

THE EVOLUTION OF LEGAL FORMALITIES IN THE FORMATION OF HIRE-PURCHASE AGREEMENTS IN NIGERIA: A DOCTRINAL ANALYSIS¹

Abstract

This paper critically examines the evolution of legal formalities governing the formation of hire-purchase agreements in Nigeria. Drawing on a doctrinal methodology, the study traces the development of formal requirements from their common law roots to their current statutory framework under the Hire-Purchase Act, LFN 2004. Initially characterised by informality and minimal documentation, hire-purchase transactions in Nigeria have undergone significant legal transformation to regulate contractual conduct, protect consumers, and promote commercial certainty. The paper analyses key statutory provisions, judicial decisions, and comparative influences that have shaped the legal architecture of hire-purchase agreements in Nigeria. The paper found that the formalities were designed to protect hirers from exploitation and ensure transparency in credit transactions. The paper recommends a thorough legislative review of the Hire Purchase Act to deal with significant limitations in the current legal framework.

Keywords: Hire-purchase, Owner, Hirer, Possession, Bailment.

1.0 Introduction

Hire purchase originated in the United Kingdom during the 19th century as a response to the need for consumers to acquire expensive goods without paying the full price upfront. The system allowed buyers to pay a deposit and then make regular installment payments, with ownership transferring only after all payments were completed. This arrangement particularly benefited those lacking immediate access to sufficient funds or collateral.

The practice gained commercial traction in 1846, credited to Henry Moore, a piano maker, and was popularised by companies like Singer Manufacturing, which used HP to sell sewing machines. Mr. Henry Moore, the Bishop Gate Piano maker, claimed to have invented the hire purchase trading system in England in 1846. This trading system soon gained ground with the advent of the Sewing machine made by the Singer Manufacturing Company, which let out machines to its customers under a hire system containing an option to purchase.² This system allowed consumers to acquire goods by paying installments while using the goods, with ownership transferring only after full payment. In 1889, the UK enacted the Factors Act, which protected bona fide purchasers from agents who had "bought or agreed to buy" goods.³ The hire purchase system was partly designed to circumvent some provisions of this Act.

The landmark case of *Helby v Matthews*⁴ fundamentally shaped the law of hire purchase in the UK by clarifying the legal nature of hire purchase agreements and distinguishing them from conditional sales. This landmark House of Lords case clarified the legal nature of hire purchase agreements. In this case, the plaintiff gave possession of a piano to a third party. The title in the piano was to pass to the third party upon the payment of certain installments.

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² Vincent, Nelson. "The Meaning, Evolution and Essence of Hire Purchase." *Blogger*, 19 Nov. 2024, <https://www.vinelegal.com.ng/2021/09/the-meaning-evolution-and-essence-of.html>.

³ Ukpga_18890045_en.pdf." n.d., https://www.legislation.gov.uk/ukpga/1889/45/pdfs/ukpga_18890045_en.pdf. Accessed 28 May 2025.

⁴(1895) AC 471

Before the installments were paid in full, the third party pledged the piano to the defendant. The plaintiff/owner thus sued to reclaim possession of the piano. The House of Lords held that until the installments were paid entirely, the title in the goods still resided in the plaintiff. Thus, the third party could not validly transfer the same to the defendant through a pledge. The court held that under a typical hire purchase contract, the hirer is not obliged to buy; the agreement is essentially a hiring contract with an option to purchase, not a contract of sale. Therefore, until all installments are paid and the option to purchase is exercised, the hirer does not acquire ownership and cannot transfer good title to third parties. This principle distinguishes hire purchase from conditional sales, where the buyer must complete the purchase.⁵ Subsequently, the UK Parliament passed the Hire Purchase Act of 1938, the first Statute to regulate hire purchase agreements, introducing protections for hirers and balancing the interests of owners and buyers. This Act was amended and reenacted several times, including in 1954, refining the legal framework governing hire purchase.⁶

2.0 Historical Development of Hire Purchase in Nigeria

In Nigeria, hire purchase transactions were initially governed by English Common Law principles, often favouring owners and leaving hirers vulnerable. To address this, Nigeria enacted the Hire Purchase Act in 1965, modeled primarily on the UK Hire Purchase Acts of 1938 and 1954 but adapted to Nigerian conditions.⁷ Initially, this Act applied only to the Federal Capital Territory of Lagos. The Hire Purchase (Application) Decree of 1966 extended its application nationwide, and the Hire Purchase (Appointed Day) Order of 1968 brought the Act into full force across Nigeria. The Act was further amended in 1970 by Decree No. 23, which made minor changes to improve its operation.⁸ Additional regulations, such as the Hire Purchase Regulation 1968, were introduced to control interest rates and contract terms. Over the years, Nigeria has re-enacted and updated its hire purchase legislation, notably in 1990 and 2004, to modernise the law and enhance protections for hirers while regulating credit sales alongside hire purchase agreements. In summary, the hire purchase system evolved from informal commercial practice in the UK to a well-defined legal framework through judicial decisions and legislation. Nigeria adopted this framework, enacting its laws to regulate hire purchase transactions and protect consumers, reflecting the foundational UK model while addressing local commercial realities. This legislative evolution illustrates the progression from early hire purchase practices to comprehensive statutory regulation in both jurisdictions.

2.1 Hire-Purchase Distinguished from Similar Legal Transactions

Although a hire-purchase agreement shares certain commercial features with other contractual arrangements, it remains a distinct legal construct governed by specific statutory and common law principles. Clarifying its legal character requires distinguishing it from related transactions such as hire, loan and mortgage, sale on credit terms, and conditional sale agreements.

⁵Olamide, O. "The Law of Hire Purchase In Nigeria - The Jet Lawyer." *The Jet Lawyer*, 2016, 2016, <https://djetlawyer.com/law-hire-purchase-nigeria/>. Accessed 28 May 2025.

⁶Ng-government-gazette-supplement-dated-1965-04-29-no-38-part-c.pdf." n.d., <https://archive.gazettes.africa/archive/ng/1965/ng-government-gazette-supplement-dated-1965-04-29-no-38-part-c.pdf>. Accessed 28 May 2025

⁷"AJHSS_VOL19_NO6_DEC2020-1.pdf." n.d., https://www.africanscholarpublications.com/wp-content/uploads/2021/04/ajhss_vol19_no6_dec2020-1.pdf. Accessed 28 May 2025.

⁸Placng.Org, <https://www.placng.org/lawsfnigeria/laws/H4.pdf>. Accessed 28 May 2025.

2.2 Hire v Hire-Purchase: A contract of hire is a bailment where the hirer obtains possession and use of goods in exchange for periodic payments, with no intention or mechanism for transfer of ownership. Title to the goods remains with the owner throughout. In contrast, a hire-purchase agreement, while commencing as a contract of hire, includes an option to purchase upon fulfilment of certain conditions, typically the payment of all installments. This distinction was affirmed by the Nigerian Supreme Court in *UAC v Edems & Ajayi Ltd*⁹, where it was held that in a hire-purchase agreement, title does not pass until the hirer exercises the option to purchase and satisfies the conditions precedent. Thus, while both contracts involve possession in exchange for consideration, only the hire-purchase agreement contemplates the eventual transfer of ownership. See *G.B. Ollivant and Co. v Akinsanya*¹⁰. Also, under Section 1 of the Hire-Purchase Act, a hire-purchase agreement is defined as one under which goods are let on hire and the hirer has an option to purchase them.

2.3 Loan and Mortgage v Hire-Purchase: A loan and mortgage transaction involves lending money to the borrower and creating a security interest (mortgage) in an asset, often immovable property or a chattel mortgage, as collateral. In these arrangements, the ownership of the asset remains with the borrower, subject only to a security interest held by the lender. In contrast, in a hire-purchase agreement, the hirer is not the owner but merely a bailee with an option to buy. There is no advance of money to the hirer, and the legal title to the goods remains with the owner until the option to purchase is validly exercised. Moreover, mortgage transactions often involve registration and enforcement through foreclosure or sale, while hire-purchase remedies include repossession or contract termination, subject to statutory limitations such as those under Section 9 of the Hire-Purchase Act. See *Jajira v Northern Brewery*,¹¹ where the Supreme Court of Nigeria was asked to determine whether a transaction styled as a hire-purchase was, in substance, a loan secured by a mortgage. The agreement in question provided for the transfer of title in brewery equipment to the “hirer” upon payment of a lump sum advance, with the balance repayable in installments, and included a clause entitling the “owner” to sell the equipment on default. The court applied the substance-over-form test, observing that, unlike a true hire-purchase where title remains with the owner until the option to purchase is exercised, the “hirer” here had effectively become the owner from the outset, with the finance house merely holding a proprietary charge over the goods as security for repayment.¹² Consequently, the court held that the transaction operated as a loan secured by a mortgage (or equivalent charge) rather than a hire-purchase.

