THE HIRE PURCHASE ACT 1965 HAS BECOME A RELIC THAT HAS NO PLACE IN CONTEMPORARY COMMERCIAL TRANSACTIONS. HIGHLIGHTING THE DEFECTS IN THE HIRE PURCHASE ACT 1965.

BY

DR, ALFRED ABHULIMHEN-IYOHA

CHIEF MAGISTRATE, EDO STATE JUDICIARY, HIGH COURT COMPLEX, BENIN CITY, NIGERIA

PhD LAW, PhD STRATEGIC STUDIES, DIPLOMA CHRISTIAN THEOLOGY AND PASTORAL MINISTRY.

+2348055968440

JUNE, 2021

1.0 Introduction

A hire purchase agreement is a contract between one party who is the owner of the goods and another party who is the hirer. According to law, it is reduced in writing and made obligatory through the inclusion of certain statutory terms. As a contract, it must as a matter of necessity satisfy the ordinary rules regarding the creation of enforceable rights and assumption of obligations under the law of contract[1].The reduction of hire purchase agreement to writing is one

[1]Loveday A. Nwanyanwu, (2013) : *Hire Purchase Strategy of Physical Capital Investment and Financial Performance of Construction Companies: Illustrating from the Nigerian Stock* Exchange Mediterranean Journal of Social Sciences, Vol 4, No 4.

of the deviations from the old common law principles that permitted the oral form of the agreement.

Hire purchase transaction is one of the approaches adopted and implemented for investing in physical capital. It confers on the hirer the benefits of a physical capital in return for periodical payments; ownership is transferred on the payment of the last installment. It is a form of commercial transaction, and an important source of medium term financing for businesses, used to finance the purchase of capital goods, ranging from plant and equipment to commodities and vehicles and their insurance[2].

Before 1965, Hire-Purchase transactions in Nigeria were regulated by Common law principles which were mostly draconian and brutish against the hirer especially in the area of repossession of the goods/ property by the owner from the hirer. However, with the enactment of the Hire-Purchase Act in 1965, the hirers now enjoy some respite, as the provisions of the Act appear to lean in their favour. To this end, Section 9 of the Act provides some conditions that must be fulfilled before an owner can repossess the goods. Goods, for this purpose, mean any chattels personal other than things in action and money and also include motor vehicle which means mechanically propelled vehicle intended or adapted for use on roads or for use for agricultural purposes. The Act does not stop at merely stating conditions for recovery of possession of the goods; it also makes provisions for sanctions upon breach of relevant sections therein[3].

While some of the provisions of the Act correct some of the irregularities of hire purchase transaction that was based on common law, it still possesses some outdated provisions that are not quite tenable in the modern business world. This paper seeks to examine the shortcomings of the Hire Purchase Act of 1965 and its effect on modern day hire purchase commercial transactions as well as proffer solutions and recommendations that are deemed important. The paper is structured into six parts including this introduction. The second explores the various definitions of hire purchase as well as examining the features of a proper hire purchase transaction. The third explores hire purchase in Nigeria, discusses and examines the criticisms of the hire purchase Act, agreement and the doctrine of repossession in Nigeria. The fourth

[2] Ibid
[3] Adebisi. L. Raimi (2015) : *The Right of the Owner to Recover Possession of the Hired Goods from the Hirer under the Hire-Purchase Act, 1965: A Right in Existence or in Extinction*,International Journal of Humanities and Social Science Vol. 5, No. 10; p 242

examines the position of hire purchase in the United Kingdom. The fifth contains a brief discussion on hire purchase in India, and then the final part which is the conclusion.

2.0 Definition of Hire Purchase

Hire purchase has been defined in numerous ways by different authors. It is a contract that takes the form of a bailment under which goods are hired. It takes the form of bailment in the sense that possession temporarily passes from the owner to the hirer upon the fulfillment of the relevant stipulated conditions. Section 20 of the Hire Purchase Act Cap H4 Laws of the Federation 2004 defines Hire Purchase as a bailment of goods in pursuance of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee. Hire purchase is a hybrid of consumer credit transaction. The hire purchase transaction is a variant form of instalment sale which is adopted and implemented to protect the owner's title to the goods if the instalment buyer or hirer in breach of his undertaking, sells them to a third party acquiring them in good faith before the payment of all instalments. There has been definitions and interpretations of hire purchase by the courts, for instance in *Afrotec Technical Services (Nig) Ltd. V MIA & Sons Ltd & Anor*[4] The Supreme Court stated that: In the hire-purchase transaction, there is no question of a sale coming into being unless and until the hirer exercises at the appropriate time the option to purchase the goods.

