

RECOVERY OF GOODS UNDER A HIRE PURCHASE AGREEMENT

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Recovery of Goods under the Common Law

Under the common law, the owner's right to recover the goods from the hirer is unqualified. If there is any slight default in payment, he can take possession of the goods, even without a court order. This worked hardship on the hirer in a lot of respects.

Firstly, the hirer has no right to redeem the goods after a default in payment of instalments. This is regardless of the fact that the default is regarding the last instalment. See *Atere vs. Amao*^[1].

Secondly, failure on the part of the hirer to pay the instalment on the particular date constitutes a breach, even though there it is just a one day delay. This entitles the owner to retrieve the goods even if it the default concerns the payment of the last instalment. See *Bentworth Finance Nig Ltd vs. Debank Transport Ltd*^[2].

Thirdly, the hirer has no legal interest in the goods after they have been recovered. This is regardless of the fact that the goods, when sold, might yield a sum which is more than the amount owed by the hirer. See: *Williams vs. UAC Ltd*^[3].
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Recovery of Goods under the Hire Purchase Act

When it comes to recovery of goods, the Hire Purchase Act restricts the right of the owner to indiscriminately recover the goods. According to the provision of S. 9 (1) of the Hire Purchase Act, after the payment of a relevant portion of the hire purchase price, the owner cannot recover the goods except by an action in the law court or in the case of motor vehicles, by following the provision of S. 9 (5).

The term "relevant portion" has been defined by S. 9 (4) as:

- In the case of goods other than motor vehicles, half of the price.
- In the case of motor vehicles, three fifths of the total hire purchase price.

If the owner of the goods decides to recover the goods in contravention of the provisions of this section, S. 9 (2) provides that the transaction would be determined and:

- The hirer shall be free from all liabilities and be entitled to recover the amounts he has paid and securities given by him concerning the agreement.
- Any guarantor shall be entitled to recover from the owner, in an action for money, all sums paid by him and all securities deposited by him for the purpose of the agreement.

In relation to motor vehicles, it is provided by S. 9 (5) that when the hirer owes three or more instalments, the owner can remove the vehicle to any premises under his control pending the determination of any action. The owner shall be liable to the hirer for any loss or damage which might be caused by the removal.

References

^[1] 1957 WRNLR 176

^[2] 1968 3 ALR 52

^[3] 1937 3 NLR 134