This distinction had critical legal implications, unlike in hire-purchase, where self-help repossession is available under the Hire-Purchase Act, a secured lender must proceed by foreclosure or sale under mortgage law.¹³ The decision in *Jajira* thus underscores that courts will look beyond contractual labels to the true nature of the transaction when distinguishing loan/mortgage arrangements from hire-purchase.

2.4 Sale on Credit Terms v Hire-Purchase: In a credit sale, goods are sold outright and ownership passes immediately to the buyer, although payment is deferred. The seller retains no title but may include reservation-of-title clauses. Risk and title pass on delivery, notwithstanding the future payment arrangement. Hire-purchase differs fundamentally in that

⁹(1958) NRLR 33

¹⁰(1969) 2 All NLR 1

¹¹(1972) N.M.L.R 29

¹²ibid 149–50 (holding that title passed upon the advance, with the balance secured as a charge).

¹³ Hire-Purchase Act, Cap H4, LFN 2004, s 9 (self-help repossession in hire-purchase) contrasted with Mortgage Law requiring judicial foreclosure.

ownership is retained by the owner until all payments are made and the hirer exercises the option to purchase. In *UAC v Edems & Ajayi Ltd* (supra), the court emphasised that the hirer is not a buyer and does not become one unless the option is exercised. Furthermore, the default remedies differ. In a credit sale, the seller may sue for the unpaid balance; in hire-purchase, the owner may reclaim the goods, though this is regulated by statutory protections such as the restriction on repossession without court order under Section 10 of the Hire-Purchase Act when more than one-third of the hire-purchase price has been paid.

2.5 Conditional Sale v Hire-Purchase: A conditional sale agreement resembles hire-purchase in deferring ownership. However, the distinguishing feature is that the title passes automatically upon fulfilling agreed conditions (e.g., full payment), and the buyer must complete the purchase. In contrast, under a hire-purchase agreement, the hirer is not obligated to buy the goods and can return them before the final payment without breaching the contract. This element of choice is fundamental. As noted by the court in *Mandilas & Karaberis Ltd v Apena*¹⁴, a hire-purchase transaction involves a right to purchase, not an obligation. See also the case of *Amao v Ajibade & Ors*,¹⁵ where the High Court of the Western Region was called upon to determine the true nature of an agreement under which the buyer paid a deposit of £400 towards goods valued at £1,045, with the balance to be discharged in three equal installments. The contract expressly provided that the vendor would “retain ownership until the full purchase price” was paid. The court held that the transaction was a conditional sale rather than a hire-purchase agreement. The decisive factor was that the agreement obliged the buyer to complete the purchase once the stipulated installments were paid, distinguishing it from a hire-purchase arrangement in which the hirer merely has a right and no binding obligation to purchase.

2.6 Lease v Hire-purchase: A lease is a straightforward contract of bailment under which goods are let for use in exchange for rent, with no prospect or mechanism for transfer of ownership.¹⁶ The lessee obtains the right to possess and use the chattel for a fixed term, but legal title remains with the lessor throughout, and there is no option to purchase at the end of the lease term.¹⁷ By contrast, a hire-purchase agreement is a hybrid instrument defined by statute 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.”¹⁸ Although it begins as a hire, the hirer has a right but not an obligation to purchase the goods once all installments are paid.¹⁹ Title in a hire-purchase transaction does not pass until the hirer fulfils the conditions precedent, typically the final installment and the exercise of the purchase option.²⁰

During the period of possession, both the lessee and the hirer usually bear the risk of loss, damage, and maintenance obligations, as agreed between the parties.²¹ However, on default, the lessor under a lease must generally resort to court proceedings for forfeiture of the lease or damages for unpaid rent, which can be time-consuming and costly.²² In a hire-purchase agreement, the owner enjoys the self-help remedy of repossessing the goods without suing for unpaid installments, subject to statutory safeguards such as those in section 10 of the Hire-

¹⁴(1969) 1 All NLR 390; (1969) NMLR 199 (SC)

¹⁵ (1955-56) WRNLR 121

¹⁶ HG Beale (ed), *Chitty on Contracts* (34th edn, Sweet & Maxwell 2021) vol 2, para 39-001.

¹⁷*Halsbury's Laws of England* (5th edn, 2021) vol 49, para 450.

¹⁸ Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 1(1).

¹⁹*UAC v Edems & Ajayi Ltd*(n.9); GH Treitel, *The Law of Contract* (14th edn, Sweet & Maxwell 2015) 783.

²⁰N.14

²¹ GH Treitel, *The Law of Contract* (14th edn, Sweet & Maxwell 2015) 701–702.

²² HG Beale (ed), *Chitty on Contracts* (n 15) vol 2, paras 39-012–39-015

Purchase Act.²³ This difference in default remedies significantly affects the balance of bargaining power and enforcement speed. From a regulatory standpoint, leases are governed by general principles of contract and bailment law, as expounded in authorities like *Chitty on Contracts*.²⁴ In contrast, hire-purchase agreements in Nigeria are additionally regulated by the Hire-Purchase Act, which prescribes formalities (s 1), minimum content requirements (s 2), and limits on repossession (s 10).²⁵ These statutory provisions aim to protect hirers by ensuring clarity in form and procedure, reflecting the unique dual nature of hire-purchase that distinguishes it from ordinary leases.

3.0 Meaning of Hire-Purchase

According to *Halsbury's Laws of England*²⁶, a hire-purchase agreement is defined as:

“A contract of hire with an option to purchase under which the owner of the chattel undertakes to sell it to, or that it shall become the property of the hirer, conditionally on his making a certain number of payments. Until the making of the last payment, however, no property in the chattel passes.”

This definition underscores the dual nature of hire-purchase agreements: they commence as contracts of hire and include an option for the hirer to purchase the goods upon fulfilling specified conditions, typically the completion of all payments. Importantly, ownership of the goods remains with the owner until the hirer exercises the option to purchase and complies with all stipulated conditions. This conceptualisation aligns with statutory definitions, such as that found in Section 1 of the English Hire-Purchase Act 1965, which describes 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.”

In the Nigerian context, the Hire-Purchase Act²⁷, mirrors this understanding, defining a hire-purchase agreement as one under which goods are let on hire, and the hirer has an option to purchase them by the terms of the agreement.²⁸ Judicial support for this view can be found in the seminal case of *Helby v Matthews*, where the House of Lords held that:

“A hire-purchase agreement is one whereby the hirer is not under any legal obligation to buy the goods but is allowed to return them, and title remains with the owner until the option to purchase is exercised”²⁹

In the Nigerian context, the courts echoed this approach in *Mandilas & Karaberis Ltd v Apena*³⁰, observing that:

“The essence of a hire-purchase agreement lies in the fact that ownership is reserved until all payments are made and the hirer exercises the option to purchase.”

This doctrinal interpretation is further reinforced by G.H. Treitel, a leading authority in the English law of contract, who defines a hire-purchase agreement as:

²³ Hire-Purchase Act (n 17) s 10.

²⁴ HG Beale (ed), *Chitty on Contracts* (n 15) vol 2, paras 39-001–39-025

²⁵ Hire-Purchase Act (n 17) ss 1–10

²⁶ *Halsbury's Laws of England* (5th edn, 2021) vol 49, para 501.

²⁷ Hire Purchase Act Cap H4 LFN2004

²⁸ Section 1(1) of the Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004.

²⁹ *Helby v Matthews* [1895] AC 471 (HL).

³⁰ N.14

“A transaction which is in law a contract of hire, conferring an option to purchase, but which in substance and commercial purpose resembles a contract of sale on deferred payment terms.”³¹

These definitions establish that a hire-purchase agreement is not merely an installment sale or a conditional sale, but a *sui generis* arrangement with distinct legal consequences, especially regarding the transfer of title, remedies on default, and statutory protections for the hirer.