Okagbue, JCA's definition of hire-purchase in *Samuel Aro V Joe Allen & Co. Ltd*[5] is also apt, similar and apposite, according to him:

> essentially, a hire-purchase is a system whereby the owner of the goods lets them on line for periodic payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so however, that the hirer may return the goods at any time without any obligation to pay further balance of rent accruing after return; until the conditions have been fulfilled the property remains in the owner's possession.

[4] (2000) 15 NWLR (Pt 692) p730
[5] [979] 2 FNR 292,295.

Thus it can be derived from the above definitions that for a transaction to qualify as hire-purchase, it must be such that possession of the goods is transferred by the owner to the hirer, with the owner retaining the property in the goods. That is, although the hirer is made to possess the goods, he cannot be regarded as the owner of the goods in law. Furthermore, the hirer is in possession of the goods for the consideration of a price payable by an initial deposit followed by installments (usually monthly) at determined rates, with an option to purchase the goods at the end of the transaction[6].The definition of hire-purchase is firm and strict. A transaction cannot be referred to as hire-purchase merely because it is so styled by the parties involved. It must be in tandem and must conform to the basic features of hire-purchase as envisaged by the Act and pronounced upon by the courts. Thus where there is an obligation to purchase the goods, the transaction is certainly not a hire-purchase. In the case *of J. Allen & Ors Ltd. V Adewale*[7], there was no right to return the goods, it was held that the agreement was a sale not a hire purchase. The point must be emphasized that property in the goods, the subject matter of a hire purchase transaction, does not pass to the hirer at the time the contract was entered into. It will only pass to him when the stipulated period has expired and certain agreed or stipulated conditions have been satisfied (for example, electing to purchase the goods and paying the agreed amount)[8]. This point was succinctly adumbrated upon by Akpata, J., of the High Court, Benin, Edo State in *Onojefegwono V Agunbiade & anor*[9]. Furthermore in *Amao V Ajibike*[10] it was held that if the transaction is in substance a sale or an agreement to sell, parties cannot make it a hire-purchase merely by calling it one.

2.1 Features of a Hire Purchase Transaction

There are certain features of the hire purchase transaction that differentiates it from other forms of commercial transactions and other consumer credit transactions, from the statutory definition of hire purchase under S.20 of the Hire Purchase Act, five characteristic features are identified.

---

[6] Adebisi. L. Raimi (2015). op. cit at footnote 3
[7] [192] 9NLR 11.
[8] Nat Ofo: *Hire-Purchase Legislation in Nigeria: Making a Case for Reform:* Legislation & Statutory eJournal, 10. 2139/ssrn.1605484
[9] Ibid, (Unreported) High Court, Benin, Suit No. B/5/75.
[10] (1955-56) W.R.N.L.R. 121

They are: it is a contract, it is a bailment, it involves passing of property and there is the right to determine agreement as well as the option to purchase the property[11].

In its features as a bailment, the relationship between the owner of the goods and the hirer is that of a bailor and bailee. With respect to the passing of property, the object of the agreement is to ensure that the property in the goods bailed or hired remains in the owner, such that the bailee or hirer will be unable to pass any title in the goods to a third party during the period of the bailment. To achieve this objective, the agreement must confer on the hirer the option to purchase or return the goods during the hire-purchase period. The absence of such a provision in the agreement renders it a mere contract to buy and sale goods under the Sale of Goods Act[12]. As a commercial transaction, a hire-purchase contract has its distinguishing features which mark it out from other commercial transactions.

These features include the following:

a) It is a contract between the owner of the goods and the hirer, which by law must be in writing.
b) There is a bailment relationship between the owner of the goods and the hirer in which the owner is the bailor and the hirer is the bailee.
c) The object of a hire-purchase is to ensure the property in the goods let on hire remains in the owner even though the owner parts with possession. From the inception of the transaction to the time the hirer exercises his option to purchase, the property in the goods remains in the owner. The hirer only gains property when and if he exercises his option to purchase the goods under the contract. Consequently, the hirer will be unable to pass good title to a third party, unless a bona fide purchaser for value without notice, during the continuance of the bailment. The hire purchase agreement confers on the hirer an option to purchase the goods or return same during the continuance of the contract.
d) The hirer has the inalienable right to determine the agreement and return the goods to the owner. Any provision in the agreement which excludes or restricts this right is void and unenforceable.

[11] Loveday A. Nwanyanwu, (2013), op, cit at footnote 1
[12] *Ibid*

e) The hirer may elect to return the goods, or purchase them at the end of the transaction. This is known as the option to purchase which essentially distinguishes hire-purchase transactions from other forms of commercial transactions[13].

