

HIRER'S RIGHTS AND
LIABILITIES UNDER THE
HIRE - PURCHASE ACT, 1967

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1988

Acknowledgement.

In preparing for this project paper of mine, I have encountered with many difficulties especially in gathering materials and trying to put them all together in order . Besides the project paper, I have to do another 6 laws papers. The pressure is so much that I cried a few times.

However, I thank God now that it is finished. I owe considerable debts to my supervisor En. Rahmat for his constant supervision. Also my course-tutor Mr. Linggam for being so considerate.

Most of all my mother, family and especially my loving husband Baharudin for all the love, support and encouragement.

Lastly, to all those who have helped me through-out the completion of this project paper.

May 1988.

Haliza Ahmad.

Preface.

When you buy something on hire-purchase, you are actually entering into legal relationship with the 3rd party. In other words, between you and 3rd. party springs a legal relationship.

The purpose of this project paper is to highlight various aspect that deals with hire-purchase transaction. Especially concerning the rights and liabilities of the hirer. Most buyers are not aware of their rights as hirers under the hire-purchase agreement and because of this at times they were unconsciously being cheated by scrupulous dealers.

This project paper is specifically concerned with the rights and liabilities of hirer which comes under the hire-purchase Act 1967.

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HISTORICAL BACKGROUND

The law relating to hire-purchase is fundamentally common law. It is to be found in decisions of the courts arising from the wording of particular agreements. Based on these findings the common law alters and adds rules to meet various situations of cases.

However history has proven that the existence of hire-purchase transaction was from the ancient contract of bailment which was known to the Romance in various forms that exists today. The contract of bailment was defined 200 years ago in Blackstone Commentaries as the delivery of goods to another person for a particular use

In England, hire-purchase trading first started in 1846. It was claimed that Mr. Henry Moore, the Bishopsgate piano maker was the one who had invented the system and introduced it in that particular year which was stated by R.M. Goode in Hire-Purchase Law and Practice. The new method of obtaining goods on credit became rapidly popular among the people especially in the year when Sewing Machine was produced by Singer Manufacturing Company. The Singer Company let out machines to its customers under a hiring agreement containing an option to purchase, the sums paid by way of hire-rent being allowed against the purchase price in the event of the option being exercised.

The idea was later developed by wagon companies which were formed to finance the purchase of wagon by collieries. In that situation, the wagon companies buying waggons and then letting them out to the collieries under hire-purchase agreements. The systems then quickly spread to furniture and other commodities including such unlikely items as false teeth.²

We must bear in mind that English law and principles were used here in our country because at that very particular time we have no such law available to accommodate the need of a system of hire-purchase transaction. So the only sensible and rationale thing to do is to adop the English law principles as long as it does not contradict inhabitants of our country.

As a result, the Civil Law Ordinance (5/1956) and the English Hire Purchase Act, 1938 were applied in Malaysia. Example of the Application of the U.K. common law, rules of equity and certain statutes was clearly stated in the Civil Law Act 1956.

The relevant provisions are as follows:

Section 3(1) save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the court shall -

- (a) in West Malaysia or any part there of apply the common law of England and the rules of equity as administered in England on the 7th day of April, 1956;
- (b) in Sabah, apply the common law of England and the rules of equity together with statutes of general application as administered or in force in England on the 1st day of December 1951;
- (c) in Sarawak apply the common law of England and rules of equity together with statutes of general application as administered or in force in England on the 12th day of December 1949.

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the states of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

In a decided case of Innaya and Anor v. Lombard Acceptance (Malaya) Ltd³ (1963) 29 M.L.J. 30, the 1st appellant was the hirer of a motor-car from the owner, to respective under a hire-purchase agreement and under which the 2nd appellant was the guarantor. After 7 monthly instalments had been paid, the 1st appellant defaulted in payment. The respondents repossessed the car which had been sent for repairs,

After paying the repairer the costs of the repairs. The respondents then bought an action for the recovery of \$1,642.79 being the sum outstanding under the hire-purchase agreement. Innaya's case is an example of a case which has the application of the English Hire-Purchase Act, 1938.

