# A. Is a Transaction a Contract of Sale?

**Elements [s. 6] from *Sale of Goods Act*:**

1) Transfer of property **(1)** // Synonymous with ownership

**- "property"** means the general property in goods, and not merely a special property;

2) From seller to buyer **(4)**

3) For money consideration called “**price**” (see below for ascertainment of price)

- Money or money value? (Applies if you put monetary value and intent for cash exchange (even barter) into transaction: *Messenger v Greene*)

**Contract of Sale can also include agreement to sell** [**s. 1]:**

**Sale**: Moment of passing property to another party; includes a bargain and sale as well as a sale and delivery

**Agreement to sell** [**s. 6(5)**]: Where transfer of property in the goods takes place at a future time or is subject to some condition to be fulfilled later

**S. 6(6)**: An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled.

**What are goods?**

**S. 1**: **goods** includes chattels personal + crops (intended sever from land? Yes 🡪 Goods: *Fredkin v Gliens*; No/not specific 🡪 Not: *Carlson v Duncan*)

Goods are choses in possession, NOT: Choses in action (i.e. intangibles like SAs), money, land, services

- **Caution**: ***SGA*** does include some leases though

**Distinction from other types of K:** E.g. bailment (delivery of goods to bailee for specific purpose w/o transfer ownership), exchange, agency

\*But might not be practically relevant; e.g. labour K can have a CL-implied term for merchantable quality, just like in ***SGA*** (*Young and Marten*)

**Essence TEST**: Are the goods the essence of the K, or an accidental quality? (*Robinson v Graves*) At end of the day, did the person own something he didn’t own prior to the transaction? If so, governed by ***SGA***

\*Monetary value approach for determining essence (*Gee v White Spot*): Is purpose to buy the meal or buy the labour/atmosphere?

**K for labour/materials** NOT covered by ***SGA***: If the substance of the matter is an agreement for the exercise of skill, and materials pass from artist to portrait commissioner only incidentally, then it’s a contract for work and labour and materials.

**Services** can be covered by ***SGA*** (*Gee*)

**Leases** (consumer and sometimes commercial) have 2 situations where, w/ option to buy or something similar, they are covered by ***SGA***:

1) If lessee will buy the entire useable value of the goods, over the course of the lease, makes it a (conditional) sale

- Ownership transfers too with purchase 🡪 A **hire-purchase agreement** 🡪 Covered by ***SGA*** (*Lee v Butler*)

2) If lease for mandatory period (can only end w/ breach) and the option is not a true option

- If hirer not contractually obliged to complete the term, ***SGA*** doesn’t apply (*Helby v Matthews*)

"lease" means a lease or an agreement to lease where the lessee is acquiring the goods primarily for personal, family or household purposes;

"lessee" means a person who leases or agrees to lease goods from a lessor primarily for personal, family or household purposes;

"lessor" means a person who leases or agrees to lease goods to a lessee;

**Consignment**: ***SGA*** applies between owner and consignee and C and B, and O and B

- If price not known til after sale, and the goods not put with general stock 🡪 No sale (*Weiner v Harris*)

- If obligations on consignee (e.g. taxes) 🡪 Sale; but if no obligation to pay if no buyer 🡪 Not a sale (*Re Stephanian*)

**Other things to consider:**

Can contract out of any duties outlined by the ***SGA***, but not out of a status (e.g. trying to say “the ***SGA*** doesn’t apply to us”)

Can be absolute or conditional K [**s. 6(3)**]

# B. What are the Elements of the Contract?

**CL Preserved** in dealing with K of sale, esp anything related to invalidating causes (e.g. mistake, fraud, coercion)

\*EXCEPTIONS: Ks of sale via mortgage, pledge, charge or other security, or to bills of sale.

- Is Equity preserved though?

**CAPACITY**: **S. 7** – Capacity to buy/sell is regulated by the general law concerning capacity to enter a contract

\*EXCEPTION: If **necessaries of life** are sold and delivered to person w/o capacity, he must pay reasonable price

\*Can’t make a contract if you are too young (void) or mentally incapacitated (voidable)

\**Bawlf Grain v Ross* – K to buy grain while drunk (incapacitated) 🡪 Voidable, elect when sober

**FORMALITIES**: **S. 8** – Eliminates the need for written evidence, K of sale can also be implied by conduct of the parties

\*If the goods are worth over $500, K is not enforceable unless it’s in writing

**PRICE: S. 12(1)** May be (a) set by K; (b) set later if agreed to in K (e.g. % market price on specific date); (c) determined in course of dealing btw parties // Otherwise, buyer must pay **reasonable price**, dependent on circumstances of each case [**s. 12(2)(3)**]

\***Doctrine of reasonable price** doesn’t invalidate the K; doesn’t necessarily mean market price (*Montana Mustard Seed*)

**S. 13** (1) If there is agreement to sell with price to be set by the valuation of 3rd party, and 3rd party fails to do so, the agreement is avoided.

**(2)** Unless if goods or any part of them have been delivered to and appropriated by the buyer; then B must pay a reasonable price for the goods

**(3)** If that fail is due to either S or B, the other party not in fault may get action in damages

**SUBJECT MATTER OF THE CONTRACT:**

Categorization of goods, either (a) or (b):

(a) Existing sale OR agreement to sell ---- vs ---- Future agreement to sell [**s. 9**]

**"future goods"** means goods to be manufactured or acquired by the seller after the making of the contract of sale;

**S. 9****(1)** Goods in K of sale either **existing goods**, owned or possessed by seller, or **future goods**; **(3)** K thus operates as an agreement to sell goods

(b) Specific sale OR agreement to sell ---- vs ---- **Ascertained** sale OR agreement to sell --- vs --- Unascertained agreement to sell

- No definition for ascertained sale - Distinguished from specific goods [**s. 21-24**]

**"specific goods"** means goods identified and agreed on at the time a contract of sale is made; can’t MAKE goods specific, have to start out as that

Possible reasons for goods being **unascertained** (subject matter not yet physically defined):

A) The goods have only been generically described, OR

B) They have not yet been separated from a larger bulk of which they form a part, OR

C) The goods do not yet exist (future goods)

**Appropriation** ascertains unascertained goods (can be thru selecting, separating, manufacturing); passing of title from seller to buyer

Remedies of a breached K for these types of goods:

- Specific performance for specific or ascertained goods

- Seller bringing a claim in debt – Only when buyer becomes the owner, and only if it’s not unascertained

- Termination of K for breach

**TYPES OF OBLIGATIONS:**

\*Can be implied or express

**Primary obligations**: You’re basically allowed freedom of K (**s. 69**); VS. **Secondary obligations** (i.e. what happens if you don’t meet primary obligations), you cannot vary them to the extent that it’s unfair/banned by CL (EQ takes over)

**S. 15(1)** if a condition is broken, buyer can either (a) waive the condition, OR (b) treat it as a warranty

**(2)** Whether a stipulation in a contract of sale or lease is a condition or warranty **depends on the construction** of the contract.

