed. Stockholm 1960, pp. 443 f.; Rodhe, *Obligationsrätt,* Stockholm 1956, p. 415.

[4] On what follows, see Portin, *op. cit.,* pp. 287 ff.

in an article of 1879.[5] Certainly, in the years that have passed since then, Kohler's doctrine has not gone without criticism, but nevertheless it has exerted a great influence on both German and Scandinavian law and also on the general attitude prevailing in the discussion by legal writers on this subject. Since Kohler, in contrast to the majority of later writers on the subject, gives an account of the premises on which the construction described above is founded, it seems to be worth while to take a closer look at his treatment of the question.

Kohler starts by discussing "the nature of payment", and suggests that usually (but not without exception), in addition to the debtor's actions, acceptance ("Annahme", "Mitwirkungsakt") is required of the creditor. Only in those cases where acceptance is required can there be any question of *mora accipiendi.*

Kohler is highly critical of the opinion that the obligee is under a duty to accept performance. He supports his own view with a number of examples. One can refuse payment proffered by a debtor in the same way as one can give away one's money in the street. One is no more obliged to live in a rented apartment than in one's own house. If one has ordered plans from an architect, one is not obliged to have a house built. If one has purchased a theatre ticket, one is not obliged to go to the theatre to see the play, etc. Compelling the obligee to accept the performance offered would be like placing him under a guardian.

Similarly, Kohler rejects the idea that the obligee is under a duty, if not to accept the performance tendered, at least to release the obligor of his obligations. Kohler supports his opinion by arguing that the obligor is not released by the obligee but rather by certain situations foreseen in law.

As the obligor does not have the right to insist on the obligee giving the acceptance necessary for the obligor to be released of his obligations, the law comes to the rescue of the obligor by giving him the chance of substitute performance. However, in certain exceptional cases the obligation to accept remains. This would be the case, for instance, when the buyer has purchased stones that are to be removed from a field. Here, the removal of the goods is an extra obligation in addition to the payment of the price.

[5] Kohler, "Annahme und Annahmeverzug", *Jherings Jahrbücher für die Dogmatik des heutigen römischen und deutschen Privatrechts,* Vol. 17 (1879), pp. 261 ff.

Kohler's doctrine seems to be open to criticism, partly because of his conclusions about action for performance, partly because of his choice of examples to emphasize his point of view, and lastly in regard to the main problem itself, "der Charakter des Mitwirkungsaktes".

Considering that action for specific performance is unreasonable in certain cases of clear breaches of contract, one cannot draw any general conclusions about such things as rescission or damages from the fact that specific performance cannot be enforced.[6]

As an argument in favour of his theory, Kohler points to the example that anyone is entitled to distribute his money "unter das Publikum". Many of his other examples are of the same kind. It is clear, however, that these examples do not touch the relationship between the obligor and the obligee but rather the question as to whether the obligee is under a duty to utilize the performance in a reasonable manner. Clearly, there is no such duty. If the buyer wishes to throw the goods away, there are no legal obstacles to prevent him from doing so. However, such treatment of the goods implies that the buyer has received the goods and furthermore it deprives him of any right that he otherwise might have to reject the goods. What we are discussing, then, is a situation that can only arise after the legal relationship between the seller and the buyer has been settled. Only the question of a possible right to damages is relevant here.[7]

The central problem for Kohler was to determine the"Charakter des Mitwirkungsaktes". As previously mentioned, he used as the starting point of his doctrine "the nature of payment". It is not necessary here to enter into a discussion of this subject. It is probably sufficient to establish that he shared the opinion that in certain cases the obligee must give his acceptance before the obligor is released of his obligations;[8] or, as Kohler puts it, per-

[6] See Ussing, *op. cit.*, p. 203; Augdahl, *op. cit.*, p. 350; and Portin, *op. cit.*, pp. 289 f.

[7] Cf. section 5 *infra* with note 3 about acceptance of quality in Anglo-American law.

