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LEGAL EVALUATION OF HIRE PURCHASE AS A COMMERCIAL TRANSACTIONS MECHANISM FOR EASE AND MODERN WAY OF DOING PURCHASING BUSINESS IN NIGERIA.

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Abstract

In ages, commercial transactions were predominantly based on outright sales, requiring full payment before ownership and possession could pass. However, as commerce expanded and consumer demand increased, this rigid model proved inadequate for a growing population with limited purchasing power and made financial burdens becoming indispensable. The evolution of hire purchase reflects the transformation of commerce from rigid cash-based transactions to flexible credit-driven systems designed to accommodate economic realities, particularly in developing economies like Nigeria, where access to credit remains relatively limited and unevenly distributed. It emerged as a response to limited consumer purchasing power and has since developed into a widely accepted commercial tool used in financing and allows possession of goods upon initial payment, while ownership is deferred until the completion of instalments. It underscores the relevance in modern business practice, where access to assets without immediate capital outlay is essential for both individual advancement and business expansion. Hire purchase also serves as a bridge between the desire to acquire goods and the ability to pay for them outrightly.

This paper critically evaluates hire purchase as a mechanism for facilitating commercial transactions and as a modern means of conducting purchasing business in Nigeria. It examines the legal foundations of hire purchase under Nigerian laws, with particular emphasis on the Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004. It also considers the rights and obligations of the owner and hirer, repossession, remedies, termination and judicial interpretations.

Keywords: Hire Purchase, Commercial Transactions, Purchasing Business, Obligations of Hirer/ Owner and Instalment Payment.

1. INTRODUCTION

In Nigeria, hire purchase has gained significant prominence in sectors such as automobile financing, consumer electronics and industrial equipment acquisition. It is widely utilized by individual seeking to improve their standard of living, as well as by small and medium-scale enterprises aiming to expand operations without substantial upfront capital. The system aligns with modern commercial realities, where credit-based transactions increasingly dominate the marketplace.

Under a typical hire-purchase arrangement, the owner makes goods available to a hirer for possession and use in return for periodic payments. The hirer may acquire ownership after fulfilling the stipulated conditions, usually by making the agreed payments and exercising an option to purchase where the agreement so provides. The legal character of the transaction is therefore different from that of an ordinary sale because possession and ownership do not necessarily pass simultaneously. Nigerian law recognizes this distinction and regulates hire-purchase transactions principally through the Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004.

Furthermore, hire purchase is not merely a financing arrangement; it is a strategic commercial tool that balances the interests of both parties. For the owner or financier, it provides security through retention of title, thereby minimizing risk. For the hirer, it offers accessibility and flexibility, making it possible to utilize goods while gradually fulfilling payment obligations. This dual advantage underscores its relevance in modern business practice.

The commercial importance of hire purchase has increased with the growth of consumer markets and the need for individuals and businesses to obtain vehicles, machinery, computers, office equipment, agricultural equipment, generators, household appliances and other assets without paying the entire price immediately. It is therefore capable of promoting economic participation by allowing a person to use an asset while gradually paying for it.

In understanding the effectiveness and application of hire purchase, as in commercial law, as a modern way of doing business in Nigeria, there must be a full examination of the actual concept of hire purchase, its nature as distinguished from similar legal transactions, its evolution, the concept under Commercial law, the obligations of parties to the agreement, reasons for its adoption and overall functioning.

2. CONCEPT AND DEFINITION OF HIRE PURCHASE

Hire purchase is essentially a contractual arrangement involving the possession and use of goods in consideration of periodic payments, coupled with an arrangement under which ownership may eventually pass to the hirer.

According to the Hire purchase act of 1965, a contract of hire purchase is; ***the bailment of goods under which the bailee may buy the goods or under which property in the goods will or may pass to the bailee***¹. This emphasizes the distinction between possession and ownership.

¹ S. 20, *The Hire Purchase Act of 1965*.

A typical hire-purchase transaction may involve three principal stages:

1. the owner provides the goods;
2. the hirer takes possession and makes periodic payments; and
3. upon compliance with the contractual conditions, the hirer acquires the right to ownership.

The hirer is initially not the owner merely because the goods are in his possession. The owner retains legal title until the requirements for transfer are satisfied. This distinction is particularly important where the hirer defaults because the owner's proprietary interest may provide a legal basis for recovering possession, subject to statutory restrictions.

According to *G.J Borrie*², a hire purchase agreement is an agreement by an owner of goods to hire them out to a hirer and to give the hirer an option to purchase, conditional on his completion the necessary payments for the goods and complying with the terms of the agreement.

The Hire Purchase Act, 1965³, was the first Nigerian enactment on hire-purchase agreements. Although originally the Act was intended to operate in the former Territory of Lagos, it was subsequently made applicable to all parts of the Federation in 1966, by the Hire Purchase (Application) Act, 1966.

The case of *Helby V. Mathews*⁴ is an example of hire purchase in this case, the owner of a piano agreed to let it on hire, the hirer agreeing to pay monthly instalments. The term of the agreement provided that the bailee might terminate the hiring by delivering up the piano to the owner, the bailee remaining liable for all areas of hire charges. It was also agreed that if the bailee should punctually pay all the monthly instalments, the piano should become his sole property and that until such full payments the piano should continue to be the sole property of the owner. The bailee was given possession of the piano. He paid a few of the installments and then pledged it with a pawn broker as security for an advance.

The House of Lords held that on the true construction of the agreement, the bailee was under no legal obligation to buy but merely had an option either to return the piano or to become its owner by payment of all the installments. In other words, the bailee has not agreed to buy the goods in the real sense of it.

A similar view was expressed in *Lee V. Butler*⁵; in this case, Lee, a furniture dealer, entered into a hire-purchase agreement with a buyer. According to the agreement, the buyer was to pay in installments, and ownership would remain with Lee until all instalments were fully paid.