In this appeal the appellant contended this by virtue of section 3 and 5 of the Civil Law Ordinance 1956, the English Hire-Purchase Act, 1938 applied here and that the re-possession was wrongful as being contravention of section 11 of the Act because more than $\frac{1}{3}$ of the amount of the hire-purchase price had been paid by the appellant and therefore the respondent had no right to recover any sum of money in addition.

It was held that even if the English Hire Purchase Act applied, section 11 of the said act has no application when the goods are in the hands of a third party at the time of the seizure. Similarly the Civil Law Ordinance and the Hire-Purchase Act 1938 were applied in Malaysia before the Hire-Purchase Act 1967 came into effect on April 11, 1968.

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CHAPTER ONE

INTRODUCTION

The Hire Purchase Act is essentially a consumer protection statute which came into force on 11 April, 1968. Respectively in Malaysia, the law relating to hire purchase is governed by the Hire Purchase Act 1967 and the Hire-Purchase (Amendment) Act, 1976. The Act only covers limited items only such as:

1. Motor vehicles.
2. Radio sets, television, gramophone sets, tape recorders and any combination thereof.
3. Air conditioners and washing machines.
4. Sewing machines.

For the other goods not in the categories covered by the Hire Purchase Act, then and common law principles regarding hire purchase transactions will apply.

(a) Nature of a Hire Purchase Agreement

A Hire Purchase Agreement may be made because the hirer cannot afford to make an outright purchase of a particular good. He enters into a hire purchase agreement with the owner who lets out the goods to him in return for the hire purchase price paid in instalments.¹

In other words if a person wants to have goods which he cannot afford to buy, hire-purchase transaction is a way, one is advisable to take where the consumer who desires to obtain the possession of goods at once without having to pay the full price on delivery.

Therefore hire purchase is not a contract of sale. It maybe defined as a contract where an awner lets goods out on hire to another party known as the hirer who shall have an option either to purchase the goods on the completion of certain sum as agreed in the contract or may return the goods and terminate the contract.

The earliest reported and leading case in Hire Purchase is in Helby v. Matthews.² In the the case, it has established the important principle in hire purchase agreement which merely grants an option to purchase goods and does not impose any binding obligation on hirer to buy i.e. the hirer may either:-

- (i) elect to buy the goods when the instalments specified in the agreements have been paid or
- (ii) return the goods at anytime before the option to buy is exercised and hence terminate the agreement in which situation he is not required to pay all the instalments.

This is defined in Section 2(1) Hire Purchase Act 1967 as follows:-

'Hire-Purchase Agreement' includes a letting of goods with an action to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise).

Parties to a hire purchase agreement may consist of the owner and the hirer only. This occurs when the dealer and seller does not involve the aid of a finance company/the owner/seller/dealer are one and the same he is the one that finances the transaction.

Usually or normally three parties are involved in a Hire-Purchase Agreement. They are the dealer (original owner/seller), hirer (customer/buyer) and finance company (owner).

The dealer who does not have the financial capital to accept payments in instalments will 'sell' the goods to a finance company which will then hire the goods to a finance company which will later hire the goods to the hirer under the hire purchase agreement. The finance company becomes the owner and is paid all the instalments while the dealer/original owner drops out of the picture.³

(b) Purpose of Hire-Purchase Act

Generally speaking, parties to the Hire Purchase Agreement can freely make their own agreement as they see fit. This no doubt gives a great advantage in a better bargaining position towards the owner than the consumer himself. In directly the owner could add a clause in the agreement excluding any liability for defects in the goods. Therefore, this is one of the positions why the hire purchase act was passed in order to protect the consumer by controlling the form and content of the hire-purchase agreement as well as conferring rights on the hirer in the event of Repossession.