[8] As regards the nature of payment (performance), see, for instance, Larenz, *op. cit.*, pp. 253 ff., who divides the different theories into the following groups: (1) "die allgemeine Vertragstheorie" (the general theory of contract), (2) "die beschränkte Vertragstheorie" (the limited theory of contract), and (3) "die Theorie der realen Leistungsbewirkung" (the theory of the actual effect of performance). The last-mentioned theory, to which Larenz himself subscribes,

formance is only possible when the obligee reaches his hand out to the obligor and opens the door of his property to him. The obligor can undertake an act of performance without the obligee's acceptance, but in so doing he has not yet achieved liberation. He only does this, according to Kohler, when the obligee accepts the obligor's performance both actually and legally.[9] At the starting point of his argument—in establishing the nature of payment—the dichotomy of performance and acceptance is matched by distinguishing the actual performance of the object of the obligation from the consensual agreement according to which actual performance means liberation from the obligation. Without demanding full identity between the terms in their usually understood sense, the matter might be expressed as follows: the obligee's acceptance should consist of both receipt of the goods and acceptance of performance (or of title).

The starting point of Kohler's argument is thus ambivalent. One finds that, according to Kohler, the obligor can undertake an act of performance ("Erfüllungsakt") without the obligee's acceptance. On the other hand, he maintains that *mora accipiendi* ("Annahmeverzug") can only occur in cases in which the obligee's acceptance is required. Although it is not clearly stated and although Kohler later treats "Annahme" as a unified and unambiguous concept, one may nevertheless venture the conclusion that delay in legal acceptance (and not only in receipt) is a necessary precondition for *mora accipiendi*.

5. The next question is what is the real content of the term "legal acceptance" in the light of the previous discussion. To understand the position more clearly, let us ignore the physical receipt of the goods.

If one follows the doctrine on the nature of payment consistently, non-acceptance only means that the obligee does not agree that the obligor's performance brings about liberation. Let us take, for example, the case of a buyer paying the price, receiving the goods and then notifying the seller that he will not accept them as performance but will hold them for the seller's account.[1]

may nowadays be considered the dominant one in German law. Kohler's ideas are based largely on "die beschränkte Vertragstheorie".

[9] See Kohler, *op. cit.*, pp. 262 f.

[1] If the buyer returns the goods, on the other hand, the same situation as with non-receipt may arise.

If the goods are of the right quality and are delivered in due time, in the right place and in the right way, the buyer's notification, so far as I can see, has no legal effect whatsoever. The buyer's contention that liberation has not occurred may be rejected at any time, by the seller's simply referring to his correct performance.

The meaning of acceptance has not been left at the stage mentioned so far. The concept has probably been extended most evidently in Anglo-American law.[2] From the above-mentioned definition of acceptance as releasing the obligor when correct performance has taken place, acceptance has been transferred or extended to cases where performance does not meet the requirements of the contract. In this way, acceptance has become acceptance of performance, not on the grounds of its performance in accordance with the contract, but in spite of its contractual deficiencies. In other words, for the buyer (obligee) acceptance has come to mean an abstention from the remedies to which he had recourse on account of the seller's breach of contract.[3] Acceptance, therefore, has come to be associated with such things as inspection of goods by the buyer. Thus it is stated in the Sale of Goods Act, sec. 34, and in the Uniform Sales Act, sec. 47, that the buyer "is not deemed to have accepted them (= the goods) unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract".

In the Sale of Goods Act, sec. 35, and the Uniform Sales Act, sec. 48, a legal definition of acceptance is given. Three possibilities are stated which will establish that acceptance has taken place: (a) the buyer "intimates to the seller that he has accepted", (b) the buyer undertakes, after delivery, an act in relation to the goods "which is inconsistent with the ownership of the seller", or (c) the buyer retains the goods and does not in a reasonable time intimate to the seller that he has rejected them. These rules are largely similar to those in sec. 2–606 of the Uniform Commercial Code.

[2] See, for instance, the lucid accounts in Williston, *op. cit.*, pp. 30 ff., and Rabel, *op. cit.*, pp. 218 ff.

[3] One explanation of the extension of idea mentioned in the text may be that it is often a matter of opinion whether the goods conform to the contract or not. Cf. the examples put forward by Kohler mentioned in section 4 *supra*, and note 7.