Under a hire purchase agreement, the hirer is entitled to the right to determine the agreement and return the goods to the owner. At this point, the hirer is no longer obliged to make further payments except the installment due and unpaid at the time of returning the goods.

3.0 Hire Purchase in Nigeria

In Nigeria, the Hire Purchase Act of 1965 was the first enactment that regulated hire purchase transactions. It initially affected the former territory of Lagos but became applicable to all parts of the Federation in 1966 following the enactment of the Hire Purchase (Application) Act No. 42 of 1966. The Act became operational on 1st October, 1968, by the Hire- purchase Act, 1965 (Appointed day) Order, L. N 90 of 1968[14]. The Act describes hire purchase as the bailment of goods in purchase of an agreement under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee. The Act further clarifies what constitutes a hire purchase price as being the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of goods to which the agreement relates, exclusive of any sum payable as a penalty or as compensation or damages for breach of the agreement but including any sum payable by the hirer under the agreement by way of deposit or other initial payment, or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by a payment of money or by the transfer or delivery of goods or by any other means. The hire-purchase transactions in Nigeria are regulated by the Act and the common law principles. The rationale for this is not far-fetched. The Act makes provisions for transactions to which it applies.

This is found in Section 1 of the Act as follows:

[13] Adebisi. L. Raimi (2015). op. cit at footnote 3
[14] Loveday A. Nwanyanwu, (2013), op, cit at footnote 1

Subject to the provisions of section 19 of this Act, the provisions of this Act (other than the provisions relating to the control of advertisement) shall apply in relation to —

a) All hire-purchase agreements and credit-sale agreements (other than agreements in respect of motor vehicles) under which the hire-purchase price or total purchase price, as the case may be, does not exceed two thousand naira; and
b) All such agreements in respect of motor vehicles, irrespective of the hire-purchase price or total purchase price, being agreements made after the commencement of this Act; and the expressions "hire-purchase agreement" and "credit-sale agreement" in the following provisions of this Act shall be construed accordingly.

So it can be derived from the above provision that the Act applies in respect of hire-purchase agreements, to: (a) transactions made after commencement of the Act over goods which purchase price does not exceed two thousand naira; (b) transactions made after commencement of the Act in respect of motor vehicles regardless of the purchase price; transactions in respect of goods which, though not covered by section 1 of the Act, were made subject of any regulation made by the Minister pursuant to section 19 of the Act. The Act will not be applicable to: (a) transactions made after the commencement of the Act in respect of goods which purchase price exceed two thousand naira other than motor vehicles; and (b) transactions made generally before commencement of the Act. In respect of these transactions, to which the Act does not apply, the common law principles will continue to apply to same[15]. This is so in view of the fact that the Act does not render such transactions illegal or void. It only excludes them from its ambit. In *Kasali A. Raimi v. Moshudi Funso Ogundana & 2 ors*[16] the Supreme Court held that: in determining whether an agreement is a contract of hire or a contract of purchase the test is whether the hirer has an option of determining the contract. If he has, he is a hirer, if not, he is a purchaser.

The objective of the 1965 Act was to cure some mischiefs and remove the trade malpractices occasioned by the common law system. These mischiefs and malpractices which the Act sought to cure and remove were:

[15] Hire Purchase Act 1965
[16] 1986) 3 NWLR (part 26) p97

a) Unscrupulous dealers with the aid of commission salesmen often deceived customers to take goods based on periodical payments without explaining to them the total cost in the installments and profits they made.
b) The unscrupulous dealers deceived customers into signing hire purchase agreements without giving copies of the agreements to the customers and which unfortunately did not contain conditions and warranties but which gave the owner the right to enter the customer's premises by force if, need be, to recover possession of the goods in default by the customer or hirer.
c) The "snatch-back firms which were used by dealers to enforce the right to recover goods were overzealous to the extent that they enforced the right on the slightest delay in payment even though a greater percentage of the price had already been paid and the default was occasioned by a supervening event like sickness or unemployment.
d) More often than not inferior goods were supplied by the owners to the hirer because they were privileged to rely on exclusion/exemption clauses.
e) The common Law system made it impossible for the hirer to redeem the goods if he subsequently got money to pay the owner.
f) In the event of resale, the owner cheated the hirer either by reselling more than the money and not accounting for the excess or claiming damages from the hirer if he resold less than the amount of money due.
g) The dealers usually cheated the hirer through the minimum payment clause in the hire-purchase agreement which stipulated the payments of a fixed large sum of money to the owner on termination of the agreement, and which usually exceeded one-half of the hire-purchase price.
h) Due to the absence of a regulatory legislation which fixes hire purchase prices and rates of interest, dealers and finance companies abused the liberty by cheating the hirers through imposition of prohibitive charges.