However, the buyer sold the goods to a third party, Butler, before completing the payments. Butler bought the goods in good faith, nor knowing the hire-purchase terms. Later, Lee discovered this and tried to recover the goods from Butler, claiming he was still the legal owner.

3. HIRE PURCHASE UNDER COMMON LAW

² *G.J. Borrie, Commercial Law (1970), p. 125.*

³ *Act No. 42 of 1966.*

⁴ (1895) A.C. 471.

⁵ (1893) 2 Q.B. 318.

Hire purchase at common law is based on contract principles parties are free to contract and to import any terms to the contracts. No special form is required for common law. Hire purchase other than the hirer's option to buy the goods. Where there is not such option, then no hire purchase agreement.

In *J. Allen & Co. V. Sanni Adewale*⁶, where the agreement did not given an option to buy, for example, said it is not Hire-purchase agreement because parties to common law hire purchase agreement are not equals, terms of the contract are usually heavily weighted in favour of the owner of the goods, the only bar being that parties cannot excluded the performance of what they contracted to do.

In *Ogwu V. Leventis Motors Ltd.*⁷, a procured a new vehicle on hire purchase. What was delivered was, however, an old vehicle the court held that reliance as an exclusion clause cannot avail in this circumstance.

Also, at common law, the debtor is not usually regarded as the agent of the owner except in respect of:

1. Receiving offers from the hirer
2. Delivering goods to him
3. Receiving notice of revocation of hirers offer.

The common law tends to regard the dealer as agent of the hirer the obligation of the owner under common law hire purchase is merely to supply gives reasonably fit and suitable for purpose even where the hirer on the skills of the owner/dealer.

In *Stephen Anoka V. SCOA*⁸, a man obtained through hire purchase a lorry which and a defective engine which he had to replace to make the lorry function effectively. His attempts to hold the dealer liable for defect failed. It was held that the dealer could not have discovered the fault without dismantling the lorry.

Prior to statutory intervention, the common law regime governing hire purchase was characterized by a pronounced asymmetry of rights, consistently exploited by owners at the expense of hirers. The owner's rights of repossession were effectively unqualified; a hirer who defaulted on a single instalment, irrespective of how many had been paid, could be divested of possession without notice, without court process, and without compensation for the value he had already contributed to the transaction. The case of *Bentworth Finance Nig. Ltd. V. De Bank Transport Ltd.*⁹, illustrates the severity of this position; the court held that a contractual term requiring 'punctual payment' of instalments was breached by a single day's delay in the final instalment payment, entitling the owner to terminate and repossess. The hirer had paid all prior instalments on time and had discharged substantially the entire hire purchase price.

Minimum payment clauses compounded the inequity. Under the common law, such clauses assumed almost unlimited forms and were enforced as agreed contractual terms without reference to penalty doctrine, unless the clause was triggered by the owner's own act of termination. *Associated Distributors Ltd v. Hall*¹⁰ applied this distinction: where the hirer terminated the agreement after paying one instalment on a bicycle, a minimum payment clause requiring him to pay half the total hire purchase price was

upheld as liquidated damages rather than penalty. However, in *Cooden Engineering Co. Ltd v. Stanford*¹¹, the court held that where the owner terminated following the hirer's default and then sought to enforce a one hundred per cent compensation clause, the clause operated as a penalty and was unenforceable. In *Amuan and Thomas v. Bentworth Finance*¹², the Supreme Court articulated a two-stage inquiry: whether the termination was by the owner or the hirer determines whether the minimum payment clause is penal (unenforceable) or constitutes liquidated damages (enforceable). The practical problem was that where the record disclosed no clear finding on who had terminated, the court would treat the clause as penal by default. *Lombank Ltd v. Excell*¹³ further demonstrated the courts' skepticism toward variable minimum payment clauses whose practical effect was to guarantee the owner full recovery regardless of when termination occurred.

The Hire Purchase Act 1965 responded to these deficiencies systematically. It introduced implied terms as to the owner's right to sell, the goods' conformity with description, their fitness for the hirer's purpose, and their merchantable quality, none of which could be excluded by agreement. It imposed a writing requirement for hire purchase agreements and mandated that a copy be given to the hirer. Crucially, Section 9(1) capped the hirer's minimum payment liability at one-half of the total hire purchase price, overriding any contractual provision that exceeded this ceiling. The Act also restricted the owner's right to repossess goods without a court order once the hirer had paid one-third of the total hire purchase price, addressing the most egregious common law repossession abuses. The operation of Section 9(1) is not merely mechanical. Where a hirer has paid less than half the hire purchase price at the date of termination, he must make up the shortfall to reach one half; where he has already paid more than half, no further liability accrues under the minimum payment clause, though he remains responsible for outstanding arrears.

The application of these principles was examined in *Anoka v. SCOA Warri*¹⁴, where the court considered the scope of the implied term of fitness for purpose. The hirer returned a vehicle on account of engine defects and sought to rely on the statutory implied term. The court held that the implied term of fitness would not apply where the defect was latent and could not have been discerned by the owner on reasonable inspection; the owner's obligation extends only to defects that are, or ought to be, within his knowledge. This qualification is important in practice, as it prevents hire purchase from functioning as an absolute warranty regime while preserving the hirer's rights against defects that the owner could and should have identified.

4. THE LEGAL FRAMEWORK OF HIRE PURCHASE IN NIGERIA

The legal framework governing hire purchase transactions in Nigeria is primarily provided by the Hire Purchase Act, supplemented by common law principles and, where relevant, the Sale of Goods Act for purposes of comparison. The Act was enacted to regulate hire purchase transactions and to protect hirers from exploitative practices by owners.

⁶ (1929) 9, NLR 111.

⁷ (1963) NNLR 115.