3.1 Rationale for the Implementation of the Hire-Purchase Scheme

The hire-purchase system emerged historically as a response to economic and legal limitations that made outright purchase or traditional credit sales inaccessible or commercially unattractive for certain classes of consumers and businesses. Several key reasons underpin the adoption and continued relevance of the hire-purchase arrangement, especially in developing economies like Nigeria. The rationale for implementing the hire-purchase scheme may be summed up in three main points.

3.1.1. Access to Consumer Goods without Immediate Full Payment: A primary rationale for adopting the hire-purchase system is facilitating consumer access to goods without the burden of full upfront payment. In contrast to cash sales and traditional credit purchases, hire-purchase agreements allow the hirer to take immediate possession and enjoy the use of goods while paying in installments.³² This arrangement is particularly valuable in jurisdictions like Nigeria, where access to formal credit remains limited, especially among the lower and middle-income population.

Guestin Benjamin’s *Sale of Goods* observed that the commercial appeal of hire-purchase lies in its ability to provide deferred ownership while satisfying the hirer’s immediate need for the goods.³³ Similarly, Igweike notes that hire-purchase arrangements are commonly employed in Nigeria to acquire high-value consumer and commercial items such as vehicles, electronics, and industrial equipment.³⁴ Given the capital constraints in many parts of the Nigerian economy, hire-purchase has become a practical alternative to traditional loan-financed purchases. Moreover, the system’s structure wherein title to the goods remains with the owner until all installments are paid, provides a form of in-built security that does not depend on collateral or personal guarantees.³⁵ This makes hire-purchase attractive to informal sector participants who may lack creditworthiness by conventional banking standards.³⁶ According to Stone and Devenney, the legal design of hire-purchase effectively spreads risk and obligation over time, facilitating consumption and economic inclusion for those otherwise excluded from the market.³⁷

In the Nigerian context, this flexibility has not only encouraged personal consumption but also facilitated the operations of small businesses and sole traders. Acquiring productive assets like vehicles or machinery on hire-purchase terms has proven crucial in enabling entrepreneurial ventures to thrive without significant capital outlay.³⁸

³¹ GH Treitel, *The Law of Contract* (n 20) 783.

³² N.13

³³ AG Guest (ed), *Benjamin’s Sale of Goods* (10th edn, Sweet & Maxwell 2017) paras 1-015–1-018.

³⁴ KI Igweike, *Law of Sale of Goods in Nigeria* (2nd edn, Malthouse Press 2001) 186–188.

³⁵ N.15

³⁶ TO Olaniyan, ‘Legal Regulation of Hire Purchase Transactions in Nigeria’ (2017) 5(2) *Journal of Private and Property Law* 45.

³⁷ Richard Stone and James Devenney, *The Modern Law of Contract* (13th edn, Routledge 2022) 456–460

³⁸ FO Oditah, *Nigerian Commercial Law: Sale of Goods and Hire-Purchase* (Ababa Press 1992) 221–224.

This model aligns with the analysis in *Chitty on Contracts*, which underscores hire-purchase as a hybrid contract designed to serve both credit and bailment functions while promoting commercial efficiency.³⁹ As a result, hire-purchase serves as both a consumer credit mechanism and a developmental economic tool, enabling broader access to ownership and increasing productivity in cash-constrained environments.⁴⁰

3.1.2 Limited Access to Dealer or Manufacturer Credit Facilities: Another compelling reason for the adoption and widespread use of the hire-purchase system is the inability or unwillingness of dealers or manufacturers to offer direct credit facilities to buyers. In commercial reality, many dealers, especially those operating in resource-constrained or developing economies such as Nigeria, are not in a financial position to extend long-term credit to buyers without jeopardising their own liquidity and operational viability.⁴¹ Even where a dealer wishes to assist a customer in acquiring goods, offering credit may pose significant financial risk due to high default rates, lack of enforceable collateral, and delays in the judicial enforcement of debt recovery. These challenges are further aggravated by inflation, currency instability, and fluctuating interest rates that characterise many developing economies.⁴²

Yet, for commerce to continue, the goods must be sold. Unsold stock represents a capital lock-up that can paralyse the cash flow of both retailers and manufacturers. Hire-purchase provides a commercially viable solution: it allows the goods to be transferred to the buyer under a controlled installment arrangement, while retaining ownership with the dealer or financier until full payment is made.⁴³ This hybrid approach enables the seller to move stock and sustain turnover while protecting their capital investment through legal retention of title, as Oditah notes in the context of Nigerian commercial practice, hire-purchase acts as a middle ground between outright sale and unsecured credit, offering legal and financial advantages to both parties.⁴⁴ The seller gains continued commercial operation without taking on undue credit exposure, and the hirer obtains immediate possession and use of the goods without needing third-party financing.

The role of hire-purchase as a surrogate for inaccessible credit is underscored in *Chitty on Contracts*, which observes that the arrangement is frequently used where “a purchaser cannot obtain bank finance or supplier credit, but needs access to goods for productive or personal use.”⁴⁵ In this way, hire-purchase serves the dual function of stimulating market activity while preserving the seller’s financial integrity. Furthermore, in Nigeria, where financial institutions often view consumer credit as high-risk, dealers and suppliers have increasingly adopted the hire-purchase model to circumvent the banking sector altogether.⁴⁶ This phenomenon explains the proliferation of hire-purchase selling motorcycles, vehicles, electronics, and home appliances across the country, particularly in urban and peri-urban markets.

³⁹ HG Beale (ed), *Chitty on Contracts* (n 15) vol 2, paras 40-001–40-010.

⁴⁰N.12

⁴¹ KI Igweike, *Law of Sale of Goods in Nigeria* (n 22) 189.

⁴² TO Olaniyan, ‘Legal Regulation of Hire Purchase Transactions in Nigeria’ (2017) 5(2) *Journal of Private and Property Law* 50

⁴³N.15

⁴⁴FO Oditah, *Nigerian Commercial Law: Sale of Goods and Hire-Purchase* (n36) 227–229.

⁴⁵N.24, paras 40-011–40-013.

⁴⁶AG Guest (ed), *Benjamin’s Sale of Goods* (10th edn, Sweet & Maxwell 2017) para 1-018.

3.1.3 Evasion of the Money Lenders Act 1939: The hire-purchase device came into its own in part because it sat just outside the definition of “money-lending” under the Money Lenders Act 1939, thus allowing financiers to evade the Act’s licensing, disclosure and interest-rate controls. Under the 1939 Act, anyone “carrying on the business of lending money” had to obtain a licence, adhere to strict caps on interest rates, and comply with detailed disclosure requirements.⁴⁷ Yet, as the House of Lords made clear in *Helby v Matthews*⁴⁸, a hire-purchase agreement is not a loan but a bailment with an option to purchase.⁴⁹ Because title to the goods remained with the owner until all installments were paid and the option was exercised, financiers were not “lending money” and thus fell outside the Act’s remit.

Commercially, this regulatory lacuna was invaluable. Dealers and finance houses could charge substantially higher rates than those permitted to licensed moneylenders, yet avoid the administrative burden and expense of licensing. Treitel observes that hire-purchase “became a convenient cloak for high-rate credit,” allowing suppliers to sustain turnover and profitability without judicial enforcement of loans or collateral registration.⁵⁰ Chitty’s commentary likewise notes that, in practice, hire-purchase enabled swift repossession of goods on default, rather than the slower process of foreclosure or distress available to secured lenders.⁵¹

In Nigeria, the post-independence Money Lenders Act, reproduces the UK model’s exclusion of hire-purchase financiers from its licensing regime.⁵² Courts and scholars affirm that a hire-purchase transaction remains a bailment with a purchase option, not a loan, which continues to escape rate caps and disclosure rules.⁵³ Although the Hire-Purchase Act empowers the Minister to regulate charges and deposits, no such regulations have ever been made.⁵⁴ The result is a dual-edged sword: hire-purchase has expanded access to consumer goods, but by circumventing money-lenders’ safeguards, it has also permitted unregulated finance charges and exposed many hirers to debt distress. Critics argue that this anomaly can be remedied only by extending licensing and rate-cap regimes to cover hire-purchase or enacting a comprehensive consumer-credit law.⁵⁵

4.0 Contractual Capacity in Hire Purchase Agreements

The doctrine of contractual capacity is fundamental to the validity and enforceability of hire purchase agreements. Under Nigerian law, particular classes of persons: infants, persons of unsound mind, intoxicated persons, illiterates, and married women are worthy of consideration.