It is submitted that based on the foregoing mischiefs and malpractices the Act was enacted to protect the Nigerian hirers through clarity of terms of hire-purchase transaction to the hirer either before or at the time of signing the hire-purchase agreement, Supply of high quality goods by dealers, Abolition of exploitation of hirers by owners through insertion of obnoxious terms in the

agreements, Protection of hirer against immediate repossession and the harsh minimum payment clause in the event of default by the hirer or if he elects to terminate the agreement[17].

It is submitted that in spite of the existence of the Hire-Purchase Act, common Law is still Nigeria's fundamental Law of Hire-Purchase. This can be garnered from the fact that, the Act only sought to alter common Law and fill in some gaps that were missing in the common Law. Moreso, the Act was based on common Law[18]. The Hire-Purchase Act is not a codifying statute and assumes the existence of common Law which it only alters and adds to in some respects to meet various situations. It is pertinent to point out that to understand the Act, one has to fully appreciate the common Law principles as they apply to Hire Purchase[19].

The first area of impact of the Hire-Purchase Act on the consumer credit is the provision of section 2(1) that makes it mandatory for Hire Purchase agreement to be evidenced in writing. The written note or memorandum must be signed by the hirer in person and not by an agent. If the owner fails to comply with these formalities, he cannot enforce the hire purchase agreement, any contract of guarantee relating to the agreement, any right to recover goods from the hirer and any security given by the hirer or a guarantor. However, the court can dispense with the compliance with any of the stated formalities in section 2(2) as specified in items 1 and 2 subject to any conditions it thinks fit to impose if, it is satisfied that the non-compliance, has not prejudiced the hirer and it would be just and equitable to dispense with that formality. [20]The Act has five basic policies behind it to ensure that the hirer, who is usually in a more disadvantaged position economically when compared to the owner of the goods is well protected. First, it ensures that he is properly informed not only in regard to the goods; but also, the hire purchase agreement itself.

Secondly, it restricts the owner’s contractual freedom by providing for the inclusion of certain terms in the agreement and prevents the owner or his agent from imposing certain onerous terms on the hirer. Thirdly, the Act implies certain conditions and warranties in the agreement and makes ineffective any attempt by the owner to exclude some of them. Fourthly, while granting to the hirer a statutory right to terminate the agreement at any time, the Act limits his liability,

[17]Jacob Enyia, (2018*)*: *The Impact of Hire Purchase Act 1965 on Consumer Credit Article*: https://www.researchgate.net/publication/325336141
[18] Ibid
[19] *Ibid*
[20] Ibid

whether imposed by the owner or not on such termination. Finally, the Act restricts and regulates the right of the owner to repossess the hired goods from the hirer when he is in default of payment or otherwise in breach of the agreement[21]

However, the harsh common law position is still applicable to hire purchase transactions not within the purview of the Hire Purchase Act. The reason for this is that by section 1 thereof, the Hire Purchase Act has a limited application. First the Act has a prospective effect being applicable only to hire purchase agreements entered into on or after October 1, 1968, the effective date of the Act itself. Secondly, the Act applies only in respect of:

(a) all hire purchase and credit sale agreements in respect of goods under which the hire purchase price or total purchase price, as the case may be does not exceed 1000 pounds (Two Thousand Naira); and (b) all such agreements in respect of motor vehicles, irrespective of the hire purchase price or the total purchase price.

The common law rules therefore still apply to cases falling outside the operations of the Act. These include all agreements which became effective before October 1, 1968 and those in relation to goods other than motor vehicles whose hire purchase or total purchase price exceeds a thousand pounds or two thousand naira. Besides, being a species of bailment and having regard to the definition of goods‟ under the Act, it applies only in respect of chattels personal capable of physical delivery. It is therefore generally not applicable to agreements relating to land or to choses in action or to the provision of services[22]. In spite of the tremendous innovative changes and the general advancement in commerce and industry, the Hire-Purchase Act 1965 has only been amended once. In 1970, the then Hire-Purchase (Amendment) Act was made to deal with some peculiar problems confronting hire-purchase transactions then. Upon the recompilation of extant federal legislations into the Laws of the Federation of Nigeria 2004, the then Hire-Purchase Act, as amended, became the Hire-Purchase Act, Cap. H4, Laws of the Federation of Nigeria 2004. This is currently the statute regulating hire-purchase transactions in Nigeria.