⁸ (1955/56) WNLR 113.

⁹ (1968) 2 ALR Comm. 52.

¹⁰ (1938) 2 KB 83.

¹¹ (1953) 1 QB 86.

¹² (1965) 1 All ER 382.

¹³ (1963) 3 All ER 486.

¹⁴ (Supra).

Under the Act, its scope and application are limited. It applies mainly to hire purchase agreements relating to consumer goods and motor vehicles, and only where the hire purchase price does not exceed the statutory monetary limit. This limitation has attracted criticism, as the prescribed amount has become outdated and excludes many modern commercial transactions from the protection of the Act. Consequently, many high-value hire purchase agreements in Nigeria today are governed largely by common law rather than statute.

With respect to the classes of goods covered, the Act is primarily concerned with goods bought for personal or domestic use, as well as motor vehicles. Commercial or industrial equipment transactions often fall outside its scope where they exceed the statutory limit.

The Act also prescribes certain formal requirements for the validity of a hire purchase agreement. Notably, the agreement must be in writing and signed by or on behalf of the hirer. It must also contain key particulars such as the description of the goods, the hire purchase price, and the terms of payment. Failure to comply with these requirements may render the agreement unenforceable against the hirer.

Furthermore, the Act provides important protections for hirers, particularly in relation to repossession of goods. For instance, once the hirer has paid a substantial portion of the hire purchase price, the owner cannot repossess the goods without a court order. This provision is designed to prevent arbitrary or oppressive repossession.

In addition, transactions that fall outside the statutory provisions either because of the nature of the goods or the value involved are governed by common law principles, which recognize hire purchase as a contract of bailment with an option to purchase.

In conclusion, while the Hire Purchase Act provides the primary legal framework for hire purchase in Nigeria, its limited scope and outdated provisions have reduced its effectiveness in modern commercial practice, thereby increasing reliance on common law rules.

Other Statutes: The Sale of Goods Act (1893, Cap. S8) governs general sales. Unlike hire purchase, an outright sale vests title immediately; by SOGA s.15(2), a buyer in possession after a voidable sale can pass good title to a bona fide third party. This rule does not apply to hire purchase (since the hirer has no title until purchase). No special "Hire purchase Act" beyond Cap. H4 exists; earlier local bans (e.g. Lagos Hire-Purchase Act) are repealed by the federal law.

Consumer Protection: The former Consumer Protection Council Act (1992) and now the Federal Competition and Consumer Protection Act 2019 cover fair trading. While no hire purchase-specific clause is quoted here, the FCCPA broadly prohibits unfair terms in consumer-credit contracts and requires that credit/hire-purchase agreements disclose full terms (annual rates, etc.). The Central Bank of Nigeria also regulates finance and microfinance companies offering hire purchase loans (e.g. for vehicles).

CAMA 2020: Under corporate insolvency rules, hire purchase goods get special treatment. Section 480(2) of CAMA provides that if a company under administration holds goods under hire purchase, they cannot be repossessed without the administrator's (or court's) consent. (Section 480(1) creates a general moratorium on enforcement.) Section 509 (not quoted) similarly protects hire-

purchase property from depletion by liquidators. This aligns with the Act's requirement for judicial process before repossession.

Secured Transactions Act 2017 (STMA): Nigeria's new movable property security law (effective from 2017) allows registration of security interests in goods. A conditional sale or hire purchase can be treated as granting a security interest to secure any unpaid balance. Though hire purchase itself is not explicitly defined in STMA, a finance company could register a financing statement for a loan on a vehicle even if governed by hire purchase. STMA provides transparent priority rules (first-to-file principle), which may inform third-party rights if goods are sold or seized. The Personal Property Security Registry is thus relevant for hire purchase financiers, though no specific hire purchase provision is quoted here.

5. FORMATION OF HIRE PURCHASE AGREEMENT

A hire purchase agreement is formed when the parties enter into a valid contract whereby the owner of goods agrees to let them out on hire with an option to purchase, and the hirer agrees to pay instalments for the use of the goods. The formation of such an agreement is governed primarily by the Hire Purchase Act, which lays down essential requirements for its validity and enforceability.

For a hire purchase agreement to be validly formed, the general principles of contract law must first be satisfied. These include offer and acceptance, consideration, and intention to create legal relations. The owner offers the goods on hire purchase terms, and the hirer accepts those terms, usually by signing the agreement and agreeing to pay the stipulated instalments.

In addition to these general requirements, the Act imposes specific statutory formalities. A hire purchase agreement must be in writing and must be signed by or on behalf of the hirer. This requirement is mandatory, and failure to comply renders the agreement unenforceable against the hirer. The written agreement must also contain essential terms such as a description of the goods, the hire purchase price, the amount and timing of instalments, and the conditions under which ownership may pass.

Another important aspect of formation is capacity of the parties. Both the owner and the hirer must have legal capacity to contract. Where the hirer is a minor or otherwise legally incapacitated, the agreement may be void or voidable depending on the circumstances.

Furthermore, the agreement must clearly reflect the option to purchase, which is a defining feature of hire purchase. Until the hirer exercises this option by completing payment of all instalments, ownership remains vested in the owner.

In summary, the formation of a hire purchase agreement requires compliance with both general contract principles and the statutory requirements under the Hire Purchase Act, particularly in relation to form, signature, and essential terms.

6. HIRE PURCHASE CONTRACT AND MEMORANDUM

Hire-Purchase Contract

A hire-purchase contract is an agreement under which the **owner** lets goods to a **hirer** in return for periodic payments, with the hirer

having the right or possibility of ultimately acquiring ownership according to the terms of the agreement.