**(3)** For sub (2), a stipulation may be a condition though called a warranty in the contract.

\*Default position for Ks of sale is to follow **s. 15** consequences, but consequences can be contracted out of

1) **Conditions**: Term in K of sale where breach 🡪 right to treat K as repudiated 🡪 Can terminate, can reject goods, (can rescind K?)

- Terms in K as to quantity (of time, measurement, etc.; incl goods’ state or condition) should be treated as conditions

2) **Warranties**: Term in K of sale where breach 🡪 damages, but no right to reject the goods and treat K as repudiated (i.e. can’t terminate)

- Terms in K as to quality should be treated as warranties if don’t fit **s. 18(b)** (*Hansa Nord*)

3) **Intermediate/innominate terms**: Cannot be automatically labelled until the breach has occurred and the seriousness of its consequences assessed; 🡪 If serious (i.e. deprive repudiating party of all/most of its benefits of K) 🡪 Treat term as condition 🡪 Rescission (*Hong Kong Fir*)

🡪 If not that serious 🡪 Treat term as warranty 🡪 Can only claim damages as remedy

- *Hansa Nord*: Imported intermediate terms into ***SGA***

Statement can’t be both representation AND term; if it is 🡪 Treat as term 🡪 No misrepresentation (e.g. via **s. 17**) 🡪 No rescission allowed, just damages (*Leaf v Intl Galleries*)

**IMPLIED TERMS:** *CP Hotels v BMO* (SCC) has 3 ways to imply a term:

1) **Implied by law/statute: S. 69** Any right, duty or liability that would arise in K of sale by implication of law may be excluded

**(a)** by express agreement,

**(b)** by the course of dealing between the parties, or

**(c)** by usage with intent/effect of binding both parties to the contract.

2) **Implied by customary usage**, incl from past practice (personal, industry, presumptive)

3) **Implied since term** **needed to give effect/meaning** to the rest of the K (standard: necessity, not reasonableness)

- Parole Evidence Rule (writing requirement) doesn’t apply to implied terms

*Bhasin v Hrynew* SCC: Implied duty of good faith, so if one party deliberately did something that frustrated the other party’s purpose in having the K (e.g. lied, misled) 🡪 Constitutes a breach of an implied condition 🡪 Damages

**Exclusion and Limitation Clauses:** Generally less freedom of K w/ secondary obligations 🡪 Penalty/LCs can be struck down 🡪 Thus (to get around that) treat EC/LCs more like primary obligations (amount owed depends on when he performs obligation) 🡪 IS protected by freedom of K

Two categories of **ECs** in consumer sales transactions: 1) Those that deny that express warranties/representations are included in sales contracts, AND 2) Those that limit or negate a buyer’s right in the event of seller’s non-performance or defective performance

4 limits on ECs (*Tercon v BC*):

1) Notice – Other party must know the EC exists

2) Construction – When ambiguous wording/interpretation, always interpret in way that goes against interests of party who provided wording

3) Unconscionability – Won’t enforce if it’s bad (EQ)

4) Public policy – If contrary to public policy (seems to only apply to egregious behaviours: Binnie dissent)

**-Obligations of Suppliers and Manufacturers:** Problematic due to privity issue (arose in **s. 6**), and they’re not party to K of sale

- CL duty for seller to let buyer know any faulty characteristics

**Vertical privity** = supply chain (*Chabot*), possibly solved by *Kendall* and **s. 18(a)** (purpose travels down chain)

*Lyons*: **Horizontal privity** = related 3rd party; can’t argue agency in privity unless intermediary gets a benefit

*Chabot*: Promise not to sue 3rd parties is unenforceable (can’t use EC in warranty to preclude self from tortious liability)

Models for Reform: **US** – get rid of HP, lets 3rd party beneficiary sue (*Henningsen*); some jurisdictions also allow for those who benefit from K

**QC** – Buyer gets from seller/dealer 1) property in the goods (passed on from manufacturer to D); 2) promises from D wrt quality (i.e. personal rights just between the two); AND 3) promises from M to D wrt quality (i.e. personal rights that bypass privity) (*GM v Kravitz, SCC*)

**CAN CL** – If clause in K intended to benefit 3rd party, then 3rd party can bypass privity and use K defence (*Fraser River*, SCC). Doesn’t matter if that defence later abolished, since for original parties there is **crystallization of interest** (freezing a legal interest at a point in time; comes from EQ)

# C. Who Has Property in the Goods? Why Is It Important?

**I. Why is property significant? Because generally…**

- Risk passes (**s. 25**)

- Property and right to sue for price go together

- Determines rights on insolvency/bankruptcy/liquidation/receivership (subject to legislation)

- Relevant if reservation of title

**II. Have the parties specified when property is to pass? Ought they to?**

**S. 22****(1)** In K of sale of specific or ascertained goods, time at which property in the goods transferred = function of parties’ **intention**

**(2)** To ascertain intention, must regard terms of K, the conduct of the parties, and the circumstances of the case.

**III. If NOT specified then, where parties’ intentions not discoverable, this intention is imputed under s. 23 rules**

\*But can’t intend an illegal transaction (*Liberty Wine Merchants*)

**1.** K for Specific Goods

RULE 1 – Unconditional K for specific goods in deliverable state: Property passes when K made (i.e. point of purchase) [**s. 23(2)**]

 \*“**Deliverable state**” – definition in **s. 4**: In such a state that the buyer would under the contract be bound to take delivery of them.