[21] :Duru Onyekachi: *The Hire Purchase Act Was Promulgated To Protect The Hirer And Shield Him From Abuses Hitherto Common In Hire Purchase Transactions* :Legal Essay Series**:** No. 10
[22] Ibid

Unfortunately, this recompiled Hire-Purchase Act did not amend the statute to incorporate overdue amendments to the legislation[23]

The innovative dynamism of the business environment and the advancement in technology have nearly almost rendered the Hire-Purchase Act irrelevant, archaic and redundant. This is typified by the emergence of new models of commercial transactions to meet the challenges of the time and side-track the unhelpful, outdated and rigid hire-purchase legislation. Hire purchase is still a useful form of commercial transaction which holds enormous benefits for the parties thereto. Thus, it is apt to keep its enabling statute contemporary to provide the enabling environment for it to thrive. It is quite disheartening to note that the Hire-Purchase Act in use in the country is about 45 years old having been originally enacted in 1965. Matters are even made worse if cognizance is taken of the fact that the Hire-Purchase Act enacted in 1965 was modelled after the Hire- Purchase Act of the United Kingdom enacted in 1938; that is, 72 years ago. Little wonder therefore that the Hire-Purchase Act has become inadequately suited to cater for the challenges in the modern world of business. Consequently, it is stating the obvious to remark that the Hire Purchase Act is overdue for substantially amendment, if not complete reenactment, that would ensure that the legislation has adequate provisions to meet the needs of business people and entrench an enabling environment for sustainable and rapid growth in commercial activities[24].

3.1 Shortcomings of the Hire Purchase Act 1965

As discussed earlier, the Act is met with some limitations and as such this has attracted criticisms from different scholars on the issue. The first major criticism against the Hire-Purchase Act is the monetary limit for goods, other than motor vehicles, to which that Hire-Purchase Act applies. By virtue of section 1 of the Hire Purchase Act, the subject matter of a hire-purchase agreement can be goods (other than motor vehicles) whose value are not in excess of N2,000 and motor vehicles. In practical terms, only motor vehicles can presently be the subject-matter of a hire-purchase agreement under the Hire-Purchase Act. It is only a matter for the imagination for anybody to undertake hire-purchase agreement for goods, other than motor vehicle, valued at not more than N2,000. The monetary limit of N2,000 is most certainly unreasonable, unrealistic and awkward. This is by far the most singular limiting factor to the growth of hire-purchase practice

[23] Nat Ofo: *Hire-Purchase Legislation in Nigeria: Making a Case for Reform:* Legislation & Statutory eJournal, 10. 2139/ssrn.1605484
[24] Ibid

in the country. The absence of hire-purchase transactions in respect of goods other than motor vehicles is attributable to this grave lapse. It is long overdue to have this lapse which arose from the conversion of the original monetary limit in the original Hire-Purchase Act when it was enacted in 1965. [25]Another criticism is the impact of technology, the amendment to the Hire-Purchase Act should reflect the present pervasive influence of technology in business transactions. Thus, the Hire-Purchase Act should be modified to take account of online transactions relating to hire-purchase. It is not difficult to imagine a situation where the hire-purchase agreement can be entered into online, especially in relation to standard form hire-purchase agreement. Fines and penalties: The penal provisions of the Hire-Purchase Act require modification to reflect current realities and to adequately serve as deterrence to a breach of statutory obligations imposed by the Hire-Purchase Act. The current penal provisions are so ridiculously low that they have been described as being derisory. The monetary value for fines and penalties in the Hire-Purchase Act should be amended to reflect present day economic realities. Signing of hire-purchase agreement: Another significant criticism of the Hire Purchase Act is in respect of the requirement that the hire-purchase agreement or the note or memorandum in respect thereof must be signed by the hirer personally otherwise the owner would be unable to enforce same. The requirement for personal signing by the hirer is strict. It is not within the proviso to section 2 which empowers the court to dispense with the requirement of section 2 if the court is satisfied that a failure to comply with any formality mentioned in section 2 did not prejudice the hirer and that it would be just and equitable to dispense with the requirement, subject to any condition the court deems fit to impose in the circumstances of the case. The requirement that the hire-purchase agreement or the note or memorandum in respect thereof be personal signed by the hirer is out of tune with modern business practice and inconsistent with the growing usage of agents in concluding business deals[26].