The contract should clearly state matters such as:

- * Full names and addresses of the owner and hirer.
- * Description of the goods.
- * Cash price of the goods.
- * Hire-purchase price.
- * Deposit or initial payment.
- * Amount of each instalment.
- * Number and dates of instalments.
- * Conditions relating to transfer of ownership.
- * Obligations concerning maintenance, insurance and use.
- * Consequences of default.
- * Circumstances under which the agreement may be terminated.
- * Rights relating to repossession and recovery of the goods.
- * Signatures of the parties.

A particularly important legal principle is that possession does not necessarily mean ownership. The owner may retain title until the hirer has satisfied the contractual requirements for ownership to pass. This distinction was important in *Yakassai v Incar Motors (Nig.) Ltd*¹⁵.

Note or Memorandum Under Hire Purchase Acts

The memorandum is a written document containing the essential particulars of the proposed hire-purchase transaction.

Under section 2 of the Hire-Purchase Act, before the agreement is entered into, the owner is required to provide the hirer with a written statement of the cash price at which the goods may be purchased for cash.

A note or memorandum under a hire purchase transaction is a short piece of writing which contains the essential terms of agreement between the hirer and the owner and which at the same time symbolizes an evidence of hire purchase transaction.

Section 2 (2) of the Hire Purchase Act 1990 (now 2004) makes it mandatory that a note or memorandum of the hire purchase agreement is made and signed by the hirer and by or on behalf of all other parties to the agreement.

The meaning of that provision is that the note or memorandum should be made before it is signed, thus the court held in *Eastern Distributors Ltd. v. Goldring*¹⁶ that “a memorandum signed in blank by the hirer was not a note or memorandum made and signed by the hirer.”

S 2 (2) enumerates what note and memorandum must contain to be valid and effective, they are:

A statement of the hire purchase price and of the cash price of the goods to which the agreement relates and of the amount of each of the instalments payable;

A statement of the date or the mode of determining the date upon which each instalment is payable;

A statement of the deposit paid;

A statement of the true rate of interest calculated in such manner as the minister may by regulations published in the Federal Gazette;

A list of the goods to which the agreement relates sufficient to identify them; and

A notice in the terms provided in the schedule to the Act which informs the hirer of his right to terminate the agreement, the manner of such termination and of the restriction on the owner's right to recover possession of the goods.

Finally a copy of this note and memorandum must be delivered or sent to the hirer within fourteen days of making of the agreement.

Memorandum or note is important because it is a condition precedent for the owner to comply with before he can enforce the hire purchase agreement or any contract of guarantee relating to the agreement or any right to recover the goods from the hirer.

Section 2 (2) of the Act provides: "An owner shall not be entitled to enforce a hire purchase agreement or any contract of guarantee relating to the agreement or any right to recover the goods from the hirer and no security given by the hirer in respect of money payable under a contract of guarantee relating to the agreement shall be enforceable against the hirer or guarantor unless the requirement on this note and memorandum is satisfied."

However, if the effect of failure to comply with this requirement of note and memorandum does not prejudice the hirer and that it would be just and equitable to dispense with the requirement, the court may dispense with the requirement and enforce the hire purchase transaction in favour of the owner, though the court may impose condition it deems fit.

We should note that if a hire purchase transaction is governed by common law, the requirement of note and memorandum is inapplicable. In *Adelabari v. Niger Motors Ltd.*¹⁷, the parties entered into an hire purchase agreement in 1964, but the purported an hire purchase agreement was not signed by the owners. The Supreme Court held that section 2 (2) of the Act was inapplicable to the transaction that took place before the 1965 Act.

But in *Yusuf and Anor v. Oyetunde and Anor*¹⁸, the owner failed to state in writing to the hirer, the cash price of the vehicle. A high court in Kaduna held that the owner could not recover the goods by instituting an action for their recovery or by exercising his right under the agreement to seize them on his own without judicial power. Also, *Sarafa Ayoke v. Alhaji Sule Bello*¹⁹, where it was held by the Court of Appeal that a credit sales agreement signed by the plaintiff's husband on her behalf, was termed a mere paper as the original buyer did not sign as required under Section 2 (2a) of the Hire Purchase Act of 1965.

The memorandum should contain essential financial particulars, including:

1. Cash price of the goods;
2. Hire-purchase price;
3. Amount of deposit, where applicable;
4. Amount of each instalment;
5. Number of instalments;
6. Dates on which instalments become payable; and
7. Other particulars required by the Act.

¹⁷ (1963) 3 All ER 486.

¹⁸ (1963) 3 All ER 486.

¹⁹ (1988) All NLR 70.

¹⁵ (1975) 1 All NLR 287; (1975) 5 SC 95.

¹⁶ (1957) 2QB. 600.

The purpose is to ensure that the hirer understands the financial implications of the transaction before becoming legally bound.

Legal Consequence of Failure to Comply

The statutory requirements concerning the form and contents of a hire-purchase agreement are important because they are intended to prevent consumers from being bound by agreements whose financial terms were not properly disclosed.

The courts have repeatedly emphasized that the true nature of the transaction, rather than merely the label placed on it by the parties, determines whether an arrangement is actually a hire-purchase transaction.

In *Alhaji Jimoh Ajagbe v Layiwola Idowu*²⁰, the Supreme Court considered the nature of hire purchase and the importance of distinguishing it from other transactions involving instalment payments.

Similarly, *Yakassai v Incar Motors (Nig.) Ltd*²¹ demonstrates why parties must properly establish whether their transaction is a genuine hire-purchase agreement or an outright sale on credit.

7. DISTINCTION BETWEEN HIRE PURCHASE AND OTHER COMMERCIAL TRANSACTIONS

i. Hire Purchase and Outright Sale

In an outright sale, ownership generally passes to the purchaser in accordance with the terms of the sale. The purchaser becomes the owner and the seller's remedies for non-payment depend upon the contractual and applicable statutory rules.

In hire purchase, possession may pass to the hirer while ownership remains with the owner until the conditions for transfer are satisfied.