4.1 Infants: An infant, legally defined as someone under eighteen, cannot generally enter into binding contracts. This incapacity is codified under the Infants Relief Act 1874, which is applicable in Nigeria and has been consistently interpreted by Nigerian courts. Section 1 of the Act provides that contracts entered into by infants are void, except those for necessities, i.e., goods suitable to the infant’s condition in life and actual requirements at the time of sale.

⁴⁷ Moneylenders Act 1939 (2 & 3 Geo 6 c 40) pts I–II.

⁴⁸ N 27

⁴⁹ GH Treitel, *The Law of Contract* (n 29) 785

⁵¹ HG Beale (ed), *Chitty on Contracts* (n 15) vol 2, para 40-007.

⁵² Money Lenders Act, Cap M13, Laws of the Federation of Nigeria 2004, s 2(1)(b).

⁵³ TO Olaniyan, ‘Legal Regulation of Hire Purchase Transactions in Nigeria’ (2017) 5(2) *Journal of Private and Property Law* 52.

⁵⁴ Hire-Purchase Act, Cap H4, LFN 2004, s 5; see also absence of subsidiary regulations in Federal Gazette

⁵⁵ Richard Stone and James Devenney, *The Modern Law of Contract* (13th edn, Routledge 2022) 460–61.

Hire purchase agreements, which typically involve installment payments for consumer goods such as vehicles or electronics, do not ordinarily fall within this exception and are thus unenforceable against minors. The principle is reinforced by the English case of *Leslie v Sheill*⁵⁶, which Nigerian courts have cited as persuasive authority in protecting minors from exploitation. Nigerian courts similarly uphold this protective stance, emphasising the need to shield minors from contracts that could impose onerous obligations. For example, in *Okonkwo v Okagbue*⁵⁷, the Supreme Court reiterated that contracts entered into by minors are generally void unless they are concerned with necessities or if employment contracts are beneficial to the minor. Thus, any hire purchase agreement purportedly entered into by an infant is voidable and unenforceable against the infant, although suppliers may seek restitution in equity to avoid unjust enrichment.

4.2 Persons of Unsound Mind: The capacity of persons suffering from mental incapacity, often described as lunatics under the law, to contract is governed by principles established at common law and Nigerian statutes. Contracts entered into by such persons during periods of incapacity are generally voidable, provided the other contracting party had knowledge or reasonable grounds to suspect the incapacity. This was established in the English case of *Imperial Loan Co Ltd v Stone*⁵⁸, which has been influential in Nigerian jurisprudence. Nigerian courts have applied this principle in many instances. In *Bank of the North Ltd v Yau*⁵⁹, the Court of Appeal accepted medical evidence as proof of mental incapacity, invalidating a credit facility agreement. The presence of a legally appointed guardian further affects contractual capacity; contracts made without the guardian's consent are void *ab initio*. This principle was underscored in *Adesanya v Alagbada*⁶⁰, where the Supreme Court invalidated contracts made by a person adjudged mentally incapable. In the hire purchase context, if a person known or reasonably believed to be of unsound mind enters into such an agreement, the contract is voidable, and the aggrieved party may repudiate the agreement.

4.3 Intoxicated Persons (Drunkards): The contractual capacity of intoxicated persons remains a less frequently litigated area in Nigeria, but is well-established in common law. A contract entered into by a person so intoxicated as incapable of understanding the nature and effect of the transaction is voidable, not void. The intoxicated party must repudiate the contract promptly upon sobriety to avoid ratification. While Nigerian courts have not directly ruled on hire purchase agreements involving drunkards, the common law principles remain persuasive. For instance, in *Uzoagulu v Eke*⁶¹, the court acknowledged the requirement of a sound mind for valid contract formation. Hence, a hire purchase agreement signed during intoxication may be set aside if the other party had knowledge of the intoxicated state.

4.4 Illiterates: The *Illiterates Protection Act* provides statutory safeguards to protect persons unable to read or write the language in which a contract is written.⁶² The statute mandates that the document's contents be read and explained in a language that the illiterate person understands, and an independent interpreter must endorse the explanation. In *UAC v Edems & Ajayi*⁶³, the Federal Supreme Court annulled a contract for non-compliance with this

⁵⁶ (1914) 3 K.B. 607

⁵⁷ (1994) 9 NWLR (Pt. 368) 301

⁵⁸ (1892) 1 QB 599.

⁵⁹ [2001] 10 NWLR (Pt 721) 408

⁶⁰ (1975) 4 SC 75

⁶¹ (1965) 2 SCNLR 1

⁶² Illiterates Protection Act (Cap 83, Laws of the Federation of Nigeria 1958).

⁶³ N.9

procedure, emphasising the need for informed consent. Given the complexity and technical nature of hire purchase contracts, failure to comply with these provisions may render such agreements voidable. Furthermore, the courts have held that illiteracy does not per se negate contractual capacity, but it necessitates procedural safeguards to ensure that consent is genuine and informed, preventing unfair exploitation.

4.5 Married Women: Historically, married women were subject to the doctrine of coverture, which subsumed their legal personality under that of their husbands, restricting their capacity to contract independently. This legal disability was abolished by the *Married Women's Property Act 1882*, which is applicable in Nigeria and confers full contractual and proprietary rights on married women.⁶⁴ Under contemporary Nigerian law, a married woman may validly enter into hire purchase agreements and be held liable as an independent contracting party. This modern position has been confirmed in cases such as *Giwa v Giwa*,⁶⁵ where the Court of Appeal recognised married women's autonomy to enter binding contracts and manage property.

The law on contractual capacity in Nigeria provides vital protections for vulnerable parties while balancing the need to uphold commercial certainty in hire purchase agreements. Infants, persons of unsound mind, intoxicated persons, and illiterates enjoy various degrees of protection through void or voidable contracts, statutory safeguards, and judicial scrutiny to prevent exploitation. Married women, in contrast, have full contractual capacity to engage in such transactions.

5. Hire-Purchase Agreement under Common Law and Hire-Purchase under the Hire-Purchase Act

In Nigeria, the regulation of hire-purchase transactions reflects a dual heritage: the principles of English common law and the Hire-Purchase Act provisions, Cap H4, Laws of the Federation of Nigeria 2004.⁶⁶ Under common law, hire-purchase agreements were primarily governed by general contract law principles⁶⁷, which tended to favour the owner or dealer, often to the detriment of the hirer, particularly in situations involving default or repossession. See *Helby v. Matthews*⁶⁸ The imbalance in bargaining power between owners and hirers led to widespread calls for reform, particularly regarding consumer protection. The enactment of the Hire-Purchase Act marked a significant departure from the laissez-faire position of the common law, introducing statutory safeguards intended to protect the interests of hirers, especially in low-value consumer transactions. The Act stipulates specific requirements regarding form, disclosure, minimum deposits, and termination rights.⁶⁹

However, the continued applicability of common law principles means that both regimes coexist, often intersecting in practice. We shall now examine the relationship between the common law and the statutory framework governing hire-purchase in Nigeria and consider the extent to which the Act modifies or complements common law doctrines, highlighting areas of convergence and divergence. This analysis is essential for correctly understanding the rights and liabilities of parties under Nigerian hire-purchase law and the broader implications for contractual fairness and consumer protection.

⁶⁴ Married Women's Property Act 1882 (UK), applied in Nigeria.