\*What is “**unconditional K**”? Doesn’t require anything more to be done (e.g. acceptance, payment) (*Varley v Whipp*); if don’t want property to pass, argue that there was a condition unfulfilled yet (thus a **conditional K**)

\*Note problem with **s. 15(4)** if property passes: Buyer can never reject the goods after property passes to him, even if there’s breach in K; best option then to take the property and seek damages

RULE 2 – Where seller is **bound to** **put goods into deliverable state**: Property passes when act is done AND buyer has notice [**s. 23(3)**]

RULE 3 – Where seller bound to **measure/test goods to ascertain price**: Property passes when act is done AND buyer has notice [**s. 23(4)**]

RULE 4 – Where goods **sold on approval** and delivered to buyer: Property passes when buyer accepts/approves/adopts/retains goods w/o notice of rejection beyond reasonable time (but that is a question of fact: **s. 70**) [**s. 23(5)**]

**2.** K for Unascertained and Future Goods

RULE – K for sale of unascertained or future goods: Property passes only after goods are ascertained [**s. 21**]

 \**Kursell*: Not knowing which trees to be chopped 🡪 More steps required to ascertain which goods were in K 🡪 Thus unascertained good

RULE – K for sale of unascertained/future goods by description: Property passes on **unconditional appropriation** by buyer/seller (with express/implied assent of the other given anytime; **(8)**) of goods with that description in deliverable state [**s. 23(7)**]

 \*What is unconditional appropriation? *Carlos Federspiel* has **factors**:

 1) Common intention by parties to attach K irrevocably to those goods and no other

 2) Common agreement by parties to change of ownership

- Implied assent to appropriation can be withdrawn by notice 🡪 No sale: *Sells*

 3) Actual or constructive delivery (if seller keeps possession it’s as a bailee, no actual ownership)

 4) Risk cannot remain with seller (that’d be a *prima facie* no sale) 🡪 Check who’s paying insurance

 5) Appropriating act is usually seller’s last; after that, goods out of seller’s control

RULE – Delivery without reservation of right of disposal is **deemed appropriation** [**s. 23(9)**]

**IV. Has the seller reserved right of disposal of goods until certain conditions are fulfilled?** Allowed in **s. 24**

**V. Has risk passed?**

**Risk** determines who bears burden of the cost of what’s occurred (e.g. uncertainty, financial consequences of injury, destruction of the goods)

**S. 2****5(1)** Unless otherwise agreed (*Jerome*), risk remains with seller until property passes to buyer, whether delivery has been made or not.

**(2)** If delivery has been delayed through either party’s fault, then despite (1), risk remains with the party at fault wrt but-for loss

**(3)** The above doesn’t affect duties/liabilities of either party as bailee or custodian of the goods of the other party

**S. 10**  K of sale of specific goods is void if, without seller’s knowledge, the **goods have perished** at the time when the K is made.

\*If K made after goods perished, law of mistake applies

**S. 11**  If **agreement to sell** specific goods, and the goods, at no party’s fault, perish before the risk passes to the buyer, the agreement is avoided.

\*If risk and property pass on to buyer before the goods perish, can’t latch onto **s. 11** for help: Buyer still needs to pay for the goods [**s. 22**]

\*If K made before goods perished, law of **frustration** (unexpected event occurs, makes K unenforceable) applies and K can be terminated

\*Doesn’t apply for goods that haven’t been ascertained

# D. What are the Obligations of the Seller?

**I. What does the K provide or should provide (if advising before K)?** See Part B above, and both parties’ obligations and remedies below

**II. Does s. 20 prevent exclusion of obligation?**

**Consumer protection**: When buyer doesn’t have the same level of economic power or access to info as seller, then **freedom of K** (from **s. 69**) needs to be limited; done by CL and **s. 20** (no waiver of warranties or conditions: ensures **s. 16-19** are in Ks)

**S.20(1)** “Retail sale/lease” is in ordinary course of the seller/lessor's business, doesn’t include a sale/lease of goods for (a) sublets, (b) business purposes, (c) to a corp, OR (d) T in bankruptcy

**(2)** Despite **s. 69**, for retail sale/lease of goods, can’t contract out of **ss. 17-19** (quality of the goods); seller must live up to them, unless the goods are/appear to be/are represented as used. Any term that attempts to diminish those sections are (a) void if severable, or (b) void if in a separate K.

**(3)** Despite **s. 69**, for retail sale/lease of goods, can’t contract out of **s. 16** (no matter if new or used). Any term or collateral K that attempts to diminish **s. 16** is (a) void if severable, or (b) void if in a separate K.

\*Example in *Gaertner v Fiesta Dance* (unfair result overturned; K found unenforceable)

*Tilden Rent-a-Car*: If term of K is particularly onerous, P must prove it took measures to properly notify other party of that term (written and signed K would normally satisfy requirement that you need to know the terms for them to be binding)

- If strange term, must be able to explain the nature of what’s being signed

*Harry v Kreutziger*: There are two different approaches to a TEST for **unconscionability**

1) **Inequality** (of both the circumstances and process) plus unfairness of result

2) Is transaction sufficiently divergent from community standards of **commercial morality** (no need to look at parties’ relative strengths)?

**III. In the absence of contradictory, express or implied provisions, *SGA* implies the following seller’s obligations:**

**1.** “**Title**” [**s. 16(a)**]: In a contract of sale or lease, unless the circumstances of K show a different intention, there is

**(i)** Implied condition if there’s a sale: **Right to sell goods**

\*This assessment done at the time of sale: *Microbeads*

\*EXCEPTIONS: If license needed, by property/tort law (e.g. IP infringement: *Niblett*), ST, if **regulations prevent it** (*J Barry Windsor*) 🡪 No right to sell 🡪 Terminate K 🡪 Buyer doesn’t have to pay for the defective good

\*No sale of goods which seller has no right to sell (e.g. theft) 🡪 **Failure of consideration** 🡪 **S. 15(4)** doesn’t apply 🡪 K void: *Rowland*

\*When original buyer makes final payment, title passes down chain (**feeding of title**), so last seller can reject goods any time before full title passes from OB down the chain (*Butterworth*)

**(ii)** Implied condition if there’s agreement to sell: Right to sell goods that arises at the time when property is to pass

\*Including an EC is possible in order to K out of s. 16(a) but must be very specific: *Sloan*

\*Because s. 16(a) outlines conditions 🡪 breach of one 🡪 leads to right to reject the goods and terminate K

\*S. 16(a) only says that seller has the right to sell the goods, not that the seller has title to the goods sold

**2.** **Quiet Possession** [**s. 16(b)**]: Implied warranty that buyer gets to enjoy quiet possession of the goods (i.e. 3rd party won’t cause problems)

- Continuation after property passes, extending into future for reasonable period (*Microbeads*)

- Warranty = can only get damages if breach

**3.** Goods **Free from Encumbrances** [**s. 16(c)**]: Implied warranty that goods won’t come with any encumbrances/charges in 3rd party’s favour (e.g. lien, SI) that weren’t declared or known to the buyer before or when K was made

- Warranty = can only get damages if breach

**4.** **Delivery** – Voluntary transfer of possession/ownership from one person to another

- **Duty of seller** to deliver the goods in accordance with terms of the K of sale [**s. 31**]; can K out of this, though not common

- **Concurrent condition with payment** [**s. 32**]: Seller must be ready and willing to give possession to buyer in exchange for price from buyer