This distinction was clearly illustrated in *Yakassai v Incar Motors (Nig.) Ltd*²². The Supreme Court held that where the transaction was an outright sale, the seller could not simply seize the vehicle because the purchaser had failed to complete payment. The seller's remedy was to pursue recovery of the outstanding payment through appropriate legal action. The Court noted that the position would have been different if the transaction had validly been established as a hire-purchase agreement.

ii. Hire Purchase and Credit Sale

The two transactions may appear similar because both permit payment by instalments. Their legal consequences, however, differ.

In credit sale, the buyer ordinarily becomes owner while owing the seller the balance of the purchase price, *Lee v. Butler*²³.

In hire purchase, the hirer initially acquires possession rather than full ownership. Ownership is retained by the owner pending compliance with the contractual conditions.

iii. Hire Purchase and Loan

A loan involves the advancement of money by a lender to a borrower, who becomes indebted to repay the amount, usually with interest.

Hire purchase, by contrast, focuses upon the provision of goods. Although the commercial effect may sometimes resemble financing, the legal relationship is principally structured around possession, use, payment and eventual ownership.

iv. Hire Purchase and Lease

A lease generally grants possession and use of property for a defined period in return for rent. It does not necessarily contemplate transfer of ownership.

Hire purchase differs because it contains a mechanism by which ownership may eventually pass to the hirer.

v. Hire Purchase distinguished from Conditional Sale Agreement

Conditional sale agreement is an agreement in which the buyer does not obtain the ownership in the goods until the performance or occurrence of certain conditions or events. Often the condition to be fulfilled is always the payment of purchase price.

The system of conditional sale agreement is similar and closely resembles that of hire purchase, particularly where the buyer has received the goods but the transfer of ownership is subject to installment payment of price until the whole price is liquidated or fully paid. The resemblances are: one, in those two cases, property in the goods remains with the owner until the full payment of the price by installment payments; two, the owner or the seller has some rights, depending on circumstances, to retake possession of the goods, if the buyer or hirer defaults; and lastly the owner or the hirer, further to the point mentioned in number two, can sell the goods to third parties or put them (i.e. goods) into private use.

Thus in *Adigun v Amao*²⁴, where the lorry which was the subject matter of the case was registered in the name of the seller in addition to an insurance policy taken also in that name, the court held that the seller had a right not only to seize the lorry but to sell it to a third party.

Similarly in *Sengene v. Yaopoku*²⁵ the court held that there was nothing strange and unlawful for a conditional credit sale to include a term in express agreement between the parties that in case of default by the buyer to pay the purchase price the seller could seize the goods and sell them to third parties. However, there are some distinctions:

- (i) In hire purchase contract, the hirer may not purchase the goods eventually but in a credit sale agreement, the buyer is obliged to purchase the goods and complete the full price of the goods. In *Amao v. Ajibade & Others*²⁶, the agreement between the parties is to the effect that the buyer could take possession of goods after the payment of deposit of £400. The balance of the purchase price of £1,045 should then be paid in three equal instalments. It was also agreed that the owner should have proprietary right until the full purchase

²⁰ (2011) 17 NWLR (Pt. 1276) 422; (2011) 37 WRM 1.

²¹ (Supra).

²² (Supra).

²³ (Supra).

²⁴ (1979) LRN 54.

²⁵ (1943) 9 WACA 142.

²⁶ (1955/56) WRNLR 121.

price, is paid. The Court held that the contract was that of conditional sale agreement and not a hire purchase agreement because the buyer is under compulsion to complete the full purchase price but in a hire purchase agreement the hirer has an option to buy or not to buy the good and consequently may not complete the payment of purchase price.

- (ii) Hire purchase is governed by the Hire Purchase Act Cap 169 1990 now 2004, while conditional sale is regulated by Sale of Goods Act 1893 and respective sale of Goods Laws of various states.
- (iii) The names of the parties in conditional sale agreement are seller and buyer but that of hire purchase are owner and hirer.

8. RIGHT AND OBLIGATION OF THE PARTIES

(i) Obligations/Duties of the Owner

- (a) **Delivery of Goods:** The owner must deliver the goods to the hirer when due and in acceptable condition.
- (b) **Title:** The owner must hold valid legal title to the property before entering into a hire purchase contract.
- (c) **Description:** Goods delivered must strictly match the agreed-upon description provided by the buyer.
- (d) **Fitness and Merchantable Quality:** Delivered items must be fit for their intended purpose and of merchantable quality.
- (e) **Exception (Latent Defects):** Under principles established in cases like *Anoka v. SCOA Warri*²⁷, the implied warranty of fitness does not cover hidden defects that the owner could not reasonably detect without taking the item apart (such as internal engine defects).
- (f) **Quiet Possession:** The hirer is entitled to uninterrupted possession, and the owner must refrain from unnecessary interference.
- (g) **Furnishing Information:** Both parties must disclose relevant transactional details, including amounts paid, dates of payment, and outstanding balances.

(ii) Obligations/Duties of the Hirer

- (a) **Acceptance of Delivery:** The hirer must accept delivery when tendered properly; failure to do so can result in a claim for non-acceptance.
- (b) **Duty of Care:** The hirer must exercise reasonable care to prevent damage to the property.
- (c) **Punctual Payment of Installments:** Installments must be paid strictly when due. As shown in *Animashawun v. CFAO*²⁸, default on payments gives the owner the immediate right to repossess the goods.
- (d) **Redelivery:** If the contract terminates or falls through, the hirer must return the property to the owner.
- (e) **Prohibition Against Sale:** The hirer cannot sell the goods prior to completing all installment payments and acquiring legal title.
- (f) **Acts Inconsistent with Owner's Rights:** The hirer must not take actions inconsistent with the owner's ownership rights until full title transfers.