3.2 Repossession in Hire Purchase

Repossession of the property is one of the unique features of the hire purchase agreement. One of the basic policies of the Act which protects the hirer is that the Act restricts and regulates the

[25] Nat Ofo: op, cit at note 22
[26] *Ibid*

right of the owner to repossess the hired goods from the hirer when he is in default of payment or otherwise in breach of the agreement. This the Act does in section 9. The Act does not seek to deprive the owner of his right of repossession. It only seeks to ensure that the right is not exercised whimsically and capriciously to the detriment of the hirer[27]. At common law, the owner's right of repossession is absolute, for the hirer's right under an agreement is entirely and exclusively dependent upon the terms of his agreement. These terms invariably put him in a very weak and precarious position for in the absence of any stipulation to the contrary, the owner may repossess the goods, without a court order, on any breach whatsoever by the hirer to pay an installment or to do so punctually[28] Furthermore, subject to the terms of the particular agreement, the hirer may pay the agreed installment in advance but never in arrears. It is immaterial whether the particular payment is in respect of the first or the last installment. Failure to pay an installment on the agreed date constitutes a breach which entitles the owner to the exercise of his right of repossession. Again, the hirer has no legal interest in the goods repossessed by the owner even when their subsequent sale may yield to the owner substantial surplus over and above the balance outstanding in the agreement.

The transfer of possession of the goods to the hirer is a fundamental feature of a hire-purchase transaction. The hirer must have possession of the goods. This is the reason while the Act defines hire-purchase as "bailment of goods". Furthermore, section 9 of the Act lays down very strict procedure to be observed by the owner before he can repossess goods that are subject matter of a hire- purchase agreement. Failure to comply with such procedure has severe consequences as provided for under Section 9 (2) of the Act which provides thus:

If an owner recovers possession of goods in contravention of subsection (1) of this section, the hire- purchase

agreement, if not previously determined, shall determine and-

(a) The hirer shall be released from all liability under the agreement and shall be entitled to recover from the

[27] Adebisi. L. Raimi (2015). op. cit at footnote 3
[28] Ibid

owner in an action for money had and received all sums paid by the hirer under the agreement or under any

security given by him in respect of the agreement; and

(b) Any guarantor shall be entitled to recover from the owner in an action for money had and received all sums

paid by him under the contract of guarantee or under any security given by him in respect of that contract.

Thus, the owner cannot repossess the goods unless pursuant to a court order.

Section 9 of the Hire-purchase Act 1965 seeks to protect the hirer from some of the rigors and hardships or harshness of common law rules without derogating from the legitimate rights of the owner. For some time, the legal position of the hirer in respect of the owner's right of repossession was considerably improved. However, in 1970, due to abuses by the hirers and great lobbying by the hire-purchase business representatives the liability placed on the owner under the principal Act was somehow eased. Generally, however, the owner's right of repossession is now restricted. The right of the owner to recover possession of the goods is largely determined by the proportion of the total hire-purchase price paid or tendered by the hirer. Section 9 of the Act prohibits the owner from enforcing a right to repossess the goods otherwise than by action when "relevant proportion" of the hire-purchase price has been paid or tendered unless the hirer has himself terminated the agreement[29].

It must be noted that section 9 (5) of the Act gives the owner a limited right to repossess the motor vehicle even though the relevant proportion has been paid. This sub-section does not apply to other goods apart from motor vehicles and the sub-section is applicable only when three or more installments are due and unpaid. It follows from the provision of section 9(5) of the Act that when the hirer has paid the relevant proportion of the hire-purchase price or more the owner, on the occurrence of a default may only recover possession of the goods by legal action. The word "action" is defined in section 20 (1) as including counter-claim and set-off.

[29] Adebisi. L. Raimi (2015). op. cit at footnote 3

Where a matter has come properly before a court pursuant to section 9(1) of the Act, section 10 thereof grants specific powers to the court which can be exercised before, during or after the hearing of the case. Before the hearing of the suit, in addition to other powers, and upon the application of the owner, the court has the powers to make interim orders for the protection of the goods from damage or depreciation, restricting or prohibiting the use of the goods or giving directions as to the custody of the goods pending the final determination of the suit.[30] At the hearing, without prejudice to any other powers conferred on the court by its rules, the court may make an order for the specific delivery of all the goods comprised in the agreement to the owner. Such an order would usually give no option to the hirer to pay the value of the goods. The court may also make an order for the specific delivery of all goods to the owner but postpone the operation of such order on the condition that the hirer or guarantor pays the unpaid balance of the hire purchase price in such installments as it thinks fit, provided the goods are in the hirer's possession or control at the time.