\*Early delivery can also be breach of condition if K didn’t allow it (*Bowes*), but can be accepted (or late delivery waived) if notice given by party (*Charles Rickards*); **Exam Protip**: Argue estoppel to avoid breach by suspending obligations that otherwise exist

\*Can K to detach delivery from payment

- Time of the essence? [**s. 14(2)**]

- Various methods of delivery including **constructive delivery**

- “**Rules**” as to deliver [**s. 33**] vs buyer taking possession (that depends on the K)

 **(2)** **Place of delivery** usually seller’s business/residence (**(3)** unless both parties know the specific goods are elsewhere)

 **(4)** If seller is to send the goods to the buyer, seller is bound to **send within reasonable time**

 **(5)** If **goods held by 3rd party**, no delivery until 3rd party tells buyer they hold the goods on buyer’s behalf

 **(6)** Doesn’t affect **transfer of doc of title** to goods

 **(7)** Demand for delivery can be treated as ineffectual if not made at **reasonable hour** (**(8)** which is a question of fact)

- **Quantity** – If seller delivers less than in K 🡪 Buyer may reject them [**s. 34(1)**]

**(3)** If seller delivers more than in K 🡪 Buyer may (a) accept the goods included in K and reject the rest, or (b) reject ALL

**(2)(4)** But if buyer accepts the whole delivery 🡪 Must pay at K rate for it all

**(5)** **Mixed goods**: If the goods seller contracted to sell arrive mixed with goods of different description not included in K, buyer can (a) accept the fitting ones and reject the rest, or (b) reject ALL and seek damages (if some of what’s delivered is deficient: *In Re Moore*)

\**William Barker*: If you only want part of the goods, accept and say the shipment was mixed goods (presumed it conforms w/ K)

 \*Meant to act as buyer’s defence to counter the seller’s argument of **s. 15(4)** (accepting any part = cannot reject any of it)

- If **Delivery by** **Installment**, buyer of goods is not bound to accept them unless otherwise agreed [**s. 35**]

**(2)** If K says goods to be delivered by stated installments separately paid for, and seller makes defective delivery on installment or buyer doesn’t take delivery or pay, it’s up to each case whether this breach of K will = (a) repudiation of K, or (b) severable breach 🡪 damages

\*Need to know how much was paid for each installment

\*Time of payment can be all at once

\**Maple Flock* TEST: 1) Look at ratio of how much breach bears to K as a whole, then 2) Look at probability of another breach. If:

 - Early problems, or breach is large part of K 🡪 Looks like repudiation

 - Isolated incident, or there’s been many successful past deliveries 🡪 No breach

- **Delivery to a carrier** is deemed to be a delivery to the buyer (if so authorized/required for seller) [**s. 36(1)**]

**(2)** Seller has to make K w/ carrier on reasonable terms

**(3)** If the seller fails under (2), and the goods are **lost or damaged in course of transit**, the buyer may (a) decline to treat the delivery to the carrier as a delivery to the buyer, or (b) hold the seller responsible in damages.

**(4)** If **shipped by sea**, seller must give buyer notice so buyer can get insurance; failing that, goods are at seller’s risk during sea transit

- **Location**: If seller agrees on **delivery at place other than where usually sold**, buyer takes on risk that **goods deteriorate in transit** [**s. 37**]

**5. Correspondence with Description** [**s. 17(1)**]: Implied condition if sale by description; if violation of **s. 17** 🡪 can reject 🡪 damages

***\*****Frey****:*** If obvious defect (buyer could have discovered if examined pre-purchase) 🡪 Can’t bring action (***caveat emptor***: AKA “suck it up")

- If something had been expressly said about the fault 🡪 Not in the realm of *caveat emptor* (“as-is”)

- If latent defect that reasonable inspection wouldn’t find, seller deliberately says nothing 🡪 **Fraudulent misrep** 🡪 Rescind/tort

\***Outside of K law**, can deal with misrep via tort law, restitution, estoppel for misrep; **inside K law**, it’s breach 🡪 rejection/termination or damages

**(2)** If sale by sample AND description, must have bulk of goods correspond with sample AND goods correspond with description

1) Is it a sale/lease of goods by description?

 - If a clause says that the sale is not by description 🡪 Seller must still deliver the article ordered (no fraudulent misrep): *Hart-Parr*

 - *Varley v Whipp*: Extends **s. 17** to cover specific goods that weren’t seen 🡪 Sale by description 🡪 No correspondence = no acceptance

 - *Beale v Taylor*: Specific goods that buyer HAD seen pre-purchase 🡪 Still a sale by description (incremental change to the law)

 - Next step: Unless absolutely NOTHING was said, something was said 🡪 Court can imply description (e.g. from how it’s presented)

2) What is part of the description?

- NOT simply a statement about the goods

 \*Identity vs quality

 - Essential vs incidental characteristic (*Taylor, NZ*) determines what’s a condition and what’s warranty for specific goods

- If unascertained goods, **s. 17** converts all that’s said about what the goods are supposed to be like (e.g. number, state, any attributes) to condition (except mere puffs) 🡪 Gives buyer more protection from seller

3) What does “correspond” mean – **How far can the goods be** from the precise description?

 - Doesn’t matter if goods are useable; if description wrong 🡪 Buyer can reject

 - If there’s a **number in description** (e.g. measurement, time; NOT $ payments) 🡪 Must be exact correspondence: *Arcos*

 - If description could have been valid (e.g. says “fed to animals” and kills some but not all) 🡪 No breach: *Ashington Piggeries*

**6. Merchantable Quality** [**s. 18(b)**]: Implied condition for MQ if both of these:

1) Goods bought by description

\***Purpose** doesn’t matter in determining merchantability, can change (must consider subsequent knowledge): *Kendall* (pheasants), *Brown*

 \*High price (for high quality purposes) can reduce certain purposes: E.g. cloth for dresses and industrial purpose in *Brown v Craiks*

\*If presented at face value as something edible, seller has obligation to ensure they’re of edible quality (glass in sausages, US case)

\*Can contract out of **s. 18**, but the closer the description is to the core of the item, the harder that will be

2) From seller dealing in goods of that description; =/= eBay seller (*Hartmann*); if ongoing, need close correspondence w/ what’s sold before

- What is “merchantable”? TEST in *Bartlett*: Whether a hypothetical buyer would be content with the goods (just need to find one; i.e. it’s **commercially saleable to buyer**: *Kendall*), not whether actual buyer actually is content (i.e. it’s **useable by buyer**); narrower than **s. 17**

 \*Can’t be merchantable if large number of individual items in the shipment are not merchantable (*IBM v Shcherban*)