9. REMEDIES FOR BREACH OF HIRE PURCHASE AGREEMENT

1. **Repossession of The Goods:** One of the most common remedies available to the owner is the right to repossess the goods where the hirer defaults in payment or breaches a fundamental term of the agreement. However, this right is not absolute and is regulated by statute to protect the hirer from oppressive recovery.
2. **Action For Damages:** Where there is a breach of contract, either party may sue for damages. The owner may claim damages for unpaid instalments, depreciation of the goods, or loss arising from wrongful use or destruction of the item. While, the hirer may also claim damages if the owner wrongfully repossesses the goods or breaches statutory protections. Damages are generally intended to place the innocent party in the position they would have been in if the contract had been properly performed.
3. **Termination of The Agreement:** The hirer has the statutory right to terminate the hire purchase agreement at any time before full payment, provided they return the goods and comply with agreed conditions.
4. **Recovery of Balance of Instalments:** If the hirer defaults and the owner terminates the agreement, the owner may sue for outstanding instalments already accrued or damages for breach of contract. However, they cannot claim future instalments that have not yet fallen due unless the contract expressly allows it.
5. **Statutory Protection For Hirers:** The Hire Purchase Act introduces important safeguards such as, the one-third rule, restricting repossession without court order. The requirement for clear disclosure of cash price, instalment price, and interest and the protection against unfair terms and hidden charges.

Minimum Payment Clauses and Damages

In hire-purchase agreements, there is usually a provision known as the minimum payment clause, which specifies the minimum amount a hirer must pay if he decides to terminate the agreement. The purpose of this clause is to protect the owner from financial loss resulting from early termination by the hirer.

At common law, hire-purchase agreements often include minimum payment clauses requiring the hirer, upon termination, to pay a specified sum. These clauses may take different forms, such as:

A fixed percentage of the total hire-purchase price,

A variable percentage of the hire-purchase price, as provided for in *Lombank Ltd v Excell*²⁹, or An amount based on agreed depreciation of the goods.

Generally, such clauses are not regarded as penalties where the hirer voluntarily terminates the agreement.

For example, in *Associated Distributors Ltd v Hall*³⁰, the hirer returned a bicycle after paying only one instalment. The agreement required payment of half the total hire-purchase price upon termination. The court upheld the clause, holding that it was a valid contractual term and not a penalty.

²⁷ (*Supra*).

²⁸ (1960) LLR 151.

²⁹ (1963) 3 All ER 486.

³⁰ (1938) 2 KB 83.

However, in *Amusan & Thomas v Bentworth Finance*³¹, the Supreme Court considered whether such a clause amounted to a penalty or liquidated damages. The court held that this depended on who terminated the contract. If the owner terminated, the clause could amount to a penalty; but if the hirer terminated, it would be treated as liquidated damages. In that case, due to lack of clear evidence that the hirer terminated the agreement, the clause was treated as a penalty and therefore unenforceable.

Similarly, in *Cooden Engineering Co Ltd v Stanford*³², the court held that a clause requiring the hirer to pay 100% compensation upon termination was excessive and therefore constituted a penalty, making it unenforceable.

Position under the Hire-Purchase Act

Under Section 8(1) of the Hire-Purchase Act, the law regulates the hirer's liability upon termination. It provides that the maximum amount a hirer may be required to pay under a minimum payment clause is one-half (50%) of the total hire-purchase price.

10. JUDICIAL INTERVENTION IN SOME CELEBRATED HIRE PURCHASE AGREEMENT

Judicial decision has played a vital role in shaping the law of hire purchase.

In *Helby v. Matthews*, the court established that a hirer does not acquire ownership and cannot transfer good title.

In *Atere v. Amao*³³, the court held that a hirer who has not completed payment cannot pass valid title to a third party. This reinforces the principle of *nemo dat quod non habet*.

In *UTC (Nig.) Ltd v. Pamotei*³⁴, the Supreme Court reaffirmed that ownership remains with the owner until all contractual conditions are fulfilled.

In *Owoniboy Technical Services Ltd v. John Holt Ltd*³⁵, the court emphasized strict adherence to contractual terms in hire purchase agreements.

These cases collectively confirm that possession does not amount to ownership in hire purchase transactions.

*Jajira v. Northern Breweries*³⁶, the Court held that where a loan is advanced to a person to purchase a chattel on the condition that the property in the chattel will remain in the guarantor of the loan until all the instalments are paid.

*Joe Allen and Co. v. Sanni Adewale and Bello Lateju*³⁷, it was held that since the sale has been completed, the plaintiff could not recover from the surety.

11. TERMINATION OF HIRE PURCHASE AGREEMENT

³¹(1965) 1 All ER 382.

³² (1953) 2 All ER 286.

³³ (1957) WRNLR 176.

³⁴ (1989) 2 NWLR (Pt. 103) 244.

³⁵ (1991) NWLR 265.

³⁶ (1972) NMLR 29.

³⁷ (1929) 9 NLR 111.

- (i) **Performance:** So long as the parties to the transaction perform their own side of the bargain, and bearing in mind that the essence of this transactions for the hirer to ultimately purchase the good involved, it stands to reason, that the most obvious way of terminating this type of agreement is through performance of the contract. Hence, once the hirer exercises his option to purchase, the contract is brought to an end by performance.
- (ii) **By Agreement:** Whatever the stage the agreement has reached, it is noted clearly that the transaction can be terminated at any time (whether it is executory or executed) so long as the parties consent to the terms of the termination; i.e. there must be mutual agreement to terminate.
- (iii) **By Repudiation:** This may occur where either parties breaches certain conditions of the contract, or of course it entitles the innocent party to repudiate and go further to claim damages since the contract is treated because of such breach as having ended.
- (iv) **By Notice:** Both under the term of the agreement and under the Hire Purchase Act. It is usual for the agreement to provide for the hirer to terminate the contract before the end of the hire purchase transaction since the essence of hire purchase is to ensure that his freedom to choose whether to purchase or not is not fettered or rendered illusory.

