

# IMPLIED TERMS IN A HIRE PURCHASE AGREEMENT

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There are some terms which are considered fundamental to the formation of hire purchase agreement. These terms are made implied terms by the provision of S. 4 of the Hire Purchase Act. These terms and warranties are present in all hire purchase agreement and are similar to those implied terms in the Sales of Goods Act.

The terms are:

1. An implied warranty that the hirer shall have and enjoy quiet<sup>1</sup> possession of the goods<sup>[1]</sup>.
- 2.<sup>2</sup> An implied condition on the part of the owner that he shall have<sup>3</sup> a right to sell the goods at the time when the property is to pass<sup>[2]</sup>.
- 3.<sup>4</sup> An implied warranty that the goods shall be free from any charge<sup>5</sup> or encumbrance in favour of any third party at the time when<sup>6</sup> the property is to pass<sup>[3]</sup>.
- 4.<sup>7</sup> An implied condition that the goods are of merchantable quality<sup>[4]</sup>. However, this would not apply in the following situations:
  - Where the goods are hired on a second hand basis and this is stated by the memorandum of agreement.
  - If the defects in the goods are of the type that the owner could not have been reasonably aware of at the time of the agreement.
  - If after the hirer has examined the goods, the defects are of such a nature that he reasonably ought to have discovered when examining the goods.

In the case of *Karsales Harrow Ltd vs. Wallis*<sup>[5]</sup> when the hirer inspected the car, it was in good condition however, when the car was delivered to him about a month later. It was discovered to be in a deplorable condition. The court held that in a hire purchase agreement, there is a duty on the owner to deliver the goods in the condition they were when the hirer inspected them.

- 5.<sup>8</sup> If the hirer states the purpose for which the goods are required, the goods must be fit for such purpose<sup>[6]</sup>.

## References

<sup>[1]</sup> S. 4 (1) (a)

<sup>[2]</sup> S. 4 (1) (b)

<sup>[3]</sup> S. 4 (1) (c)

<sup>[4]</sup> S. 4 (1) (d)

<sup>[5]</sup> (1956) 2 All ER 866

<sup>[6]</sup> S. 4 (2)