⁶⁵ [2018] LPELR-44368 (CA)

⁶⁶ Hire-Purchase Act (N.4)

⁶⁷ Sagay, I. E., *Nigerian Law of Contract*, 2nd edn. (Ibadan: Spectrum Books, 2000)

⁶⁸ N 4

⁶⁹ N 4, s. 1, 2, 8, 9

5.1 The Form and Nature of Hire-Purchase Agreements under the Common Law

At common law, hire-purchase agreements were not required to be in writing to be valid and enforceable. Like most contracts, they could be oral, written, or partly oral and partly written, provided the essential elements of a contract: offer, acceptance, consideration, and intention to create legal relations, were present. This principle followed the general rule of freedom of contract in English common law unless a statute required otherwise.⁷⁰ This flexibility, however, had profound implications for proof and enforceability. Oral agreements were inherently prone to ambiguity, disputes over terms, and imbalance in bargaining power, especially where one party (usually the hirer) lacked documentation to verify the precise conditions of the transaction. Courts faced difficulties ascertaining whether the agreement was a hire-purchase or a conditional sale, particularly in cases where possession had been transferred and payments had begun. Furthermore, where the transaction involved goods, the Statute of Frauds 1677⁷¹ sometimes required written evidence of contracts exceeding certain monetary thresholds. However, hire-purchase agreements often evaded these rules because the property in the goods did not pass immediately, thus distinguishing them from outright sales governed by the Sale of Goods legislation. The lack of a writing requirement under the common law left hirers vulnerable to hidden or unfair terms inserted orally, difficulty enforcing their right to terminate or resist repossession and challenges in proving the existence or content of the agreement in court.

This legal vacuum was one of the key motivations for the introduction of statutory regulation, such as Nigeria's Hire-Purchase Act,⁷² which in section 2 mandates that hire-purchase agreements must be in writing and signed by both parties, failing which the contract is unenforceable by the owner.

Under the common law, a hire-purchase agreement is a contract of bailment with an option to purchase. It allows the hirer to take possession of goods and make periodic payments, with ownership remaining vested in the owner until all conditions, usually the full payment of the hire-purchase price, are met. The distinguishing feature is that the hirer is not obliged to purchase the goods but can do so at the end of the term⁷³. This ensures the transaction remains legally distinct from an outright sale or a conditional sale agreement. A typical common law hire-purchase agreement includes several essential clauses. The four most important among them are:

5.1.1 The Hire Clause: This clause establishes the agreement as a hire of goods, not a sale. It expressly states that possession is transferred but not ownership, confirming that the hirer is renting the goods for a period. This clause is fundamental in classifying the transaction as a hire-purchase. Courts at common law placed considerable emphasis on the wording of the hire clause to distinguish between different forms of contracts for the use and eventual acquisition of goods. In *Helby v. Matthews*⁷⁴, the House of Lords held that a hirer who had not yet exercised the option to purchase was not liable for conversion when he pledged the goods. The decision turned on the finding that no agreement to buy existed, only an agreement to hire with an option to purchase. Similarly, in *Lee v. Butler*⁷⁵, where the

⁷⁰ *Currie v. Misa* (1875) LR 10 Ex 153; (1875–76) LR 1 App Cas 554

⁷¹ and its Nigerian counterparts, such as section 4 of the Statute of Frauds applicable in various states

⁷² *Supra*

⁷³ *Helby v. Matthews*

⁷⁴ *ibid*

⁷⁵ 1893) 2 QB 318

agreement stipulated that the hirer must pay all installments and then the title would pass automatically, the court held it to be a sale by installments rather than a hire-purchase.

This underscores the significance of drafting the hire clause to reflect the parties' true intention. For the hirer, the hire clause creates a flexible arrangement that permits the use of goods without the immediate financial burden of ownership. However, at common law, it also means the hirer bears the risk of losing the goods and all payments made if default occurs and does not acquire equitable or legal title unless and until full compliance with the terms. However, the rigidity of the standard law position has been modified by legislation, as will be analysed later. For instance, the hire clause is still essential under the Hire-Purchase Act. Still, the Act imposes mandatory protections for the hirer, such as: Right to terminate the agreement after paying a minimum portion (section 8), Restrictions on repossession after one-third payment (section 9) and Disclosure requirements to ensure transparency (section 3). Nonetheless, the hire clause remains the foundational term upon which the entire structure of hire-purchase is built, both at common law and under statute.

5.1.2 The Termination Clause: A central feature of the hire-purchase relationship under common law is the hirer's ability to determine the hiring and return the goods before completing all installments. This is often expressed through a termination clause, which gives the hirer the right to end the agreement voluntarily by returning the goods and ceasing further payment obligations (save as contractually stipulated). The clause empowering the hirer to terminate was vital in reinforcing that the contract was one of hire with an option to buy, rather than a disguised installment sale. See *Helby v. Matthews*⁷⁶ where the House of Lords confirmed that the hirer could choose not to exercise the purchase option and end the contract by returning the goods, with no liability for the remaining installments (though he forfeited past payments). However, the termination clause was not automatic under common law, it had to be expressly included in the agreement. Where absent, the hirer might face claims for breach of contract if they attempted to return the goods before completing the installments. See *Cundy v. Lindsay*⁷⁷. In practice, the termination clause allowed the hirer to exit the agreement if unable or unwilling to continue payment; it limited the extent of financial liability, though many agreements required a minimum number of installments to be paid before valid termination and acted as a risk control mechanism in long-term consumer credit arrangements.

Yet, even where the clause existed, the hirer often forfeited all prior payments, regardless of how substantial; any claim to compensation for improvements or part-performance; and potentially, the right to terminate where the goods were damaged or not in deliverable condition, depending on the agreement's terms. Common law courts generally upheld such forfeiture provisions unless they were unconscionable or penal. For example, in *Karsales (Harrow) Ltd v. Wallis*⁷⁸, the court refused to enforce a hire-purchase agreement where the car delivered was not roadworthy, despite a clause excluding implied conditions. Recognising the imbalance of bargaining power and frequent abuse of such clauses, the Hire-Purchase Act introduced statutory safeguards. Under Section 8(1) of the Act, a hirer may terminate the agreement at any time before exercising the option to purchase, upon giving notice and returning the goods. Furthermore, Section 8(2) provides that the hirer must pay any arrears due up to the date of termination, and half the hire-purchase price, or the balance thereof if a lesser amount has already been paid. This statutory formulation balances the freedom to

⁷⁶N.4

⁷⁷(1877–78) LR 3 App Cas 459

⁷⁸[1956] EWCA Civ 4; [1956] 1 WLR 936

terminate with the owner's financial interest, codifying what was previously a matter of contract under common law.

5.1.3 The Option to Purchase Clause: A defining feature of a hire-purchase agreement under common law is including an option to purchase clause. This clause grants the hirer the right, but not the obligation, to acquire ownership of the goods at the end of the hiring period, usually upon payment of all agreed installments and, in many cases, a nominal final sum. This clause distinguishes a hire-purchase agreement from a conditional sale or credit sale, where the buyer is typically bound to purchase. The option to purchase clause ensures that ownership of the goods does not automatically pass to the hirer, even after substantial payments. Instead, the hirer must positively exercise the option to acquire title. Until this is done, the title remains with the owner, and the hirer is merely in possession as a bailee. This principle was firmly established in *Helby v Matthews* wherein it was stated thus: “The essence of a hire-purchase agreement is that the hirer is under no obligation to buy; he can return the goods and avoid further liability”. In that case, the House of Lords held that since the hirer had not exercised the option to purchase, he was not liable to sell the goods to a third party, because he had not acquired title.

The exercise of the option typically requires two things: Complete and express. Thus, the clause acts as a contractual mechanism that converts a bailment into a sale, but only upon the hirer’s volition. Courts have consistently treated the option to purchase clause as central to distinguishing hire-purchase agreements from installment sales. In *Lee v Butler*⁷⁹, the court ruled that despite the label of a hire-purchase agreement, the transaction was actually a sale on credit because the hirer was contractually obligated to purchase the goods and title passed on the first payment. This case illustrates that if the option to purchase clause is worded to create an obligation to buy rather than a mere option, the courts may recharacterise the transaction as a sale, defeating the owner’s retention of title. Therefore, precise and careful drafting of the clause is crucial. The clause serves both protective and facilitative purposes. For the owner, it ensures that the title is retained until full payment, providing security for the credit extended. For the hirer, it offers flexibility, allowing the return of the goods without committing to purchase if circumstances change. However, common law courts permitted owners to insert clauses that made the option difficult to exercise e.g., by adding excessive conditions or forfeiture provisions. Such clauses were rarely invalidated unless they were found unconscionable or in restraint of trade.

