
Business Law
Hire Purchase Law
zoom

What is Hire Purchase?

- Hire purchase is a legal term for **an agreement**, in which the **owner** of the goods **transfers possession** to the hirer for his use and enjoyment, in return for **payment in regular installments**.

- Upon complete payment, the hirer has **the option** to either **purchase** the goods **or return** them to the owner.

transverse possession.

zoom

Features of a Hire Purchase Agreement

1. The buyer takes **possession** of the goods immediately and agrees **to pay the total hire purchase price in installments**

2. The price is made up of the cost of the goods plus interest during the term of the HP agreement) **cost of goods + interest = HPP**

3. The hire purchase agreement will usually provide that the property in the goods/ownership shall pass to the hirer when he has paid all the installments or that after he has paid all instalments, he may purchase the property by paying a nominal sum.

other types of agree

zoom

Features of a Hire Purchase Agreement (2)

4. The hirer has the right to terminate the agreement **anytime** before ownership passes to him.

5. On completion of the payment, the hirer has the option to accept the goods or to return the goods to the the owner without liability to make further installments. However, he cannot recover the sum already paid.

So now, let's differentiate the different types. of agreements.

zoom

Hire Purchase distinguished from other Legal Transactions

1. **Hire Purchase and Hire**

In an ordinary contract of hire, the owner of the goods transfer possession to the hirer in return for payments.

However, unlike the HP agreement, the hirer in an ordinary hire agreement, **does not have the option to purchase the goods.** The hirer returns the goods to the owner after use.

Let's differentiate the different types of agreements. The higher purchase agree

zoom

2. Hire Purchase and Sales Agreement

- Once the sales agreement is made, the **buyer is under the obligation to buy the goods**, failure to pay the price of the goods could result in an action for breach of contract. This is **unlike the HP agreement where the hirer has the option to purchase or return the goods to the owner**. An action cannot be maintained against a hirer for the balance of the HP price.

You know, so in a sales agreements. Once the sale agreement is

zoom

Legal Framework for Hire Purchase

-The principles of Common Law and the Hire Purchase Act of 1965 are presently the applicable laws that govern hire purchase agreements in Nigeria.

-Section 1 of the HP Act regulates all HP agreements under which the HP price does not exceed N2, 000 and all HP agreements in respect to motor vehicle irrespective of the hire purchase price.

With respect to higher purchase agreement, the legal framework is the Higher Purchase Act.

zoom

Hire Purchase Agreement

In a simple HP agreement, there are usually 2 parties involved.

- the hirer
- and the supplier/dealer

In some cases, The supplier/dealer sells the goods to the finance company and arrange for the finance company to supply it to the buyer on hire purchase.

-

But in more complex

zoom

Formation of Hire Purchase Agreement

- The HPA provides that for a HP agreement to be enforceable, some requirements as to the form and content of the agreement must be complied with:

- Section 2 (1) of the HPA provides that the owner must state **in writing** to the hirer the **price at which the goods may be purchased**, unless the hirer selected the goods by reference to a catalogue, pricelist or an advertisement which clearly stated the cash price of the goods.
- Section 2 (2) HPA also provides that **a note or memorandum of the agreement is to be made and signed by the parties.** the note must contain, the hire purchase price, the price of the goods, number of instalments, deposit made, statement of the true interest rate, the date when each instalment is payable, a list of the goods which the agreement relates to.

This does not have to be a detailed contract, but a a note evidencing the agreement.

So how are higher purchase agreements formed?

zoom

- For an agreement to be treated as a HP agreement, it must possess the essential characteristics of a HP agreement, it must contain:

1. A provision whereby the owner **agrees to let**, and the hirer **agrees to hire** the goods.

2. A provision whereby the hirer is given **the right or option** to either **purchase** the goods at the end of the hiring **or terminate** the contract by returning the goods to its owner, at anytime during the contract.

- An agreement which does not contain these fundamental provisions, may be treated as an outright sale.

He must possess this, he must have this essential

zoom

- other provisions that should be included in HP agreements are, the period of hire, the right of the owner to repossess, a description of the subject matter of the agreement.

- Where an **illiterate** is a party to a HP agreement, the agreement must be read and explained to him before he signs the agreement for it to be valid. **Section 3 of the Illiterate Protection Act.**

So where there is an illiterate, where an illiterate is a party to the agreement, what happens?

zoom

Obligations of the Parties

- Obligations of the owner at common law
- Obligations of the owner under HP Act

- **Obligations of the owner at Common Law**

1. It is the duty of the owner **to deliver the goods to the hirer**. Breach of this fundamental duty entitles the hirer to repudiate the contract.

So what are the obligations? of the parties.

zoom

Obligations of the owner at Common Law

2. There is an **implied condition/duty as to title**

- In other words, the owner should **possess good title** to the goods, he **must have the right to sell the goods at the time when ownership is to pass**.
- That the goods shall be **free from any charge or encumbrance** in favour of any third party at the time when ownership is to pass.
- Where he does not possess good title, the option given to the hirer to purchase the goods is of no effect, because he cannot transfer title which does not exist to the hirer.
- In such a case, the hirer can repudiate the contract and recover any money paid as deposit or instalmental payment.