 - Dissent: *De minimis* if defect is too small (broken cover)

- Merchantable for reasonable period: **Exam Protip**: can drag in durability

 \**Buckley v Lever Bros*: Not insurance; if useable at delivery 🡪 No breach of K if not useable at time of accident

- EXCEPTION: If buyer examined the goods and there were defects that **reasonable examination ought to have revealed**

 \**Thornett & Fehr*: If you begin an examination, you must do it reasonably; otherwise, non-thorough exams 🡪 *caveat emptor*

- **Batman**: How to argue **s. 18(b)** today (incorporating *Brown* into the *Bartlett* test):

1) Figure out what description is

2) Look at (market) price being paid for goods of that description

3) In conjunction, work out a list of hypothetical buyers and what their purposes might be

4) Work out if only one of those would be satisfied with the goods for their purpose. And if one is, then you cannot get **s. 18(b)**

**7. Fitness for Purpose** [**s. 18(a)**]: Implied condition for fitness if all three of these:

1) Knowledge by seller of particular **purpose for which goods are needed**

2) **Reliance on seller’s skill** or judgment

 \*Inherently applicable when seller is also manufacturer

\*Do not need to show buyer only relied on seller’s skill or judgment, just that, but for reliance on seller’s skill or judgment, buyer would have not entered into the K of sales (*Kendall*); not applicable if it’s expert buyer relying on reps of unsophisticated seller (*Hartmann*)

\*Presumption of reliance, even if buyer is more knowledgeable than seller (*Kendall*)

3) Goods are in **course of seller’s business to supply**

\*”Goods supplied” also includes packaging, etc., more than what was bought (e.g. buyer buys soda, but bottle needs also to be of MQ)

- If the normal person can use the goods without harm, the goods are reasonably fit.

- EXCEPTION: If K of sale for specific goods bought under and **using patent/trade name** 🡪 No implied condition, automatic fitness, assumption of quality, for any purpose

\***TEST** from *Baldry*: Did buyer specify goods under its trade name meaning that he’s satisfied it’ll fit his purpose, and he’s not just relying on seller’s skill and judgment (however great it might be)?

\*Description of a good by trade name or asking for seller’s advice =/= Sale under that trade name (*Baldry*)

- Test done at time of sale, if time interval between buying and defect was just staving off the inevitable (*Crowther*); **Exam Protip**: Can drag in durability; **minor repairs ok**, but major repairs/expense are not

Should buyers or sellers shoulder the costs of accommodating buyers with **idiosyncratic differences, allergies, or sensitivities**?

- **Allergy TEST** from *Esborg* (hair dye): If buyer belongs to a “significant group of consumers” that have “innocent allergy” 🡪 Can hold seller liable

 \*More peculiar you are, the less likely you are to get protection from **s. 18(a)**

 \**Griffiths* (tweed coat): If no peculiarity in product but great peculiarity of buyer/reaction 🡪 Can’t be seller’s fault

 \**Ingham* (hair dye on skin): If buyer not innocent allergic (i.e. knew/ought to have known) 🡪 No remedy for buyer

**Trade usage** [**s. 18(d)**] may annex implied condition/warranty wrt fitness or quality

**8. Sale by Sample** (seller shows sample of full stock to buyer pre-purchase) [**s. 19(2)**] if there is a term in the K to that effect. Implied conditions for:

**(a)**: **Bulk to correspond to sample** in quality

 \*Superficial correspondence (i.e. they look more or less the same) is fine: *Steels & Busks* didn’t have identical chem composition

**(b)**: Reasonable time/opportunity for buyer to **compare bulk with sample**

**(c)**: Free from hidden defects that would not be apparent upon **reasonable examination of the sample** (can’t be superficial inspection, but also doesn’t need to be test for stress: *Godley v Perry*)

\***S. 16-18** can apply to sale by sample

If sale by sample, buyer with quality issues can have recourse to **s. 17-19**, and two possibilities wrt sample:

1) Buyer chooses sample

2) Seller chooses sample (*Cudahy*)

**9. Durability** [**s. 18(c)**]: Implied condition wrt durability for both of these:

1) **Reasonable period of time** for maintaining merchantable condition of **s. 18(b)** (includes normal transit to destination, disposal): *Mash & Murrell*

2) Goods put to use to which they would **normally be put**: As long as not a weird use, there’s an insurance obligation

**Scope of SS. 16-19 usage in defence of buyers**: s. 16 and s. 18(c) are unrestricted, can be used whenever > s. 17 in practical applications > s. 18(a)(b) only applicable to those in business of dealing with such goods [**Batman** thinks (c) should have this limit too] > s. 19 most restrictive

- **S. 18(a)** harder to meet than **s. 18(b)** for seller (*Crowther*), easier for buyer

# E. What are the Obligations of the Buyer?

**S. 15(4)**: If buyer has accepted part of the goods, **buyer can’t reject any of them** (i.e. repudiate K) including in the future. Other scenarios where breach of condition can only be treated as breach of warranty:

1) K of sale is not severable and **buyer has accepted** all or part of the goods, OR

 \*AKA “cannot reject, regardless of whether buyer has become owner”

2) K is for specific goods and the **property has passed** to buyer, OR

3) K has an implied term that the goods had only **passed provisionally**; Used goods are specific goods 🡪 Pass immediately (*Wojawkowski*)

To get around it, you can either: (1) Find another provision, like **s. 34(3)**, OR (2) In **s. 15(4)** itself, buyer and seller have multiple K’s, and treat each delivery as a separate K (example: A B and C are all goods with different pre-set delivery dates)

 - This won’t work for large collective entity like coal delivered at separate times

**I. What does the K provide or should provide (if advising before K)?** See Part B above, both parties’ obligations, and remedies below

- Quantum (warranty); When (warranty; see **s. 14(1)**); How (not in course; important though); Where

**II. *SGA* stipulates the following obligations of the buyer:**

**1.** Duty to **accept the goods** [**s. 31**]

**When** does acceptance take place? [**s. 38(1)**] Until and after buyer has had reasonable opportunity to examine the goods delivered

**(2)** Upon delivery, seller is bound to give buyer reasonable opportunity to examine the goods

Ways that show **how** buyer accepts [**s. 39**, which also focuses on how to communicate acceptance to someone else]:

**(a)** **Buyer intimates to the seller** that the buyer has accepted them (includes “even though you’re in breach of K, I accept that”)

**(b)** After delivery to buyer, **buyer does anything wrt the goods that’s inconsistent with seller’s ownership** (AKA “acting like you own the goods = that must mean you’re not going to reject them”), OR

\*Seems to be **conflating ownership with acceptance**: This is true with specific goods [**s. 15(4)**], but what about the rest?