Under the Hire-Purchase Act, the option to purchase clause remains central. However, the Act imposes statutory controls on how and when the option may be exercised. For instance, section 8 allows the hirer to terminate the agreement before the option is exercised, and section 9 restricts repossession after one-third of the hire-purchase price has been paid, thereby limiting the owner’s ability to pressure the hirer into purchase. Thus, while the common law recognises the option to purchase clause as a matter of pure contract, Nigerian legislation imposes consumer protection overlays, curbing potential abuses of this clause. The option to purchase clause is the linchpin of the hire-purchase structure under common law. It transforms what is initially a contract of hire into a contract of sale, but only when the hirer elects to buy.

5.1.4 Minimum Payment Clause: Under common law, hire-purchase agreements often contain a minimum payment clause, which stipulates that the hirer must pay a certain

⁷⁹ N 73

minimum amount before they can lawfully return the goods and terminate the agreement. This clause protects the owner from loss due to depreciation or partial use of the goods. It ensures that, even if the hirer chooses not to exercise the option to purchase, they will have made payments sufficient to cover part of the value or wear of the goods. The clause functions as a form of compensation or liquidated damages for early termination. It typically requires the hirer to make payments equal to a specified number of installments (often half the total price) before they can end the contract and return the goods without further liability. This principle is closely aligned with the equitable doctrine of preventing unjust enrichment, ensuring the hirer does not benefit disproportionately at the owner's expense. In *Cork v Musselwhite*⁸⁰, the court upheld the inclusion of such clauses as reasonable within commercial practice, provided they are not penal. Similarly, in *Campbell Discount Co Ltd v Gall*⁸¹, the Court of Appeal recognised the enforceability of a minimum payment clause, holding that the hirer was not entitled to return the goods without fulfilling the agreed minimum payment, as the clause had been clearly expressed and agreed upon. Thus, a minimum payment clause is enforceable under common law as long as it is reasonable, clearly communicated, and not a disguised penalty. It reflects the balance of interests between the owner, who retains title and risks, and the hirer, who enjoys possession and use.

Therefore, under common law, courts will uphold a minimum payment clause only if it is reasonable in the circumstances of the agreement. Reasonableness is assessed by determining whether the amount required to be paid reflects a genuine pre-estimate of the loss the owner may suffer. If, for instance, the clause requires the hirer to pay 50% of the total price before they can return the goods, the court may consider whether this amount fairly corresponds to the depreciation or use of the goods during the hire period. A clause will be deemed unreasonable and therefore unenforceable if it goes beyond what is necessary to protect the owner's legitimate interests and instead seeks to punish the hirer for terminating the agreement. The clause must also be communicated to the hirer. Under principles of contract law, a party can only be bound by terms they were made aware of, especially when those terms are onerous or financially significant. This aligns with the principle in *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd*⁸², where the court held that unusual or burdensome terms must be brought to the party's attention before they can be enforced. If the minimum payment clause is hidden in fine print or not adequately explained to the hirer at the time of agreement, a court may find that it was not validly incorporated into the contract.

Again, the clause must not be a penalty, which is prohibited under common law. A penalty clause imposes a sum out of proportion to the actual or anticipated loss, and is designed to deter breach rather than to compensate for loss. The classic test for identifying a penalty was laid down in *Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd*,⁸³ where the House of Lords held that a clause would be a penalty if it stipulated a payment that was “extravagant and unconscionable” compared to the likely loss. This principle was recently reaffirmed and refined in *Cavendish Square Holding BV v Talal El Makdessi*⁸⁴; *Parking Eye Ltd v Beavis*⁸⁵, where the Supreme Court held that a clause is penal if it imposes a detriment out of all proportion to any legitimate interest the innocent party has in enforcing the contract.

⁸⁰[1916] 2 KB 824

⁸¹[1961] EWCA Civ J0302-3 (Court of Appeal, 2 March 1961)

⁸²1989] QB 433

⁸³[1915] AC 79

⁸⁴[2015] UKSC 67

⁸⁵[2015] UKSC 67

Nigerian courts have followed similar reasoning in *Okonkwo v Co-operative and Commerce Bank Ltd*⁸⁶, where disproportionate enforcement of contractual terms was rejected.

Therefore, a minimum payment clause will only be upheld if it compensates the owner for actual or anticipated losses (e.g., depreciation, cost of repossession, missed installments) rather than punishing the hirer for opting out.

6. The Form and Nature of Hire-Purchase Agreements under the Hire-Purchase Act

The Hire-Purchase Act governs the form and essential characteristics of hire-purchase agreements in Nigeria. Before its enactment, the legal framework was primarily governed by English common law and equitable principles, which proved inadequate in protecting the interests of hirers, who were often individual consumers or small-scale traders with limited legal and financial knowledge. The Act provides a formal legal framework to safeguard hirers, usually consumers with limited bargaining power, from unfair contractual practices. It outlines the required form of such agreements, the minimum content, and the legal consequences of non-compliance.

The primary motivation behind the legislation was to curb exploitative practices by owners and finance companies, who often drafted complex agreements containing harsh or one-sided clauses. In many cases, hirers who had paid significant installments could lose the goods and their money upon default, due to strict forfeiture and repossession clauses. While occasionally providing equitable relief, the courts lacked a codified mandate to regulate such imbalances.⁸⁷ Consequently, the Act was introduced as a consumer protection statute, with the aim of:

- Ensuring transparency and fairness in hire-purchase contracts;
- Mandating written agreements containing key financial and legal information;
- Restricting unjust repossession once a substantial portion of the purchase price had been paid;
- Granting the hirer rights of termination and redress.

The Act closely mirrors the English Hire-Purchase Act 1964, which had a similar objective of protecting the "financially weaker party" in hire-purchase arrangements.⁸⁸

6.1 Scope of Transactions Regulated by the Act

The Hire-Purchase Act regulates only **specific types of credit arrangements** that fall within the legal definition of a hire-purchase agreement. The Hire Purchase Act 2004 regulates specific hire-purchase and credit-sale transactions in Nigeria. According to section 1, the Act applies to:

- All hire-purchase and credit-sale agreements (other than those concerning motor vehicles) where the hire-purchase price or total purchase price does not exceed two thousand naira.
- All such agreements concerning motor vehicles, regardless of the price.

Thus, the Act is not of universal application to every hire-purchase agreement, but only to those that fall within these monetary and subject-matter limits. These provisions mean that the Act governs: Non-motor vehicle hire-purchase and credit-sale agreements only if the price does not exceed ₦2,000. All motor vehicle hire-purchase and credit-sale agreements

⁸⁶ (2003) 8 NWLR (Pt 822) 347 (CA)

⁸⁷ A. Obilade, *The Nigerian Legal System* (Sweet & Maxwell 1979) 162–163.

⁸⁸ G. McBain, 'Modernising the Law of Hire-Purchase' (2004) 14(1) *Nottingham Law Journal* 6.

have no price limit. Agreements outside this scope may still be valid but are governed by common law principles rather than the statutory regime. Currently, the monetary ceiling stipulated in the Hire-Purchase Act remains unchanged. Specifically, Section 1(a) of the Act limits its application to hire-purchase and credit-sale agreements (excluding motor vehicles) where the total purchase price does not exceed ₦2,000. Established in the original 1965 legislation, this threshold has not been adjusted to reflect current economic realities. This monetary limit is now considered obsolete because of the significant naira depreciation and inflation over the decades. In practice, the Act's provisions apply to very few, if any, modern hire-purchase transactions involving goods other than motor vehicles. Consequently, many such transactions fall outside the protective scope of the Act, leaving parties to rely on common law principles. The outdated monetary threshold undermines the Act's effectiveness in regulating contemporary hire-purchase agreements and protecting consumers. Until legislative amendments are made, many hire-purchase agreements, especially those involving goods other than motor vehicles, remain unregulated by this Act.

6.2 Requirements for the Creation of Hire Purchase Agreements under the Hire Purchase Act 2004

The Hire Purchase Act 2004 imposes formal and substantive requirements for creating enforceable hire purchase agreements in Nigeria. These requirements ensure transparency, protect hirers, and regulate credit transactions. Below is a detailed analysis of the statutory prerequisites.