12. HIRE PURCHASE AS A COMMERCIAL TRANSACTIONS MECHANISM FOR EASE AND MODERN WAY OF DOING PURCHASING BUSINESS IN NIGERIA

Hire purchase has become one of the most practical and commercially relevant methods of conducting business in Nigeria, particularly within the framework of modern commercial law. It represents a hybrid contractual arrangement that blends elements of bailment and sale, allowing a person (the hirer) to take immediate possession of goods while paying for them in instalments, with ownership transferring only upon the fulfilment of stipulated conditions. This system has gained remarkable traction in Nigeria due to prevailing economic realities such as limited access to credit, low disposable income, and the high cost of capital. As a result, it has evolved from a mere contractual device into a major commercial strategy for facilitating trade, expanding markets, and driving economic participation across various sectors.

Under Nigerian law, hire purchase transactions are principally governed by the Hire Purchase Act, although its applicability is somewhat restricted by monetary thresholds and geographical limitations, meaning that in many instances, the common law and general principles of contract continue to regulate the relationship between parties. The legal nature of hire purchase was definitively clarified in *Helby v Matthews*³⁸, where the court emphasized that such an agreement does not constitute a sale but rather a bailment

³⁸ (1895) A.C 471.

with an option to purchase. This distinction is critical in commercial practice because ownership remains vested in the owner or creditor until the hirer exercises the option to purchase, usually by completing all installment payments. Consequently, the owner retains proprietary rights over the goods, including, in appropriate circumstances, the right to repossess them upon default.

In modern Nigerian commerce, hire purchase has found extensive application as a financing mechanism that bridges the gap between outright purchase and traditional lending. Its significance lies in its ability to democratize access to goods and productive assets without requiring immediate full payment. This has made it particularly attractive in a developing economy where liquidity constraints are common. Businesses, especially retailers and manufacturers, have adopted hire purchase as a marketing and sales strategy to increase turnover and customer base. By allowing customers to spread payments over time, sellers effectively reduce the barrier to purchase, thereby stimulating demand and enhancing revenue generation. This model has become especially prevalent in the sale of consumer goods such as electronics, household appliances, and furniture, where the high upfront cost would otherwise deter potential buyers.

Beyond consumer transactions, hire purchase plays a critical role in the financing of capital assets within Nigeria's commercial sector. Small and medium-scale enterprises (SMEs), which form the backbone of the Nigerian economy, frequently rely on hire purchase arrangements to acquire machinery, equipment, and operational tools necessary for business expansion. In the absence of readily accessible bank loans, hire purchase provides an alternative means of financing that does not require extensive collateral or complex credit evaluation processes. This has had a multiplier effect on productivity, employment, and overall economic growth, as businesses are able to scale operations and improve efficiency without the burden of large initial capital outlays.

The automobile industry in Nigeria also exemplifies the practical application of hire purchase as a modern business model. Many individuals and corporate entities acquire vehicles through structured instalmental arrangements facilitated by car dealers, finance companies, and banks. These arrangements typically involve an initial deposit followed by periodic payments, with ownership transferring upon completion. This has not only increased vehicle ownership but has also supported ancillary industries such as logistics, transportation services, and ride-hailing businesses. In this context, hire purchase functions as both a commercial and developmental tool, enabling mobility and economic activity.

In recent years, the application of hire purchase in Nigeria has been further transformed by technological advancements and the rise of financial technology (FINTech) companies. Digital platforms now offer variations of hire purchase arrangements, commonly referred to as "Buy Now, Pay Later" (BNPL) schemes, which allow consumers to obtain goods and pay in instalments through online interfaces. These platforms utilize data analytics and automated credit assessments to streamline the approval process, thereby expanding access to credit for a wider segment of the population. This digital evolution has significantly modernized the traditional hire purchase model, making it more efficient, accessible, and aligned with contemporary consumer behavior.

From a legal standpoint, the application of hire purchase in Nigeria incorporates a balance between the rights of the owner and the protection of the hirer. The Hire Purchase Act imposes certain obligations on owners, including the requirement that agreements be in writing and that key terms such as the cash price, hire purchase price, and installment structure be clearly disclosed. It also provides safeguards against arbitrary repossession, particularly where the hirer has paid a substantial portion of the purchase price. In such cases, the owner may be required to obtain a court order before repossessing the goods. These provisions are designed to prevent exploitation and ensure fairness in commercial dealings.

Nevertheless, the practical application of hire purchase in Nigeria is not without challenges. One of the major limitations is the restricted scope of the governing legislation, which does not adequately cover all categories of goods or transactions, thereby leaving significant gaps in consumer protection. Additionally, there is a tendency among some creditors to incorporate onerous terms in hire purchase agreements, including excessive interest rates and harsh repossession clauses. On the other hand, defaults by hirers remain a persistent issue, often resulting in financial losses for businesses and contributing to cautious lending practices. The enforcement of rights through the judicial system can also be slow and cumbersome, further complicating the effectiveness of the system.

Another important aspect of the application of hire purchase in modern Nigerian commerce is its distinction from other forms of commercial transactions such as credit sales and leases. Unlike a credit sale, where ownership passes immediately and payment is deferred, hire purchase retains ownership in the seller until all conditions are fulfilled. Similarly, unlike a lease, which typically does not confer an option to purchase, hire purchase inherently includes such an option. These distinctions are not merely theoretical but have practical implications for risk allocation, taxation, and the rights of third parties.