\*If buyer take goods **beyond seller’s control** (e.g. on train far away) = Deemed acceptance since upon buyer’s rejection/termination, goods need to be available for seller to sell/redirect (*Hardy v Hillerns*)

**(c)** After **lapse of a reasonable time**, buyer retains the goods without intimating to the seller that he’d rejected

\***Being silent** in and of itself constitutes an election to retain the status quo

\*Reasonable person would, if he had an objection, have said something in due course; EXCEPTION in some consumer contexts where vehicle **needed to be tested out in all seasons to determine suitability for the job** before acceptance (*Rafuse Motors*)

 - EQ may limit **delayed acceptance** only in response to hardship

\***S. 38** right to examine is, it seems, subordinate to **s. 39**

**Late acceptance** = breach of obligation in K; but if seller’s delivery was late, then seller can’t sue for late payment (just if buyer refuses delivery)

**Concurrent obligation**: Timing of buyer’s acceptance obligation coincides with the timing of seller’s delivery obligation [**s. 32**]

Subject to **s. 51(3)**: Perishable goods (See Seller’s Remedies below)

**2.** Duty to **pay for the goods** [**s. 31**]

Unless otherwise agreed, payment should take place at the same time as delivery [**s. 32**]

 \**Kay Corp v Dekeyser*: Can have a valid K w/o time of payment being agreed upon, if both parties agree to that

**Time of payment** not the essence of a K of sale unless a different intention appears in the K [**s. 14(1)**]

**(2)** Whether other stipulations regarding time are the essence of K, depends on the terms

**III. Methods of Payment include:** 1. Cash, 2. Letter of credit, 3. Negotiable instrument, including bill of exchange, cheque, or promissory note

**-To get rid of an unwanted part of a K**, or in commercial contexts to get temporary suspension of a condition:

1) **Abandonment** by election, which comes into effect the moment the election is conveyed

2) **Agreement in a subsequent K** to change the original K

3) Estoppel: **Promissory estoppel** suspends obligations that would otherwise exist

**-Limits of responsibility for another’s losses**, except not in Torts (there, you are solely responsible for any damage caused)

1) Late delivery from seller to buyer due to a **3rd party’s delay** 🡪 Not seller’s fault

2) P’s claim is too remote (and D **never took on those risks**) 🡪 Legally, the damage is too remote to be D’s fault

3) P didn’t act within reason to **protect the damaged goods** 🡪 Not D’s responsibility either

# F. What Remedies are Available to the Buyer?

**I. Have the parties expressly or impliedly provided for remedies?**

If liquidated, is it a penalty? ECs and LCs – Enforceable?

**II. Reject Goods**: Ends K’s primary obligations

**1.** **Entitlement to Reject**

- If a condition, right to reject depends on construction of K [**s. 15(2)**], including if it’s written as “warranty” **(3)**

- If intermediate term that was breached had grave consequences

- If wrong quantity of mixed goods – **S. 34** (See Delivery – Quantity above)

- If installment deliveries – **S. 35** (See Delivery by Installments above)

\*Buyer just **needs to notify seller**, same way as when goods are not in conformity with the K, that he has a reason that gives rise to right to reject

**2.** **Consequences** of Proper Rejection:

- Refuse to pay price – Or recover price if already paid

- Not bound to return goods to seller (just need to notify seller) [**s. 40**]

- Damages still available

**3.** **Loss of Right to Reject Goods**

**a)** Specific Goods: Lose right to reject (and thus terminate K) as soon as property passes [**s. 15(4)**]

- Note how this operates w/ **s. 23(2)**: Since property in specific goods passes immediately when entered K, buyer never has right to reject the goods

- More commonly, buyer gets ownership long before he gets possession

**b)** Acceptance of Goods (See Part E above) – **S. 15(4)**: Buyer loses right to reject if there was acceptance of goods, no matter specific or ascertained

**S. 39(b)**: You also lose the right to reject if you’ve put the goods out of reach (e.g. put it in the hands of a third party), which is an act inconsistent with seller’s ownership

**III. Specific Performance**: Authorized by **s. 55(1)** for seller’s breach of K for specific or ascertained goods, w/o retaining goods after paying dmgs

 \*Unascertained goods (e.g. “half the wheat on board ship”) can’t get specific performance (*Re Wait*)

**(2)** Order may be unconditional, or w/ conditions as the court sees fit

**General principles** re: specific performance apply

Look at CL first, then EQ if CL remedy inadequate which will make you go out of business waiting for damages 🡪 Should get you specific performance: *Sky Petroleum*, a shaky authority

**IV. Damages**: Tied not to obligations but to your intentions under the K; both General and Special

- **Exam Protip**: Early in damage claim, you don’t need to specify if you’re seeking general or specific damages (many will fit into both)

- Each term in K that can be broken (e.g. wrt quality, time of delivery) has a corresponding damages claim/obligation

**1.** **Non-Delivery and Late Delivery**

**a)** General principles – **S. 54(1)** allows buyer to seek damages from seller for non-delivery if seller wrongfully neglects or refuses to deliver to buyer

**(2)** Measure of damages: Loss directly and naturally resulting in ordinary course of events from seller’s breach of K

 \*Part 1 of ***Hadley v Baxendale* TEST**

**(3)** If available market for the good, **measure = [Market/current price of the goods at the time they ought to have been delivered] – [K price]**

 \*Where [K price] = Price buyer would have paid if the K had been performed correctly

\*If no time set, use time of refusal to deliver

\*Can get special damages on top of what’s calculated by this formula, but need to show especial reason for it

\***Exam Protip**: We will be given market value of the goods in the fact pattern

- If no market, *prima facie* recover loss of profit

**b)** **Claim for sub-sales** – **S. 57** – Special damages that buyer/seller has right to recover (Part 2 of ***Hadley* TEST**), see also **s. 54(2)**

- Needs specific sales, knowledge of seller, and (probably) particular goods

- If seller knows buyer entered into sub-K (e.g. right to resell is good clue) 🡪 Can claim for sub-sales (*Re Hall and Pim*)

**c)** Late delivery

- Either cost of substitute during delay or difference in market price between date of breach and date of delivery

**2.** **Breach of Conditions or Warranties** (or sometimes Intermediate Terms)

- Availability – **S. 56(1)** If breach of warranty by seller, innocent buyer may:

**(a)** Set up breach of warranty against price, OR

**(b)** Maintain action for damages

**(2)** Measure of damages: Estimated loss directly and naturally resulting in ordinary course of events from breach of warranty (*Hadley* Part 1)

