

OWNERSHIP AND TRANSFER OF TITLE IN A CONTRACT OF HIRE PURCHASE

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Unlike the Sales of Goods Act, the provisions of the Hire Purchase Act is silent on the issue of transfer of title. There are no specific sections that have been devoted to the transfer of title in the Hire Purchase Act. Thus, majority of the rules in relation to the transfer of property in a contract of hire purchase are majorly sourced from the common law.

It is trite that in a contract of hire purchase, property does not transfer from the owner to the hirer until the hirer exercises his option of purchasing the goods after the payment of all instalments. Prior to the exercise of this option, the hirer only possesses the goods. Hence he cannot transfer the goods to another person.

The hirer's option to purchase the goods can be said to be of two kinds, active or passive. It is passive when the property in the goods passes after the happening of a stated event or on the payment by the hirer of a stated total sum. The option is active if the agreement contains a provision that after the hirer has made all the payments in relation to the instalments, he may purchase the goods.

Transfer of Title

It is a general principle in the law of contract that you cannot give what you do not have. This is encapsulated in the Latin maxim *nemo dat quod non habet*. Thus, a person who does not have title in the goods cannot purport to transfer the title to another person. In a contract of hire purchase, the property in the goods do not transfer to the hirer till he has adequately purchased the goods. As a result, he cannot purport to transfer the title in the goods to a third party. It in the case of *Helby vs. Mathews*, Lord Herschel stated:

A person who is in charge of a piano under such agreement (hire purchase agreement) is no more its apparent owner than if he had merely hired it, and in the latter case, anyone taking it as a security should have no claim to hold it against the owner.

From the above, without the purchase of the goods by the hirer, the agreement is still considered a contract of hire. Hence, the goods still belong to the owner of the goods.

Under the common law, if a bailee acts in a way that is detrimental to the bailment, the bailor acquires the right to bring the agreement to an end and reclaim possession of the goods. Transferring possession to a third party without the owner's consent can be regarded as an act which is detrimental to the bailment.

Exceptions to the Rule

The power of the owner to seize goods when title has been wrongly transferred amounted to a lot of hardship suffered by innocent third parties who bought the goods in good faith. Due to this, the law has created some exceptions. They are:

- Where the goods have been given to a mercantile agent under a hire purchase agreement^[1]. In the case of *Astley Industrial trust Limited vs. Miller*^[2] the court held that this exception would apply where the mercantile agent received the goods in his capacity as mercantile agent and the owner consented to the possession of the goods in the capacity of a mercantile agent.
- If the goods are sold in a market overt according to the usage of the market^[3]. See: *Bishop Gate Finance Corporation vs. Transport Brakers Ltd*^[4].
- If after the goods have been transferred to a third party, the owner consents to the transfer on the condition that the hirer would pay his unpaid balance. See: *Butterworth vs. Kingsway Motor & ors*^[5].
- If the hirer assigns his option to purchase to a third party. In the case of *Whitley vs. Hilt*^[6] the hirer, under a hire purchase agreement, sold a piano to a purchaser. The owners then instituted an action in court. Before the commencement of the action, the purchase completed the payment of the hire purchase price. The court held that the hirer had successfully transferred his option of purchase.

References

^[1] See S. 2 of the Factors Act

[\[2\]](#) 1968 2 All ER 36

[\[3\]](#) S. 22 (1) SOGA

[\[4\]](#) 1949 2 K.B

[\[5\]](#) 1954 2 All ER 694

[\[6\]](#) 1918 2 KB 808