In evaluating hire purchase as a modern way of doing business in Nigeria, it is evident that its relevance extends beyond mere transactional convenience. It has become an essential instrument for financial inclusion, enabling individuals and businesses to participate in economic activities that would otherwise be inaccessible. It supports consumption, encourages investment, and facilitates the circulation of goods within the economy. Moreover, its adaptability to technological innovation ensures that it remains responsive to changing market dynamics.

In conclusion, hire purchase occupies a central position in Nigeria's commercial landscape as a dynamic and versatile method of conducting business. Its application reflects a pragmatic response to economic challenges, offering a flexible and accessible means of acquiring goods and financing business operations. While legal and practical challenges persist, the continued evolution of the system, particularly through digital integration and potential legislative reforms, underscores its enduring significance as a cornerstone of modern commerce in Nigeria.

13. APPRAISAL OF SIGNIFICANCE AND CHALLENGES OF HIRE PURCHASE

Hire purchase as a commercial system offers significant advantages to both consumers and businesses, which explains its

continued relevance in modern Nigerian trade. At its core, it provides a flexible credit arrangement that allows consumers to acquire goods immediately while spreading payment over time. This makes expensive durable goods such as vehicles, electronics, and machinery more accessible to individuals who may not have the financial capacity to pay outright. In this way, hire purchase promotes consumer welfare by improving access to essential goods and enhancing living standards.

From a business perspective, hire purchase greatly increases sales and market expansion. Manufacturers and dealers benefit because it widens the pool of potential customers beyond those who can afford immediate payment. By enabling instalment payments, businesses are able to move goods faster, improve cash flow over time, and reduce the problem of unsold stock. This system therefore stimulates production, encourages competition, and supports economic growth by increasing demand in the market. It is particularly useful in developing economies like Nigeria where purchasing power is unevenly distributed.

Hire purchase also promotes financial inclusion and entrepreneurship. Small-scale business owners who may not qualify for bank loans are able to acquire productive assets such as vehicles or equipment through instalment arrangements. This enhances productivity and supports self-employment, making hire purchase an important tool for economic development. In addition, it reduces the immediate pressure on consumers to seek formal credit from banks, thereby providing an alternative financing option in the commercial system.

Despite these advantages, hire purchase also presents several challenges and disadvantages. One major problem is that it is often more expensive in the long run compared to outright purchase. This is because the total amount paid under hire purchase usually includes interest, administrative charges, and other hidden costs, which significantly increase the overall price of the goods. As a result, consumers may end up paying far more than the original market value.

Another major issue is the risk of repossession. Since ownership remains with the owner until the final instalment is paid, any default by the hirer may lead to repossession of the goods. This can cause significant hardship, especially where the hirer has already made substantial payments. Although the Hire Purchase Act 1965 provides some protection to hirers by restricting arbitrary repossession, the risk still remains a serious disadvantage in practice.

Additionally, hire purchase can encourage financial over commitment by consumers. Because goods are easily accessible without full payment, individuals may enter multiple agreements beyond their financial capacity, leading to default and financial strain. This may create long-term debt pressure and instability for consumers.

There is also the problem of unfair contractual terms in some agreements, particularly where consumers are not fully aware of the total obligations involved. Although statutory regulation exists, gaps in enforcement may allow unscrupulous dealers to impose harsh conditions on hirers. This undermines the fairness of the system and can lead to disputes between parties.

14. CONCLUDING REMARK AND RECOMMENDATIONS

Hire purchase, as defined in commercial law, is a contractual arrangement whereby goods are delivered to a hirer in return for periodic payments, with ownership remaining with the owner until the final instalment is paid and the option to purchase is exercised. Its essential nature lies in the separation of possession from ownership, coupled with the element of choice afforded to the hirer, who is not bound to complete the purchase until all contractual conditions are fulfilled. This distinguishes it fundamentally from both conditional sale and credit sale agreements. In a conditional sale, ownership passes automatically upon the fulfillment of specified conditions, while in a credit sale, ownership transfers immediately despite payment being deferred. Hire purchase, therefore, uniquely preserves ownership with the seller until full performance, making it a more protective structure for the financier.

The evolution of hire purchase reflects the transformation of commerce from rigid cash-based transactions to flexible credit-driven systems designed to accommodate economic realities, particularly in developing economies like Nigeria. It emerged as a response to limited consumer purchasing power and has since developed into a widely accepted commercial tool used in financing vehicles, machinery, electronics, and other capital goods. This evolution underscores its relevance in modern business practice, where access to assets without immediate capital outlay is essential for both individual advancement and business expansion.

The operation of hire purchase also imposes distinct legal duties on the parties involved. The owner is obligated to deliver goods in a usable and merchantable condition and to respect statutory safeguards governing repossession and disclosure of terms. Conversely, the hirer is duty-bound to make timely instalment payments, take reasonable care of the goods, and refrain from disposing of or encumbering the goods before ownership passes. These reciprocal obligations ensure a balance of interests, protecting both the financier's proprietary rights and the hirer's possessory and statutory protections.

This paper argues that hire purchase remains commercially valuable because it facilitates access to productive assets, encourages consumer spending, supports business expansion and reduces the immediate financial burden associated with outright purchases. However, the effectiveness of the Nigerian legal framework is undermined by outdated monetary thresholds, enforcement difficulties, inadequate adaptation to digital commerce, uncertainty surrounding modern financing arrangements, and the need to balance the interests of owners and hirers. Despite certain statutory limitations, it continues to serve as an effective means of bridging the gap between financial constraint and asset acquisition, thereby reinforcing its position as a cornerstone of contemporary commercial law and business practice in Nigeria. This paper recommends that legislative modernization is necessary to make hire purchase more responsive to contemporary Nigerian commercial realities. Also, the review of monetary limits, recognition of electronic documentation, stronger consumer protection, clearer rules on digital transactions and repossession, improved dispute-resolution mechanisms and a balanced regulatory framework capable of supporting both commercial innovation and fairness.

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