The consequence of the section 9(2) is that where an owner wrongfully recovers possession of goods let out on hire-purchase for which the relevant proportion of the hire-purchase price has been paid, the hire-purchase agreement would automatically be brought to an end and the hirer would be entitled to recover all the payments made to the owner pursuant to the hire-purchase agreement. It is conceded that the Hire-Purchase Act was enacted to protect the hirers from exploitation by heartless owners, but section 9(2) appears to be a gross overkill. It completely ignores the essence and structure of a hire-purchase agreement. Making the owner liable to refund to the hirer all previous instalments paid in respect of the goods is to unduly confer some undeserved financial advantage on the hirer. The instalments paid by the hirer were for the periods in which he had possession and use of the goods. That being the case, he had received value for the payment of the instalments. Compelling the owner to refund the instalment paid on account of a wrongful repossession of goods, the subject-matter of a hire purchase agreement, cannot be said to meet the justice of the matter. It is exceeding harsh, unduly disadvantageous and most certainly unsupportable. It may be argued that the essence of the provision is to compel owners to desist from such wrongful repossession of goods, the subject matter of hire-purchase agreement. Even then, it does seem to have gone too far. The hirer could be compensated by way

[30] Adebisi. L. Raimi (2015). op. cit at footnote 3

of damages for wrongful repossession. The exact amount is subject to the circumstances of the case and the discretion of the court.

4.0 Hire Purchase in the United Kingdom

While the Hire Purchase Act of 1965 of Nigeria is based on common law of the United Kingdom, the creation of separate contemporary legislation(s) will make an impact on hire purchase transaction as evidenced in developed climes. Hire-Purchase agreement in advanced economies are highly regulated by the various consumer credit Acts of these economies and other consumer credit contract legislations. For instance, the United Kingdom Hire-Purchase agreements are regulated by the consumer credit Act of 1974 which was amended by the consumer credit Act of 2006. There is no comparable legislation in Nigeria yet. Hence, sections of the English Act depict its relationship and influences on the Nigerian Hire-Purchase Act and Agreements[31].

Britain has gone further to enact the Credit Contracts and Consumer Finance Act 2003 hereinafter referred to as the 'CCCFA' which is the main Law that provides protection for consumers in credit contracts. It covers credit sales, secured loan contracts and unsecured loan contracts. Section 5 of CCCFA defines credit as when you borrow money or you are given the right to defer payment of a debt, or to defer payment for purchase of goods or services. Section 7 also defines a consumer credit contract as an agreement one makes to get credit (borrow money) or to buy goods or services on credit (including hire-purchase). Section 9 of the Consumer Credit Act 1974 also defines credit as that which includes cash loan, and any other form of financial accommodation[32].

The English Consumer Credit Act 1974 (herein after called CCA) is an omnibus legislation that regulates all forms of consumer credit agreements as listed in part II of the Act, and include, inter alia, Hire-Purchase agreements, Credit sales agreements, Pawn brokering, Land mortgages etc. section 6 of the Consumer Credit Act is a replica of section 2 of the Nigerian Hire-Purchase Act 1965. Both deal with the execution of consumer credit agreement that is they must be properly

[31] Nat Ofo: op, cit at note 22
[32] Adebisi. L. Raimi (2015). op. cit at footnote 3

executed in documents in the prescribed form containing all the prescribed terms and signed in a prescribed manner by both the creditor (owner) and debtor (hirer) whereas section 2(2)(d) of the Hire-Purchase Act requires a note or memorandum of the hire-purchase agreement to be sent to the hirer by the owner within 14 days, section 63(2) of the consumer Credit Act requires a copy of the executed agreement to be given to the hirer or debtor within 7 days following the making of the agreement. Under the consumer credit Act implied terms are also excluded. It is submitted that these statutory precautionary measures are to safeguard the debtor or hirer against injustice, exploitation and oppressive malpractices of the owner or creditor. Section 79 of CCA compels the owner to give the hirer information in a statement depicting the total sum which has become payable under the agreement by the hirer but remains unpaid and the various amounts comprised in that total sum, with the date when each became due, if the hirer requests in writing with a payment of a fee of 15 new pence[33].

If the owner fails to comply with this requirement, he is not entitled, while the default continues, to enforce the agreement, and if the default continues for one month he commits an offence. This provisions is imperi material with section 6 of the Hire-Purchase Act 1965. The provisions in the two Acts are meant to obviate the owner from fixing prohibitive hire-purchase price, rates of interest and fixed large sums of money in the minimum payment clause. Section 81 of CCA provides for appropriation of payments as section 7 of the Hire- Purchase Act 1965. These provisions, it is submitted were inserted to assist the hirer or debtor to satisfy the sums due under the hirer or debtor to satisfy the sums due under the hire-purchase agreement. Sections 86 and 87 of CCA provide for recovery of goods or rents on the death of the hirer or debtor like regulation 10 of the Hire-Purchase Regulations of 1968. Recovery is done through the legal representatives of the debtor or hirer through an order of court as stipulated by section 86(2) of CCA. Section 98 of CCA grants the owner or creditor the right to terminate regulated agreement by giving the debtor or hirer 7 days' notice of termination. Section 99 grants the debtor or hirer the right to terminate regulated hirer purchase agreement by giving notice to any person entitled or authorized to receive the sums payable under the agreement[34].