**(3)** Market value TEST for **measure = [Value of goods at time of delivery] – [Value would have had if answered to warranty]**

\*Damages can’t put P into better position than if K was performed (*Wertheim v Chicoutimi Pulp*): e.g. if actual loss < better price or if D saved P from occurring losses by breaching K (*Bowlay Logging*) – that would be overcompensation

\*Duty to mitigate damages and take reasonable steps to get reasonable price: **Loss = [Value of goods if they’d answered K] – [Value of goods as they actually occurred upon delivery]** (*Chicoutimi*)

 - Burden on seller to establish market value of delivered goods; burden on buyer to establish market value of goods in K

\*Can’t overcompensate and get both lost profit AND wasted expenditure damages; must elect one (*Cullinane*), though sometimes it’s possible to get damages under multiple heads (*Sunnyside Greenhouses*)

\*Onus on D to show that what was delivered has value, or else courts will assume it’s worthless; if successful, damages = full purchase price (*Ford Motor v Haley*, SCC)

**(4)** If opt for **s. 56(1)(a)**, damages still available

- If sub-sales, **s. 57** – Special damages, see also **s. 54(2)**

**3.** General Rules Apply for, e.g. ECs, mitigation, etc.

**Liquidated damages** = You’re actually claiming in debt = Can get rid of this problem through debt agreements

At the time the amount of liquidated damages was established between the parties, it needs to look like a reasonable amount

Doesn’t have to be in sync with the actual amount of loss

**4.** **Special Damages** [**s. 57**] is Part 2 of *Hadley v Baxendale* TEST, comes about when there’s **special purpose for entering K**; relies on:

***Hadley*** **remoteness TEST** in *Koufos*: Result was “reasonably supposed to have been in the contemplation of both parties at the time they made K as a probable result from the breach of K” 🡪 So P must show D was aware (when K made) that this loss was sufficiently likely to result from breach 🡪 D only responsible for the type of loss that he could have reasonably expected to know about

- **Batman**: Broader test in torts 🡪 Will probably yield greater quantum of damages

**Physical damage**: Remoteness TEST same as in Torts (SCC mix authority) 🡪 Lower threshold (reasonably foreseeable as probable conseq): *Parsons*

Loss of **emotional benefit that was contracted for**: Can be special damages for such a defect if goods instead gave grief: *Wharton*

 - Generally speaking, emotions like happiness (and luxury) not quantifiable; has to be something for which there is market/market price

**V. Statutory Remedies** in **liens**: Given by operation of law, work b/w two parties to give a property interest that holder has against ROW

- This lien is non-possessory, statutory/EQ, and a **general lien** (not necessarily over the property that gave rise to the lien in the first place)

**S. 74** definitions: "**payment**" includes buyer’s obligation/liability to 3rd party despite seller’s default; "**seller**" includes (a) successor in interest or title of a seller, and (b) **trustee** (one who assumes control of a seller's property by operation of law; e.g. T in bankruptcy, liquidator, receiver)

**S. 75**: **Buyer’s lien** arising against certain goods (not against seller) **(1)** if in usual course of seller's business he makes an agreement to sell and

**(a)** The buyer pays all or part of the price,

**(b)** The goods are unascertained or future goods, and

**(c)** The buyer is acquiring the goods in good faith for use primarily for personal, family or household purposes.

[AKA “it’s a consumer K where buyer pays and gets nothing”]

**(2)** The **lien** under **(1)** is for the amount the buyer has paid towards the purchase price (claim for a property interest) and is **against**

**(a)** All goods (i) that seller has for sale, (ii) that correspond w/ description of the goods, and (iii) property hasn’t passed to a different buyer under different K [confirmed in **s. 76(3)**]

**(b)** Any bank account where the seller usually deposits the proceeds of sales.

**S. 76**: **(1)** A **buyer's lien is discharged** when the seller (a) Delivers the goods to buyer, OR (b) Refunds $ that buyer had paid toward the goods

**(2)** If seller refunds $ under **(1)(b)**, buyer can still sue for breach of K (get damages!)

**(3)** Buyer’s lien ends when seller fulfills the K of sale, or if another buyer becomes owner (that BFPFV takes the goods)

# G. What Remedies are Available to the Seller?

**I. Have the parties expressly or impliedly provided for remedies?**

If liquidated, is it a penalty? ECs and LCs – Enforceable?

**II. Real Remedies – *SGA* Part 5**

**1.** General remedies

- Available to **unpaid sellers**, and **s. 42(2)** broadly deems seller to be such **(a)** when the whole price has not been paid, OR **(b)** when the condition on which a conditional payment is received has not been fulfilled due to dishonour of instrument.

**2.** **Seller’s Lien** [**s. 43(1)(a)**]: Preliminary step to get to right of resale

- Does not itself rescind K [**s. 51(1)**]

- Is a particular/**specific lien**: Lien is in the property that is the subject of the lien (i.e. gave rise to the complaint) 🡪 Can’t be transferred!

- Seller must be in **possession** (even as agent) of the property OR an important symbol of it

**S.44**: Unpaid seller has **right of lien** if: **(1)(a)** goods sold w/o credit, **(b)** term of credit expired, **(c)** buyer becomes **insolvent** [**s. 3**: i.e. either (a) has ceased to pay his debts in ordinary course of business, or (b) cannot pay them when they’re due], OR **(2)** possessing goods as buyer’s agent/bailee

 \*Also has **right to withhold delivery** if property in goods hasn’t passed yet to buyer [**s. 43(2)**]

**Part delivery** – Only in BC can unpaid seller exercise lien over undelivered installments [**s. 45**]; (*Snagproof v Brody*)

\*If seller still have goods in possession and complain about part delivery and no payment, can have a lien in the goods in his hands

**Termination of lien** or right of retention if: [**s. 46(1)**]

**(a)** Delivery to buyer’s carrier w/o reserving right of disposal of goods

**(b)** Buyer gets lawful possession

**(c)** Seller waives lien (also **s. 50** wrt seller assenting to lien being affected by any disposition by buyer)

OR when document of title sold from OB to 3rd party BFPFV // Doesn’t need seller’s assent [**s. 50**]

- EXCEPTIONS, where lien is not lost: **S.46(2)** Seller gets paid

**3.** **Stoppage of Goods in Transit**: [**s. 43(1)(b), s. 47**]: Preliminary step to get to right of resale

- Does not itself rescind K [**s. 51(1)**]

- Amounts to resumption of possession and may revive right to lien

**4.** **Right of Resale** by Seller [**s. 43(1)(c)**]: Good option if even threat of lien won’t make buyer cough up payment