Hire Purchase Act also designed to protect the seller from the buyer selling the goods to a bona fide third party for value.

It is always vitally important to bear in mind that since the hirer is not the owner, he therefore cannot pass a good title to a 3rd party because during the duration of the hire-purchase transaction, the ownership of the goods remains in the owner. In any case where the hirer should sell the goods, he may be liable in an action for conversion by the owner.

This was decided in the case of Credit Corporation (M) Bhd v. The Malaysia Industrial Finance Corporation and Anor.⁴ where the plaintiff purchased a car and entered into a hire purchase

agreement with a hirer. The car was registered in the name of the hirer with the plaintiffs' claim for ownership indorsed on the register and the registration card. The first defendant purchased the car from a third party and entered in hire-purchase agreement with the second defendant. After terminating the hire, the plaintiffs repossessed the car. The plaintiff thereupon sought a declaration that they were the owners of the car. The defendants counter claimed for trespass, conversion and wrongful detention and damages.

The court held that until the hirer had exercised his option to purchase by paying the total amount and fulfilling all his obligations under a hire purchase agreement, no property in the car passed to the hirer.

(c) Hire-Purchase Distinguished From Other Transactions

Hire-purchase agreement maybe distinguished from other transactions. Under the Sale of Goods the buyer has bought or agreed to buy. He can give a good title under section 25 (1) of the Sale of Good Act. Whereas under the hire-purchase the hirer has not agreed to buy therefore he cannot give good title under section 25(1) of the Sale of Goods Act. He is also not bound to buy the goods even if he has paid most of the instalments.

Next, in Credit Sale Agreement, the property in the goods passes to buyer on sale with payment postponed, to be made in one lump sum or by instalments. In later case, buyer is bound to pay all instalments and he cannot return the goods. Buyer can pass good title to a 3rd party. In the event where the buyer defaults in payments, seller cannot recover possession but can sue for the price. In the hire purchase transaction hirer cannot pass good title to a third party.

Furthermore, under Conditional Sale Agreement, goods are sold but property in goods remains with seller until the price is paid. Buyer is bound to pay the whole purchase price whether by instalments or in one lump sum on the other hand, in hire-purchase the hirer under no obligations to pay all instalments and can return the goods at any time. As regards to lease or simple hiring, there is no element of sale. It is not covered by the Hire Purchase Act nor by the Sale of Goods Act but by the ordinary law of contract.

CHAPTER II

HIRE - PURCHASE AGREEMENT

1. CONDITIONS FOR HIRE PURCHASE AGREEMENT

There are formalities required for the making of the Hire-Purchase Agreements. These formalities can be divided into three stages which must be complied with i.e. before, during and after the making of the agreement.

(a) Before Entering Into The Hire-Purchase Agreement

Before a hire-purchase agreement can be entered into, the owner is required by virtue of section 3(1) to give the prospective hirer a written statement concerning:-

- description of goods;
- cash price of goods;
- term charges including interest payable by the hirer;
- insurance and registration in the case of motor-vehicles;
- total amount payable;
- difference between cash price and total amount payable;

- instalments payments.

After the written statement is given, there will be a written offer by the hirer. It is the owner's subsequent acceptance of the hirer's offer that concludes the making of a hire-purchase agreement.

(b) During The Making Of The Hire-Purchase Agreement

It is very important to take note that every hire-purchase agreement must be in writing. The hirer need not sign the agreement personally for it may be signed by his agent/representatives and also the hire-purchase agreement must be signed by all parties concerned to the agreement including for example the guarantor.

The requirement of a written agreement is a vital point because section 5(1) further stated, that "a hire-purchase agreement that is not in writing shall not be enforceable by the owner". Similarly, if the agreement is not in writing, in any event later on the owner is unable to bring any in to the court of law.

