

▣ This chapter is a modification of a work originally authored by Scott J. Burnham & Kristen Juras and published by CALI eLangdell Press under the BY-NC-SA 4.0 License. See “Rights, Licensing, Attribution, and More” at the end of this chapter.

## Chapter 11. Warranties of Title

Under § 2-312, with *every* contract for sale of a good, the seller (whether merchant or non-merchant) makes warranties with regard to title.

First: The seller warrants that the title conveyed is *good*, and the transfer is *rightful*. This warranty applies regardless of whether or not the seller had actual knowledge of a title problem. For example, even if seller is unaware that the watch he purchased from a friend is stolen, the seller will nonetheless breach this warranty of title when he subsequently sells the stolen watch.

Second: The seller warrants that the goods are delivered *free from any security interest or other lien*, except for those security interests or liens *known by the buyer* at the time of contracting. In order to fall into this exception, the buyer must have *actual* knowledge of a lien or other encumbrance at the time of contracting. The seller cannot argue that the buyer “should have known.” For example, where a security interest had been perfected by the filing of a UCC financing statement, but the buyer did not have actual knowledge of it, the seller breached this warranty (even though the buyer could have, and probably should have, done a lien search). *Elias v. Dobrowolski*, 412 A.2d 1035 (N.H. 1980).

☑ **Purple Problem 11-1.** ABC Co. buys a machine from XYZ Co. Shortly thereafter, the repo man arrives and tells ABC that he is there to repossess the machine on behalf of a bank, which has a security interest in the machine. It turns out the repo man is right. Does ABC have any recourse?

▣ **RIGHTS, LICENSING, ATTRIBUTION, AND MORE:** This chapter is a derivative prepared by Eric E. Johnson of Chapter 6 of *SALES AND LEASES: A Problem-based Approach*, authored by Scott J. Burnham & Kristen Juras, published by CALI eLangdell Press in 2016, © 2016 CALI, licensed under the Creative Commons BY-NC-SA 4.0 License, available at: <https://creativecommons.org/licenses/by-nc-sa/4.0/>. That license contains a disclaimer of warranties. The original work is available at <https://www.cali.org/books/sales-and-leases-problem-based-approach>. Among the changes in this derivative work: most of the material of Chapter 6 was removed; this derivative has different typography and formatting; the text has been revised and rewritten in places, and some material may have been added in. A comparison with the original will show the full nature of modifications. This derivative is not endorsed by CALI. The book from which the original chapter came contains this notice: “This material does not contain nor is intended to be legal advice. Users seeking legal advice should consult with a licensed attorney in their jurisdiction. The editors have endeavored to provide complete and accurate information in this book. However, CALI does not warrant that the information provided is complete and accurate. CALI disclaims all liability to any person for any loss caused by errors or omissions in this collection of information.” Those disclaimers and admonitions should be construed to apply vis-à-vis individual persons involved in the creation and preparation of the text. The suggested attribution from the original work is this: Scott J. Burnham & Kristen Juras, *SALES AND LEASES: A Problem-based Approach*, Published by CALI eLangdell Press. Available under a Creative Commons BY-NC-SA 4.0 License. This derivative work, prepared and published in 2017, is licensed under the Creative Commons BY-NC-SA 4.0 License, available at: <https://creativecommons.org/licenses/by-nc-sa/4.0/>.