**S. 51(1)**: K of sale not rescinded by exercise of seller’s lien; not terminated, still operative

**(2)** After resale by unpaid seller, **new buyer gets good title** against original buyer; EXCEPTION to *nemo dat*!

**(3)** Available if **perishable goods**, OR if buyer doesn’t pay after unpaid seller **notifies him of intention to resell**

\**RV Ward v Bignall*: Interprets **(3)** so that, as long as seller gave notice of intent to resell + exercised his lien, ownership leaves OB regardless if there’s new buyer NB; damages = price OB would have paid vs. current value

**(4)** Available if express clause reserves right of resale; original buyer has no claim in the goods

- Rescinds original K [**s. 51(3)(4)**]

- Right to damages remain [**s. 51(3)(4)**]

**III. Personal Remedies**

**1.** Buyer liable for **neglecting or refusing to take delivery** of goods [**s. 41**], plus (a) any loss resulting, and (b) reasonable charge for care of goods

**(2)** If repudiation, seller can terminate K and still get damages

**2.** **Action for Price** [**s. 52**]: AKA debt claims (can’t be mitigated! They’re quantified already: *Standard Radio*)

**(1)** Available when property has passed and **buyer neglects or refuses to pay**

 \**Colley*: Not available before property passes. But if K says passes when it’s loaded on a ship and no ship 🡪 Can claim damages only

 \**Stein Forbes*: If passing of property requires buyer to accept something and he refuses 🡪 No pass (D can prevent action for price)

**(2)** Available where, though property not passed or goods appropriated, **no payment on the set day**

**3.** Damages for **Non-Acceptance** [**s. 53**], available whether or not property has passed

**(2)** Measure – General principle: Loss directly and naturally resulting from ordinary course of business

**(3)** If available market: **Damages = [K price] – [Market/current price when goods ought to have been accepted or when refusal made]**

 \*Complies with Part 1 of *Hadley* TEST

\*If market price same as K, can claim **loss of sale** b/c of buyer’s default since every NB is a new profit (*Charter v Sullivan, Victory Motors*)

\*If unique goods, can’t predict what buyer would have bought 🡪 Can’t claim loss of sale since no “**available market**” (*Lazenby*)

\*Special damages also available, but under **s. S7**

**-Anticipatory breach** of K possible (no CL to support): B tells S in advance that B won’t pay or accept the goods, before set time of delivery, so clearly property in goods hasn’t passed yet. Since this was unexpected, S’s claim can only be in damages. S is given an election:

1) Affirm the K and wait for B to change his mind and, when the time comes, accept and pay for the goods, OR

2) Accept the breach at that point 🡪 Damages assessed at time of breach, assessing market value at that time

 \*May not have this choice, unless S can show a legitimate reason why not accepting the breach of K right away

# H. Position of a Buyer Who Takes From a Non-Owner

**I. Basic Position**: From CL, principle of *Nemo dat quod non habet*, in *SGA* as **s. 26(1)**: No title passes to buyer if seller is not owner

Buyer’s remedy as a result: Option to act under **s. 16(a)**

**II. Statutory Exceptions to Basic Position**: Ways of transfer of title to 3rd party by seller who’s not owner who acts as statutory agent

**a)** **S. 26(2)**: True owner **estopped** from denying title in buyer who appears to have authority of owning the goods in his possession

Effect: Depends on statement underlying the estoppel – can’t be intentionally misleading (*Shaw v Commissioner of Police*)

\*If person passing title w/o possession of it, he passes on a limited property interest, can’t deny that transferee has full title (**title by estoppel**)

**b)** **S. 27**: Sale in a **market overt** – if buyer acts in good faith and w/o notice

Effect: Good title to the goods acquired by NB

\*Cases in BC don’t use it, since courts are in disbelief. But lots of English law on this

EXCEPTION: **s. 29**, only applies when goods were stolen and thief was prosecuted to conviction for theft (can’t plead guilty, can’t be other crime)

- Interest in stolen property revests in original owner

**c)** **S. 30(1)**: **Seller in CONTINUOUS possession** (unbroken: *Pacific Motor*) of goods already sold to OB (i.e. seller has possession still but no title)

 - NB receives goods from S, acts in good faith w/o notice

 - Treated as if this transfer was expressly authorized by owner of title (the OB)

Effect: NB receives whatever title true owner has

- Seller deemed an agent so NB gets whatever title he has

 - NB can be transferee for any limited property interest, doesn’t have to be buyer

\***S. 30(1)** much broader than **s. 51** (which depends on lien, notice given, and new buyer and aims to give seller authority and protection from claims it acted wrongfully)

\*If NS not in lawful possession (not regulated by s. 30), OS can seize property and claim he’s a **self-help transferee** of the title (*Worcester v Cooden*)

**d)** **S. 30(3)**: Seller (NS) has possession because he was **buyer under an earlier K**

 - But seller doesn’t necessarily have title; OS might have it

 - New buyer receives goods, acts in good faith w/o notice of liens/other rights of OS

Effect: NS deemed to be a mercantile agent for true owner

 - NB receives whatever title true owner has

\*If 3rd party (NB) took in good faith, then he gets title (*Head v ICBC*)

**e) S. 51(2)**: Seller has exercised **lien over unpaid goods**

Effect: Buyer gets good title as against original buyer

**f) S. 59(1)**: **Mercantile agent** rightly in possession of goods (w/ owner’s consent)

 - Disposes of goods in ordinary course of business of the mercantile agent

 - Buyer acts in good faith w/o notice

Effect: Ostensibly as if mercantile agent were acting with express authority from owner

\*Doesn’t deal with consignment; these are dispositions by agents [**s. 58**], who are the only ones original owner can sue (*St John v Horvat*)

# I. Position of a Buyer Who Takes From a Seller with a Voidable Title

**S. 28**: Buyer acquires a good title if acting in good faith w/o notice, where seller has a **voidable title**

\***Why voidable**? Due to undue influence, mistake, misrep, seller has no entitlement to goods at all… whatever Contracts taught

\*OB **can elect to void title** (as long as it’s done before NB comes along), OR OS can rescind K before NS sells to B (which would give NS nothing to sell and NB no title to the good); communication to public authority (e.g. police) can constitute notice of election in lieu of finding the person w/ voidable title (*Car and Universal Finance*)

Common scenarios to get to use **s.28**:

1) S was likely a buyer in a previous transaction, and lied to that previous seller so he’d hand over the goods. But that previous seller hadn’t rescinded the K. Now new B gets a perfect title from sneaky S.

2) Person who appears to be S has absolutely no entitlement to the goods, due to being a sneaky thief. Compare this to **s. 51**, where seller was original owner and wasn’t doing anything improper.