Next, the hire-purchase agreement must also specify all the following particulars:

- (i) date of commencement of hiring;
- (ii) number of instalments to be made;
- (iii) amount of each instalments;
- (iv) place at which payment is to be made;
- (v) time at which each payment is to be made;
- (vi) description of the goods sufficient to identify them.

where any part of the consideration is provided other than in cash, a description of that part of the consideration to be stated.

By virtue of section 4(3)(e) every hire-purchase agreement must set out the following in Tabular Form:

- (1) Cash price, the price at which at the time of signing the agreement the hirer might have purchased the goods for cash.
- (2) Deposit.
- (3) Freight.
- (4) Vehicle registration fees.
- (5) Insurance
- (6) Term charges and
- (7) Total amount payable.

Under section 4(3) if these provisions are not met, the owner will be guilty of an offence. Furthermore, under section 5(2) an owner who does not comply with these requirements will not be able to enforce the agreement or any contract related to it. In other words, if there is a breach in the provision:-

- the owner has no right to recover the goods from hirer.
- the security given by the hirer is not enforceable by the owner and
- the hire-purchase agreement or contract of guarantee is not enforceable by the owner.

(c) After The Making Of Hire-Purchase Agreement

The owner must within 14 days after the making of the Hire-Purchase Agreement give the hirer a copy of the agreement together with a notice in the form specified in the Third Schedule informing the hirer of his rights.

The notice specified in the Third Schedule of section 4 as mentioned earlier contain information on the hirer's rights where:-

- i) The hirer is entitled to a copy of the agreement and a statement of the amount owing if a written request is made.

(ii) The hirer has the right to assign his rights with a written consent of the owner.

(iii) The hirer has the right to complete the agreement at anytime and is entitled to a rebate of some of the charges payable.

in the event the hirer is unable to pay his instalments, he is entitled to return the goods to the owner at his own expense provided payment must be made on any amount sufficient for the owner to cover any loss suffered.

Next, within 7 days of the receipt of any insurance policy on the goods, the owner's required by the Act to give the hirer a copy of the insurance policy itself or a written statement setting out the terms, conditions and exclusions of the policy.

Section 5(3) gives the right of discretion to the court to dispense with the requirement in an action if it is satisfied that a failure to comply with the requirement is just and equitable.

2. PROTECTION OF HIRER'S RIGHTS

(i) Conditions And Warranties

The Hire-Purchase Act provides certain terms implied by the Hire-Purchase Agreement. These may be either conditions or warranties which cannot be excluded except under circumstances of second hand goods.

A breach of conditions entitling the party which is not in breach to repudiate the contract and altogether sue for damages suffered as a result of the breach.

A breach of warranty only entitles the hirer to sue for damages but not to discontinue the hire-purchase agreement.

Part III of the 1967 Hire-Purchase Act deals with the Conditions and Warranties to be implied in every Hire-Purchase Agreement.

(a) Breach of Implied Conditions

Implied conditions are implied in the hire-purchase agreement by the Hire-Purchase Act.

(i) Right To Sell

Section 6(1)(6) the owner shall have the right to

sell the goods at the time when the property is to pass to the hirer. Breach of this condition is regarded as a total failure of consideration so that the hirer may repudiate the transaction and recover from the owner all sum paid.

There are 2 decided cases which illustrate the effect of a breach of conditions as to the right to sell i.e. Rowland v Divall¹ and Warman v. Southern Counties Car Finance Corporation.²

In Rowland v. Divall (1923), a buyer of a car used it for about 3 months and later found out that it was actually a stolen property and had to return it to its true owner. There is a breach of section 12 of the Sale of Goods Act 1979 which provides that in every contract of sale there is an implied condition on the part of the seller that he has the right to sell the goods at the time the property is to pass to the buyer.

It was held by the Court of Appeal that even though the buyer had used the car for this period, he could recover the whole of the purchase price as there had been a total failure of consideration.

From the facts of the case, it was clear that there has