

THE LAW OF HIRE PURCHASE IN NIGERIA

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What is a Contract of Hire Purchase?

The meaning of hire purchase has been defined by the Hire Purchase Act. According to the provision of S. 20(1) of the Act, a contract of hire purchase is:

The bailment of goods in pursuance of an agreement under which the **Bailee** may buy the goods or under which the property in the goods will or may pass to the **Bailee**.

In order to understand the above definition further, the meaning of “**bailee**” has to be known. According to the Black’s Law Dictionary 9th Edition, a **bailee** is:

A person who receives personal property from another, and has possession of but not title to the property.

From the above, a contract of hire purchase can simply be understood as an agreement whereby the owner of goods transfers possession of the goods to another person called the hirer for an agreed periodical payment at the end of which the hirer has the option to either buy or return the goods.

History of Hire Purchase Law in Nigeria

The law of hire purchase is of recent origin in English law. The earliest statute relating to it was promulgated in 1938. However, it has been recognised under the English Common Law since the 19th century. The first judicial recognition of a contract of hire purchase was in the decision of the House of Lords in the case of *Helby vs. Mathews*[\[1\]](#).

In this case, the plaintiff gave possession of a piano to a third party. The title in the piano was to pass to the third party upon the payment of certain instalments. Before the instalments were completely paid, the third party pledged the piano to the defendant. The plaintiff/owner thus sued to reclaim possession of the piano.

The House of Lords held that until the instalments were completely paid, the title in the goods still resided in the plaintiff, thus the third party could not validly transfer same to the defendant by the way of a pledge.

Hire Purchase under the Common Law

Under the common law, hire purchase transactions were tilted more in the favour of the owner of the goods than to the hirer. The owner had a lot of privileges to the detriment of the hirer. Also, under the common law, the contract was not usually set in writing. This provided the owner with a lot of opportunity to exploit the hirer.

The following are some of the characteristics of a hire purchase agreement under the common law:

- The hirer didn’t have any right to redeem the hired goods if he doesn’t complete the payment of his instalments. This even applies if he had paid all previous instalments punctually and he was a day late in paying the last instalment. In the case of *Bentworth Finance Nig Ltd vs. De Bank Transport Ltd*[\[2\]](#), the court held that a provision for punctual payment meant that the instalments must be paid on the stipulated date. A one day delay in the payment could be regarded as breach of the agreement, entitling the owner to retrieve the goods. This is regardless of the fact that it was the last instalment that was delayed.
- The agreement transferred no property or proprietary interest in the goods to the hirer. The hirer would only have property rights in the goods after he has exercised his rights of purchase. No rights would accrue to him even though he has paid a substantial part of the amount for the goods.
- The hirer might be liable to pay an excessive amount due to the minimum payment clause. In the case of *Amusa & Anor vs. Bentworth Finance Nig Ltd*[\[4\]](#), the court held *inter alia* that where a hirer exercises his option of terminating the agreement, he cannot complain that the minimum payment clause is a penalty.
- When the owner seizes the goods and he decides to sell to another party, he was not accountable to the hirer, even if there was just one arrears of installments to be paid.
- The absence of statutory regulation created room for a lot of sharp practices like owners charging exorbitant interest rates against the hirer.
- Copies of the signed document, if any, were not usually given to the hirer.

In Nigeria, the common law rules in relation to hire purchase were in operation. These rules evidently worked a lot of hardships on parties, especially the hirer of goods. Thus, in 1965, the Hire Purchase Act was passed into law to regulate contracts of hire purchase in Nigeria.

The Hire Purchase Act of 1965

This Act was enacted in the year 1965. At the time of enactment, the Act applied only to the Federal Capital Territory of Lagos. It was subsequently given national application by virtue of the Hire Purchase (Application Act) 1966. However, application of the law didn't start until October 1 1968 by virtue of the Hire Purchase (Appointed Day) Order 1968.

The Act of 1965 has a lot of provisions that protect the interest of the hirer. Some of the ways it does this include:

- It provides for the full involvement of the hirer in the formation of the transaction.
- It restricted the owner's contractual freedom by inserting some implied terms. It also prohibits the implementation of some terms that are detrimental to the hirer.
- The statute granted the hirer the right to terminate the agreement while also limiting the liability that he would incur as a consequence of this.
- The acts restricts the power of the owner to repossess the goods indiscriminately. He can only gain possession of the goods when the hirer has defaulted in payment or in breach of the agreement.
- The Act made certain conditions and warranties implied. It also nullifies any attempt at trying to exclude these terms and warranties.

Classes of Goods Covered Under the Hire Purchase Act

According to the provision of S.1 of the Hire Purchase Act, the following are the classes of goods that are covered by the provisions of the Hire Purchase Act:

- All hire purchase agreements where the price of the goods in question does not exceed two thousand naira.
- All agreements that concern motor vehicles and other automobiles.

A motor vehicle has been aptly defined by s. 20 of the Hire Purchase Act as "a mechanically propelled vehicle intended for or adapted for use on road or for agricultural purposes".

In respect of other goods that aren't covered by the above provision, the English Common Law and Equity would apply.

Reasons for the Adoption of Hire Purchase in Nigeria

There are a handful of reasons that informed the adoption of Hire Purchase in Nigeria. Some of them are:

- It offers the opportunity to those who are in need of a particular product but do not have all the funds they need. Under hire purchase, such people can deposit some amount of money and would complete the payment after a series of installments.
- Another reason is due to the fact that it helps manufacturers to profitably sell their stocks in order to prevent them from piling up. In this situation, a financier steps in, pays the manufacturer and subsequently carries out hire purchase agreements with the customers.
- Another reason is due to the fact that hire purchase agreements are not within the purview of the old Money Lenders Act 1939[5]. According to Section 2C of the Act, Money Lenders excluded:

Any person *bona fide* carrying on any business not having for its primary object the lending of money.

Hire purchase agreement clearly are not for the purpose of lending money. This was reiterated by the courts in the case of *Olds Discount Ltd vs. Playfair Ltd*[6].

Nature of Hire Purchase Agreement

Like all other commercial agreements, before a hire purchase agreement can come into fruition, there must be the following:

- **Offer and Acceptance:** The hirer offers to hire the goods and the owner accepts. The mere signing of the hire purchase agreement is enough to constitute acceptance of the agreement.
- **Consideration:** The consideration in a hire purchase agreement is usually in the form of periodical payment.
- **Capacity:** The general rule of capacity in the law of contract also applies to a hire purchase agreement. Thus, an infant cannot be bound in a contract of hire purchase unless it is a contract for necessities.

A hire purchase agreement can be terminated by the parties and by statutory provisions. If there is a breach of the agreement by either party, it gives the other party the right to terminate the hire purchase agreement.

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References

[1] 1895 AC 471

[\[2\]](#) 1968 3 ALR Comm. 52

[\[3\]](#) 1968 3 ALR Comm

[\[4\]](#) 1966 NWLR 276

[\[5\]](#) Cap 124 Laws of the Federation of Nigeria 1958

[\[6\]](#) 1938 3 ALL ER 285