6.2.1 Written Information on Cash Price of Goods: Section 2(1) of the Hire Purchase Act 2004 mandates that before entering into any hire purchase agreement, the owner must state in writing to the prospective hirer the cash price of the goods. This requirement ensures that the hirer is fully informed of the amount they would pay if they chose to purchase the goods outright, rather than by installments. The cash price must be communicated otherwise than in the note or memorandum of the agreement, meaning it should be provided separately and clearly to the hirer before the agreement is finalised. This disclosure enables the hirer to make an informed decision and understand the financial implications of the hire purchase arrangement compared to a cash purchase.⁸⁹ However, the Act recognises certain practical exceptions to this written disclosure requirement. It provides that the obligation to state the cash price in writing is deemed to have been sufficiently complied with if the hirer has inspected the goods (or like goods) and, at the time of inspection, tickets or labels were attached to or displayed with the goods clearly stating the cash price. Similarly, the requirement is also satisfied if the hirer has selected the goods by reference to a catalogue, price list, or advertisement clearly stating the cash price.⁹⁰ These exceptions acknowledge standard commercial practices where prices are displayed or published, thus obviating the need for a separate written statement to the hirer.

Failure by the owner to state the cash price of the goods in writing as required by section 2(1) of the Hire Purchase Act 2004 has serious legal consequences. According to section 2(2) of the Act, if the owner does not comply with the written disclosure requirement, the owner is not entitled to enforce the hire purchase agreement or any related guarantee contract. Furthermore, the owner cannot exercise any right to recover the goods from the hirer, and any security given by the hirer or guarantor regarding money payable under the agreement is unenforceable against them. This means non-compliance effectively renders the hire purchase

⁸⁹ibid

⁹⁰ HPA S 2(1)(a)(b)

agreement unenforceable against the hirer unless the statutory requirements are met.⁹¹ Judicial authority supports the importance of this requirement. In *Alhaji Kelani v John Olubalogun & Anor*⁹², the court underscored that informing the hirer of the cash price is essential to make the hirer aware of their option to purchase the goods outright, rather than only through hire purchase. This disclosure promotes informed consent and protects the hirer from unfair terms.

6.2.2 The Note or Memorandum: Central to this framework is the requirement that a written memorandum must evidence every hire purchase agreement.⁹³ Section 2 of the Act mandates that this memorandum be signed by both the hirer and the owner or their authorised representatives. The memorandum must contain detailed particulars, including the hire-purchase price, the cash price of the goods, the amount and timing of each installment, and the deposit paid by the hirer. Additionally, it must specify the true rate of interest, calculated under regulations prescribed by the Minister of Trade, and provide a clear description of the goods sufficient for identification⁹⁴. The memorandum must also include a prominent notice stipulated in the Schedule to the Act to enhance transparency.⁹⁵ The notice is important as it allows the hirer to terminate the agreement if they wish to do so. This written requirement protects the hirer by ensuring that all essential terms are documented and agreed upon.

In addition to the written memorandum, the Act requires a copy of this document to be delivered to the hirer within fourteen days of the agreement's execution.⁹⁶ This provision ensures that the hirer retains a record of the contractual terms, thereby reducing the risk of disputes arising from misunderstandings or misrepresentations. Delivering the memorandum is a critical procedural safeguard that promotes fairness and accountability in hire purchase transactions. Failure to include the cash price in the memorandum, or to comply with the other formal requirements of section 2, renders the hire purchase agreement unenforceable against the hirer unless the court is satisfied that the hirer has not been prejudiced and it would be just and equitable to dispense with the requirement.

6.2.3 Signatures: Another requirement is that the memorandum of a hire purchase agreement must be signed by both the hirer and the owner (or their authorised representatives). This is a fundamental provision under section 2(1) of the Hire Purchase Act 2004. This formal requirement serves as a critical safeguard to ensure that both parties have expressly consented to the terms of the agreement, thereby preventing disputes arising from oral or informal arrangements. The signature on the memorandum is evidence of the parties' intention to be bound by the terms contained therein. It demonstrates that the hirer has received and agreed to the detailed terms, including the cash price, hire-purchase price, installment amounts, deposit, and description of the goods. The owner's signature confirms the offer and acceptance of the contract terms. Without the signatures, the memorandum lacks the necessary formal validity to constitute an enforceable contract under the Act.

⁹¹ Olamide, O. "Formalities of a Hire Purchase Agreement - The Jet Lawyer." *The Jet Lawyer*, 2016, 2016, <https://djetlawyer.com/formalities-hire-purchase-agreement/>. Accessed 03 Jun. 2025.

⁹²(1983) OGSLR 183

⁹³HPA S. 2 (2) (a)

⁹⁴HPA S. 2 (2) (b)

⁹⁵HPA S. 2 (2) (c)

⁹⁶ HPA S. 2(2) (d)

The courts have consistently held that the signature requirement under section 2(1) is mandatory and not merely directory. In *Obisesan v Adetoro*⁹⁷, the Court of Appeal emphasised that the absence of the hirer's signature on the memorandum renders the hire purchase agreement unenforceable. The court reasoned that the statute aims to protect the hirer by ensuring the terms are recorded and agreed upon in writing. Without the hirer's signature, the hirer cannot be deemed to have consented to the contract, and the owner cannot enforce it. The absence of a signature invalidates the agreement, preventing the owner from recovering goods or enforcing payment. The statutory requirement that the memorandum be signed by both the hirer and the owner or their representatives is a mandatory condition precedent to the enforceability of a hire purchase agreement under the Hire Purchase Act 2004. Judicial authorities have affirmed that failure to comply with this requirement renders the contract unenforceable, thereby protecting the hirer and ensuring contractual certainty.

6.3 Provisions to be Avoided in a Hire Purchase Agreement under the Act

The Hire Purchase Act 2004 contains explicit provisions to protect the hirer from unfair and oppressive terms in hire purchase agreements. Section 3 of the Act declares explicitly specific clauses in such agreements to be void and unenforceable because they undermine the statutory rights of the hirer or impose unfair burdens. These provisions are designed to prevent owners or their agents from exploiting their superior bargaining position and to ensure fairness in hire purchase transactions. The provisions that should be avoided in a Hire Purchase Agreement under Section 3 of the Act include the following:

6.3.1 Prohibition of Entry and Repossession without Court Order: Section 3(a) voids any clause authorising the owner or anyone acting on their behalf to enter the hirer's premises to repossess goods without a court order. This protects the hirer's right to privacy and security of their premises, preventing self-help repossession or forced entry, which could be abusive or unlawful. The Act requires the owner to seek judicial intervention before recovering goods, ensuring due process and legal oversight.

6.3.2 Restriction or Exclusion of the Hirer's Right to Terminate: Section 3(b) invalidates any provision that excludes or restricts the hirer's statutory right to terminate the hire purchase agreement under section 8 of the Act. It also voids clauses that impose additional liabilities on the hirer upon termination beyond those expressly provided by the Act. This ensures that the hirer can exercise the right to terminate the agreement without being unfairly penalised or restricted by contract terms.

6.3.3 Excessive Liability on Termination: Section 3(c) renders void any clause that subjects the hirer to a liability exceeding what the Act allows if the hirer terminates the agreement. This prevents the owner from imposing excessive financial burdens on the hirer beyond the statutory maximum, thereby protecting the hirer from punitive damages or charges.

6.3.4 Relief of Owner's Liability for Acts of Agents: Section 3(d) prohibits clauses that relieve the owner from liability for wrongful acts or defaults of any person acting on their behalf concerning the hire purchase agreement. This provision ensures that owners remain responsible for the conduct of their agents, protecting hirers from abuses or misconduct by representatives of the owner.

⁹⁷(1995) 6 NWLR (Pt. 404) 687

6.3.4 Restriction on Choice of Insurer or Repairer: Section 3(f) voids any clause requiring the hirer to use the services of a particular insurer, repairer, or other service provider not freely chosen by the hirer. This protects the hirer's freedom of choice and prevents owners from forcing hirers into potentially expensive or substandard service arrangements.

6.3.5 Agency Relationship Imposed on Hirer: Section 3(e) invalidates any provision that makes a person act on behalf of the owner in forming or concluding the hire purchase agreement as the hirer's agent. This prevents the owner from imposing unintended agency relationships that could create additional liabilities or obligations for the hirer.