Here we can pass over the extensive discussions carried on in Anglo-American law about the consequences of the buyer being held to have accepted the goods. The dominant opinion is that the buyer loses only the right of rescission but not the right to damages.[4] This rule is expressly stated in the Uniform Sales Act, sec. 49. What is interesting in this connection is the way in which the idea has been extended to cases of failure to accept the goods in due order. Delay in acceptance is no longer something like default or breach of contract by the buyer but, on the contrary, an abstention from the remedies the buyer would have had by virtue of the seller's breach of contract. One similarity with the theoretical construction of *mora accipiendi* is, without doubt, that in each case there appears the idea of "abstention from a right". But there is an important difference in the outcome. In *mora accipiendi*, the right to performance in accordance with the contract is considered to have been renounced, but according to the Anglo-American view on delay in acceptance, a right which would otherwise have arisen on account of the seller's faulty performance is renounced. So much for the buyer. From the seller's point of view, *mora accipiendi* means that liberation does not take place at the time agreed, while in cases of delayed acceptance, according to the Sale of Goods Act, sec. 34, and the Uniform Sales Act, sec. 47, "liberation" takes place in the sense that the seller escapes the unpleasant consequences of his own breach of contract.

It seems obvious that delay in acceptance, as described above, in spite of the similarity in the starting points in the discussions on *mora accipiendi* and acceptance of title, has little in common with the situations usually dealt with in connection with *mora accipiendi* or non-acceptance in the Sale of Goods Act, sec. 50, and the Uniform Sales Act, sec. 64.

As I mentioned earlier, Scandinavian law lacks anything corresponding to acceptance in the sense in which the word is used in the Sale of Goods Act, sec. 35, and the Uniform Sales Act, sec. 48. Corresponding questions are regulated in a different way. Thus it is stated in sec. 57 of the Scandinavian Sale of Goods Acts that the buyer's right of rescission is usually excluded unless he can return the goods essentially unaltered and undiminished. According to secs. 27 and 52 of the same statute, the buyer for-

[4] See, for instance, Williston, *op. cit.*, pp. 37 ff. In this connection, there is no question of acceptance by formation of contract. For this, see section 1 *supra*, note 2.

feits all recourse to remedies in regard to delay or defects in the goods unless he protests within a reasonable time.

The most essential difference in relation to Anglo-American law consists in the fact that the buyer's acts—for example, disposing of goods—are linked directly to the consequences, such as loss of action, without the question of acceptance being interpolated.[5] In Scandinavian law, there are no express rules which clearly define acceptance. It seems clear, however, that in general accepting the goods without protesting will wholly or partly deprive the buyer of his rights in regard to such things as defective goods. One could continue with numerous examples where acceptance in some form becomes relevant in connection with performance of contract. In this connection it is worth noticing the situation mentioned below where, between the same parties, there are several contracts having similar objects of performance. In writings on the subject, further situations have been discussed, among others, acceptance subject to reservations and acceptance of partial performance.[6] These cases, however, do not throw any new light on the present theme.

6. Let us return to the rules regarding *mora accipiendi* in sale in Scandinavian law. Briefly, these rules are, as mentioned in section 2 above, that the seller is obliged to take care of the goods, that the risk is transferred without delivery provided that the goods are specified, that the seller has the right to compensation for expenses, and that under certain conditions he has the right of resale. In French and German law, he has in addition an extensive right to performance by depositing the goods with a third party for the buyer's account.

It is evident from this survey that the rules intended to protect the seller refer to situations where the goods have remained in the possession of the seller. The only case where the question of the seller's liberation from his obligation arises without his retaining the goods in his possession concerns performance by depositing the goods. But here, too, as in all other cases, it is presupposed that the buyer has not physically received the goods.

The legal idea of *mora accipiendi* has therefore been built up along the following lines. The starting point has been that the

[5] See also, Rabel, *op. cit.*, pp. 218 ff., where the system obtaining in Anglo-American law is criticized.

