

---

## Commercial Law And Agreements

Hire purchase agreements are agreements whereby an owner of goods allows a person, the hirer, to hire goods from him for a specified time while paying the owner in scheduled instalments. The hirer has an option to buy the goods at the end of the agreement if all installments are being paid. Hire Purchase Agreements however, are not contracts of sale but contracts of bailment as the hirer merely has an option to buy the goods. The hirer has the right of using the goods but he is not the legal owner during the term of the agreement.

Hire Purchase is a way of financing the sale of goods at a future date. Section 24 of The Hire-Purchase Act, 1974 (NRCD 292) in the interpretation section defines a Hire Purchase Agreement as an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee. With a Hire Purchase Agreement, the hirer has an option to purchase the goods or not and also, property does not pass until full purchase price has been made.

Under common law, a hire-purchase agreement is an agreement under which the owner of the goods delivers them to the hirer in exchange for a periodic payment made by the hirer, and further agrees that the hirer can return and terminate the agreement or purchase the goods at the end of the contract period. In summary, a hire purchase agreement is an agreement in which the hirer pays in instalments with the option to purchase the goods, but is not liable to do so.

There are some key features of Hire Purchase Agreements which set them apart from any other type of contract; the first of which is the element of hire. In a hire purchase agreement, the hirer enjoys the goods in return for certain periodic payments made to the owner. It implies a relationship in which property of the owner temporarily goes into the possession of the hirer until the hirer effectively exercises the option to purchase.

The second element of a Hire Purchase Agreement is the option to purchase. In this agreement the owner is said to make an irrevocable offer to sell the goods to the hirer, with the hirer having the option of either purchasing the goods, or returning them, thereby terminating the Hire Purchase Agreement. The hirer may exercise the option to buy the goods by paying what is known as an option fee which is a supplementary and minimal amount of money paid after he has paid the scheduled instalments to the owner. After payment of the additional nominal sum, the property in the goods will be transferred from the owner to the hirer. Also, the option fee may be included into the stated instalments made to the owner so that after he has fulfilled his obligation in meeting all the payments due, the property in the goods will automatically confer in the hirer.

The elements of a Hire Purchase Agreement is perfectly couched in the case of *Helby v Matthews*. A piano was hired to an individual, the contract providing that he was to retain possession of the piano while he kept up the payment instalments. At the end of the term, he was given an option to purchase but before that time, the hirer pledged the piano to a pawnbroker and defaulted on the payments. It was held that upon the true construction of the agreement, the hirer was under no legal obligation to buy, but had an option either to return the

---

piano or to become its owner by payment in full; that by putting it out of his power to return the piano he had not become bound to buy; that he had therefore not 'agreed to buy goods' within the meaning of the Factors Act 1889 s. 9, and that the owner was entitled to recover the piano from the pawnbroker.

To meet the requirements of a valid and successful hire-purchase agreement, the following must be observed:

Firstly, before an agreement is made, the seller or owner shall orally and in writing to the prospective hirer or buyer, otherwise than in the agreement referred to in Section 1, the price at which the goods may be purchased for cash and the hire-purchase price or the total purchase price. It is felt that the requirement of stating both prices in writing will aid the buyer in understanding the terms of the transaction.

Secondly, for a hire purchase agreement to be enforceable, the agreement must be in writing and signed by the hirer or buyer by or on behalf of any other parties to the agreement. Note that the owner is required to sign the agreement; this is to see that he takes a direct step in the formation of the agreement and its procedures.

Thirdly, the agreement shall contain

- a statement of the cash price and the hire-purchase price or total purchase price, as the case may be, of the goods;
- the amount of each instalment by which the price is to be paid and the date or the mode of determining the date upon which each instalment is payable;
- a description or list of the goods to which the agreement relates sufficient to identify them;
- a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms set out in the First or Second Schedule to this Decree.

A copy of the agreement shall be delivered or sent to the hirer or buyer within 14 days after the making of the agreement.

Failure to follow such requirements listed above have huge implications on both parties, especially the owner of the goods. The law seeks to protect the hirer in this situation because he is the most vulnerable party in the agreement and as such the law imposes harsh measures on the owner to serve as a check in ensuring that there is no deviousness on the part of the owner in the agreement.

The consequences of unenforceability on the part of the owner includes

- He shall not be entitled to enforce any contract of guarantee relating to that agreement;
- No security given by the hirer or buyer in respect of money payable under the agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall be enforceable against the hirer or buyer, or against the guarantor, as the case may be, by the holder of such a security; and
- The owner or seller shall not be entitled to enforce any right to recover the goods from the hirer or buyer.

---

The consequences on the part of the hirer for failure to enforce the contract are less severe. A consequence of unenforceability on the part of the hirer is the termination of the contract which then removes any obligations from the parties and establishes them back to their respectful positions before the agreement was made.

Where the parties fail to comply with the requirement in Section (1) (b) which talks about the price at which goods may be purchased for cash and the hire-purchase price, Section (1) (c) which talks about the date and description of the goods and section 3(2) which is the requirement to deliver the copy of the agreement, the court can exercise its discretion and still hold the agreement enforceable if it considers it just and equitable to do so and if it's clear that the omission of those requirement has not prejudiced the hirer in any way.

This is seen in the case of Mensah v Osei. The defendant let a second-hand car to the plaintiff on a hire purchase agreement for the price to be paid in various installments. The hire purchase agreement however did not contain the various notices prescribed in the hire purchase Act, 1958 which were that there must be a notice which relates to the rights of the hirer to terminate the agreement by returning the goods and restriction on the owner's right to recover the goods after a certain percentage price has been paid. The car developed a fault and the plaintiff sent it to repairs to which the repairs cost was debited to the defendant. Later, the defendant seized the car as a result of arrears in the installments payable. The plaintiff sued for the return of the car contending that the agreement lacked the basic requirement as specified by the Act. The court held that although there were clear breach of the act, in that it did not incorporate the statutory notice as to the hirer's right to terminate the hire agreement, the court will presume that the plaintiff knew at all times as everybody is presumed to know the law that he could terminate the hire-purchase agreement if he wished. Failure to comply with section 4 (2) (c) of NRCDC 292 has therefore not prejudiced the plaintiff in any way. The court thus used its discretion here.

Any provision in a hire-purchase or conditional sale agreement shall be void to the extent that it provides that—

- an owner or seller or any person acting on his behalf is authorized to enter upon any private land or premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement or sold under a conditional sale agreement or is relieved from liability for such an entry; or
- the right conferred on a hirer by section 5 to terminate the hire-purchase agreement is excluded or restricted, or any liability beyond that imposed by section 6 is imposed on a hirer by reason of the termination of the hire-purchase agreement by him or under that section; or
- a hirer, after the termination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been terminated by him under this Decree; or
- any person acting on behalf of an owner or seller in connection with a hire-purchase or conditional sale agreement is treated as or deemed to be the agent of the hirer or buyer; or
- an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with a hire-purchase or conditional sale agreement.