3. the owner has the **duty not to interfere with the quiet/peaceful possession and enjoyment** of the goods by the hirer.

The second one is that there is an implied condition.

zoom

4. Another implied condition is that the **goods delivered shall be fit for the purpose** for which it is hired.

-This is especially so where the hirer relied on the judgement and skill of the owner.
-Where the hirer did not rely on the judgement and skill of the owner or where the defect was hidden when the agreement was made or , there is no implied condition of fitness for purpose.

Exclusion Clause

Some of **the implied obligations of the owner of the goods can be excluded or modified by express agreemen**t. However, an exclusion clause cannot benefit a party who has failed to perform his fundamental obligation under the contract.

So another

zoom

Obligations of the Owner under the Hire Purchase Act

Under the HPA all the implied terms at common law apply to HP agreements.
Section 4 (1) provides that in every hire purchase agreement there shall be:

a. An implied warranty that the hirer shall **have and enjoy quiet possession**.
b. An implied condition that **the owner shall have the right to sell the goods at the time the property is to pass to the hirer (good title).**
c. an implied warranty that the goods shall be **free from any charge or encumbrance** in favour of any 3rd party at the time when the property is to pass.
d. An implied condition that the goods shall be of **merchantable quality**
   - Where the defect on the goods is such that the owner could not reasonably have been aware of, at the time the contract was made, the owner will not be guilty of breach of duty.
   - where the goods are let as second-hand goods and the note or memorandum of agreement states that the goods are sold as second-hand, the owner cannot be made liable for this implied condition of merchantable quality. (this provision could be abused by fraudulent sellers, especially with regards to the grade of the 2nd hand goods

the owner does not give the other party, the hierarch, quiet possession. It does not entitle

- Section 4 (2) provides that where the hirer makes known, expressly or by implication, the particular purpose for which the goods are required, there is an implied condition that the goods are reasonably **fit for purpose**.
  - In other words, under the HPA, reliance on the owners skill and judgement is not required. this is unlike the common law.

- **Exclusion Clause**
- Section 4 (3) HPA provides that the implied terms in section 4(1) cannot be excluded. It further provides that the implied terms set out in section 4 (2) cannot be excluded or modified by any provision in the agreement/owner unless he can prove that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.
  - This means that where there is an excusion clause in a HP agreement, it will not avail the owner from fulfilling his obligations as provided in Section 4 (1)(2) except the provision was brough to the hirers notice and its effect explained to him. In other words, it bars the use of exemption clauses except where the hirer was warned b4 it inclusion.

sections... section 4, Sub 2. provides that

zoom

Obligations of the Hirer

- The hirer is under the obligation to take delivery of the goods.
- While they remain in his possession, it is his duty to take proper reasonable care of them. He must not deal with the goods in a manner inconsistent with the owner's title. Such as selling or pledging it. He must return the goods when the HP agreement is terminated.
- The hirer has the duty to make the installments payments promptly. Payment of instalments in mandatory though it can be waived or suspended.
- punctual payment means payment on the day stipulated. Failure to make payment promptly gives the owner the right to terminate the contract and repossess the goods.

Of the, owner. Now, let's talk about the obligations

zoom

Remedies of the Owner

- Where the hirer breaches the agreement (for instance where he fails to perform any of his duties) what remedies will be available to him. These are the solutions available to an owner who has suffered loss

- the owner can sue for damages (an amount of money imposed on a person as payment for harm or injury caused to another) where the hirer refuses to take delivery of the good or even where he terminates the contract after taking delivery.

Now, what are the... what are the remedies? of the owner.

zoom

- Please remember that the hirer has the right to terminate the agreement and return the property to the owner at any time before the final payment is due. However, the HPA provides that this must be done in writing.
- the question now is, what happens when he terminates the contract.

- At common law, the owner has the right to sue for damages.
- However, under the HPA, section 8 states that where the hirer terminates the agreement he will only be liable to pay to the owner any sum that will be sufficient to bring the total sum to one-half (1/2) of the hire purchase price.



So, Wade? So, remember

zoom

Right to repossess/retake the goods Under Common Law

- Under common law, an owner has the right to repossess the goods where the hirer commits a breach of the agreement.
- He can exercise that right without following due process.
- He can seize the goods even where the hirer has made substantial payment.
- where the hirer commits a breach of the agreement, and the owner can repossesses the goods and sue the hirer for arears of rental.

- This absolute power can be easily abused by dishonest owners.
- It has caused hardship to hirers.

Under common law.

zoom

Right to repossess/retake the goods under the HP Act

- the hardship caused by the common law rule has been mitigated by HPAct 1965.
- Section 9 (1) provides that where a relevant proportion of the hire purchase price has been paid, the owner can only reposses the goods by instituting an action in court.

- "relevant proportion" has been defined as one-half (1/2) of the hp price in the case of goods other than motor vehicles and three-fifths (3/5) in the case of motor vehicles.

- where the owner contravenes the provision of section 9 (1), the agreement will be terminated and he will be liable to refund the hirer all sums paid with respect to the HP agreement.

- where the hirer has not paid a relevant proportion of the hire purchase price then the owner can repossess the goods without his consent or an order of court.
- this provision does not apply where the hirer exercised his right to terminate the ageeem that power at any time, arbitrarily, without any due process.

zoom