[6] See, for instance, Rabel, *op. cit.*, pp. 221 ff.

buyer's receipt of the seller's performance is twofold—both factual and legal. Both in German and in Scandinavian doctrine the main emphasis has been laid on the legal component, the idea of liberation. On the other hand, when the idea has been translated into concrete legal rules concerning specific situations of conflict, the rules have almost exclusively come to apply to the factual component, the physical receipt.

In order fully to understand the above, it is not sufficient merely to note the appearance of an extension of the basic idea.

What happens at non-acceptance is that the seller has the goods ready for performance but the buyer does not receive them. As it would be unreasonable to expect or even to encourage the seller to throw away the goods at once (in many cases this would be impossible), rules are required which lay down what shall be done with the goods in such cases of non-receipt, and how the seller shall be released of his obligation to store the goods. The rules on *mora accipiendi* and non-acceptance deal primarily with these two factual problems.

There remains the question of delay in "legal" acceptance. Is there any such problem in general? Without digressing into a discussion on "the nature of payment", it can be established that the settling of a contract involves more than the simple movement of various objects. The seller ought to perform a contract, not only send some goods to the buyer. The buyer's position as obligee means that he should receive performance of the seller's obligation, and not, for instance, receive goods as a loan. Thus far, it seems correct, with Kohler, to speak of a legal component existing in addition to the factual one.

Can this legal component of performance be delayed by the buyer? As will be seen from the account in section 5 above, it is meaningless, in Scandinavian law at least, to speak of non-acceptance of title in the normal case. If A has sold to B a particular painting by a certain artist and it has been delivered in accordance with the contract and received, non-acceptance of title as such cannot invalidate A's performance. The extension from acceptance of title to acceptance of quality in Anglo-American law has brought about a confrontation with problems quite different from delay (*mora*). The possibility remains that between two persons A and B there may exist several obligations with one and the same physical object of performance, for instance, two buying agreements and an agreement on carriage. If B receives

from A goods which conform to each of the three contracts, differences of opinion may arise about which of the contracts A has thus fulfilled. But one can hardly imagine that B, who receives the goods, might, by some sort of non-acceptance, invalidate the performance of all three contracts. If B accepts the goods in performance of the "wrong" contract, this would affect the question whether A had delayed performance (was in *mora*) according to one of the contracts. These problems seem to have little or nothing to do with those usually dealt with in connection with *mora accipiendi*. There can hardly be any excuse for linking these problems with those arising in connection with delayed receipt.

7. A summary leads to the following conclusions. The usual theoretical construction of *mora accipiendi* in Scandinavian and German law is based on the idea that the obligee, in this case the buyer, should physically receive and legally accept the goods. Furthermore, it has been held that non-performance of these acts should be considered as delay by the obligee, *mora creditoris*. As performance aims at something more than the removal of the goods from seller to buyer, the construction of *mora creditoris* has conveniently been built up round the legal component of the obligee's acts. The error in the *mora accipiendi* theory seems to lie in the fact that the ambiguity in the starting point of the argument has not been consistently recognized, and therefore the problem has been dealt with as if it were simple and homogeneous. That the rules concerning the consequences of *mora accipiendi* have acquired a certain unity is due to the fact that they apply to non-receipt, that is to say, the situation that arises when the goods remain with the seller after the date agreed for performance. This extension of the idea can be explained by the fact that the problems which could be expected to arise in connection with delay in legal acceptance (as obligee) have nothing to do with *mora*. Thus, of the problems whose solution has been attempted under the heading *mora accipiendi,* only the effects of delayed receipt remain.

These circumstances seem to explain the fact that the rules on *mora accipiendi* have served their purpose tolerably well, despite the palpable errors in the underlying ideas.

What has been said would seem to indicate that it is not completely correct to talk of the buyer's position as *mora credito-*

ris. It is not the buyer's actions as obligee that are involved, but the fact that the buyer, by his delay, has prevented the conclusion of the bargain within the agreed time, with the same result as arises from delayed delivery by the seller. In principle, then, there is no difference between delayed delivery and delayed receipt, but only a dissimilarity in the actual situation which arises as a result of the delay.