These prohibited provisions reflect the Act's broader consumer protection objectives. Hire purchase agreements often involve consumers lacking bargaining power and legal expertise. By voiding unfair clauses, the Act ensures that the hirer's rights are preserved and that the terms of the agreement are reasonable and transparent.

The Act also implies certain non-excludable conditions and warranties, reinforcing protections against unfair contract terms. The Act implies certain essential conditions and warranties into every hire purchase agreement, regardless of any contrary provisions in the contract. Section 4 stipulates that the hirer is entitled to quiet possession of the goods, that the owner has the right to sell the goods when the property is to pass, and that the goods are free from encumbrances. The goods must also be of merchantable quality unless sold as second-hand with explicit notice and reasonably fit for any particular purpose made known by the hirer. These implied terms provide fundamental consumer protections and ensure that the goods meet minimum quality and suitability standards. See the case of *Afolabi v Polymera Industries (Nigeria) Ltd*⁹⁸, where the Supreme Court emphasised that any attempt to exclude implied conditions or limit the hirer's statutory rights must be clearly communicated to the hirer before the agreement is concluded to be valid. Otherwise, such clauses are void.

Finally, it is noteworthy that the Minister of Trade is empowered under section 5 to regulate various aspects of hire purchase agreements, including interest rates, charges, minimum deposits, payment periods, and advertising standards. This regulatory oversight allows for the adjustment of terms to reflect economic realities and to prevent exploitative practices, thereby enhancing consumer protection.

7. Conclusions and Recommendations

This doctrinal analysis of the evolution of legal formalities in the formation of hire-purchase agreements in Nigeria reveals a progressive legislative framework aimed at protecting the interests of hirers while regulating credit transactions effectively. The Hire Purchase Act, from its earlier versions to the current 2004 enactment, has consistently emphasised the need for written agreements that clearly disclose essential terms such as the cash price, hire-purchase price, installment amounts, and parties' rights. These formalities prevent unfair practices, ensure transparency, and provide legal certainty in hire-purchase transactions. However, the analysis also shows that specific provisions of the Act, including monetary thresholds and enforcement mechanisms, have not kept pace with Nigeria's evolving economic realities, such as inflation and increased market complexity. Judicial interpretations affirm the mandatory nature of statutory formalities, particularly the requirement for a signed memorandum and disclosure of the cash price, with non-compliance rendering agreements unenforceable. This strictness protects consumers but may limit credit availability if owners

⁹⁸ (1967) 1 All NLR 149

find compliance burdensome. Furthermore, exceptions to the written notice requirement, such as price tags or catalogues, reflect practical commercial considerations, balancing consumer protection with business efficiency. The Act's prohibition of unfair clauses and implied terms further strengthens the hirer's position, aligning Nigerian law with international consumer protection standards. Based on the analysis of the evolution of legal formalities in Nigerian hire-purchase agreements, and considering the identified limitations and imbalances, the following recommendations are proposed to modernise and enhance the effectiveness of the Hire Purchase Act 2004:

7.1 Legislative Review and Modernisation: There is a pressing need to review and update the Hire Purchase Act 2004 to reflect current economic conditions. Monetary limits, such as the two thousand naira threshold for non-motor vehicle transactions, should be revised upward to accommodate inflation and contemporary market values. This would broaden the Act's applicability and enhance consumer protection in higher-value transactions. More effectively, the Minister's powers under Section 5 of the Act should be expanded by adding a subsection empowering the Minister of Commerce to adjust the financial limits periodically based on prevailing market conditions, such as inflation or price increases. This regulatory flexibility would allow the monetary threshold to keep pace with economic realities without requiring frequent legislative amendments. Section 5 currently authorises the Minister to regulate terms of hire-purchase transactions by publishing regulations in the Federal Gazette, including restricting sums charged and prescribing payment methods. Extending this power to include the adjustment of monetary caps would enable timely and responsive updates, ensuring the Act remains relevant and effective in protecting consumers and facilitating commerce. Such an amendment would address the current impediment where the ₦2,000 cap is "out of touch" with the market, thereby broadening the scope of hire-purchase agreements covered by the law. It would also encourage owners to engage in hire-purchase transactions for a broader range of goods, promoting economic growth and consumer access to credit. Other common law countries, such as the UK and Australia, regularly update their consumer credit laws to reflect economic realities, ensuring protections cover a broad range of transactions. Nigeria could adopt a similar approach by periodically revising monetary thresholds to maintain relevance and inclusivity.

7.2 Incorporation of Digital and Modern Transaction Realities: Contemporary hire-purchase transactions are increasingly conducted through digital platforms, a situation inadequately addressed by existing Nigerian legislation. Other common law jurisdictions are revising legislation to encompass electronic contracts, digital disclosures, and online dispute resolution mechanisms. Nigeria can potentially update its legal framework to encompass digital transactions, ensuring that consumer protection evolves in alignment with technological advancements. Other common law jurisdictions have modernised their hire-purchase and consumer credit laws to incorporate digital transaction realities explicitly. For example, they recognise electronic contracts as legally valid and enforceable, provided they meet standard contract formation requirements. These laws mandate clear digital disclosures of all relevant terms such as cash price, hire-purchase price, interest rates, and payment schedules, ensuring transparency even when agreements are concluded online. They also provide online dispute resolution mechanisms, enabling parties to resolve conflicts efficiently without resorting to costly and time-consuming court proceedings. To achieve this, Nigeria should explicitly amend the Hire Purchase Act to authorise electronic contracts and digital disclosures.

7.3 Alternative Dispute Resolution (ADR) Mechanisms: In common law jurisdictions, there is a notable inclination towards utilising alternative dispute resolution methods, including mediation and arbitration, to address hire-purchase disputes efficiently and cost-effectively. Incorporating ADR provisions into Nigerian hire-purchase law can alleviate court congestion and facilitate more expedient resolution for aggrieved parties.

7.4 Regular Legislative Review and Amendment Processes: The legislative frameworks in the UK and Australia are enhanced through systematic reviews and stakeholder engagement, ensuring that hire-purchase laws remain current and effective. Nigeria has the potential to implement regular assessments of its hire-purchase legislation, incorporating input from consumer groups, industry stakeholders, and legal experts to maintain a balanced and effective legal framework.

7.5 Decentralised Regulation for Effective Monitoring: Due to Nigeria's federal system and substantial population, centralised oversight by the Federal Government is constrained in properly supervising hire-purchase transactions. Certain global federations delegate authority to local, regional, or state governments to control and oversee such agreements, enhancing supervision, consumer protection, and adaptability to regional economic circumstances. Centralised authorities often lack detailed, real-time information about diverse regional markets and consumer behaviours across Nigeria's 36 states and the Federal Capital Territory. As a result, a one-size-fits-all regulatory approach may be inefficient, slow to respond to local issues, and disconnected from the realities faced by consumers and traders in different parts of the country. Local regulators have superior knowledge of regional economic dynamics, consumer needs, and business practices. This informational advantage enables them to tailor regulatory approaches and enforcement strategies to the specific context of their jurisdictions, improving effectiveness and relevance. Decentralisation allows more frequent and closer supervision of hire-purchase transactions, reducing fraud, abuse, or non-compliance opportunities. State-level agencies can conduct inspections, educate consumers, and resolve disputes more promptly than a distant federal authority.

7.6 Public Awareness and Education Programs: Many dealers and customers remain unaware of their responsibilities and rights under the Hire Purchase Act. A comprehensive public awareness campaign is essential to educate stakeholders on the legal requirements, rights, and processes related to hire-purchase agreements. Such a campaign would inform consumers about their rights, such as the right to receive a written memorandum of the agreement, the right to know the cash price and hire-purchase price, and protections against unfair terms or unlawful repossession. It would also inform traders and owners about their legal obligations, including the need for transparent disclosure, proper documentation, and adherence to the formalities prescribed by the Hire Purchase Act. Government agencies such as the Ministry of Commerce, consumer protection bodies, and industry associations should collaborate to design and implement multi-channel awareness initiatives to achieve this. These could include mass media campaigns (radio, television, and social media), distributed simplified guides and brochures in local languages, community outreach programs, and workshops targeting vulnerable populations. Additionally, incorporating hire-purchase education into broader financial literacy programs would enhance long-term consumer empowerment.