The section appears to be biased against the creditor as it does not specify the timeframe of the debtor's or hirer's notice of termination. By section 100 the debtor or hirer shall pay one-half of

[33] Nat Ofo: op, cit at note 22
[34] *Ibid*

the total price. However, section 101 specifies 18 months as the duration of the debtor's or hirer's notice to the creditor or owner. But section 9 of the Hirer-purchase Act 1965 specifies one-half for other goods and three-fifths for motor vehicles as the relevant proportion of the purchase price to be paid before the owner shall not enforce any right of possession of the goods against the hirer

5.0 Hire Purchase in India

Hire Purchase in India is also based on the common law principles and rules of the United Kingdom as it is a commonwealth country. In India a hire purchase agreement is defined in the Hire Purchase Act, 1972 as peculiar kind of transaction in which the goods are let on hire with an option to the hirer to purchase them, with the following stipulations:

a) Payments to be made in installments over a specified period.
b) The possession is delivered to the hirer at the time of entering into the contract.
c) The property in goods passes to the hirer on payment of the last installment.
d) Each installment is treated as hire charges so that if default is made in payment of any installment, the seller becomes entitled to take away the goods, and
e) The hirer/ purchase is free to return the goods without being required to pay any further installments falling due after the return[35].

Though both the system of consumer credit and installment sale are quite popular in financing and look similar, there is clear distinction between the two. In an installment sale, the contract of sale is entered into the goods are delivered and the ownership is transferred to the buyer but the price is paid in specified installments over a period of time. In hire purchase the hirer can purchase the goods at any time during the term of the agreement and he has the option to return the goods at any time without having to pay rest of the installments. But in installment payment financing there is no such option to the buyer. In installment payment, the ownership of the goods is transferred immediately at the time of entering into the contract. Whereas in hire

[35] Rai University, Management of Financial services : Hire Purchase – Conceptual, Legal And Regulatory Framework

purchase the ownership is transferred after the payment of last installment or when the hirer exercises his option to buy goods.

As it is evident in Nigeria, there is no exclusive legislation dealing with hire purchase transaction in India. The Hire Purchase Act was passed in 1972. An Amendment bill was introduced in 1989 to amend some of the provisions of the act. However, the act has been enforced so far. The provisions of are not inconsistent with the general law and can be followed as a guideline particularly where no provisions exist in the general laws which, in the absence of any specific law, govern the hire purchase transactions. The act contains provisions for regulating:

1. the format / contents of the hire-purchase agreement
2. warrants and the conditions underlying the hire-purchase agreement,
3. ceiling on hire-purchase charges,
4. rights and obligations of the hirer and the owner.

In absence of any specific law, the hire purchase transactions are governed by the provisions of the Indian Contract Act and the Sale of Goods Act[36].

Conclusion

As discussed above, the common law principles which hire purchase agreements is based on was harsh on the parties involved, especially the hirer whom the law and society generally perceived as the disadvantaged party in the transaction. The Hire Purchase Act of 1965 was introduced and enacted to curb the unscrupulous and inhumane activities of owners who whimsically oppressed the hirers and forcefully/wrongfully repossessed the goods in the possession of these hirer even after reasonable periodical payments had been made. Although some of the provisions of the Act is commendable in this regard, the Act is however, yet to meet up with the advancement and technological developments/standards of the current Business industry, due to some of its provisions being archaic, inchoate and outdated, it is important the Act be amended to fit the modern day situations and environment of commercial transactions in order to be in tune with modern day globalization and best practices.

[36] Rai University, Management of Financial services

Also, the monetary limit for goods, other than motor vehicles, the subject-matter of hire-purchase should be expunged from the Act. It is important that there be no limit for any goods let out on hire-purchase because this will constitute an impediment to commercial growth. Again, once the monetary limit for other goods has been done away with, section 9(5) of Act should be extended to other goods other than motor vehicles since the subsection is of great value in balancing the interests of the parties under the agreement. If the limit is removed, the owner will be able to undertake interim-repossession of other goods in particular hire-purchase transactions. This may, probably, change the opinion of some scholars who had dubbed the Hire-Purchase Act as the hirers' Act and unduly protective of the hirers.

Hire purchase is still a useful form of commercial transaction which holds enormous benefits for the parties thereto. Thus, it is apt to keep its enabling statute contemporary to provide the enabling environment for it to thrive. It is quite disheartening to note that the Hire-Purchase Act in use in the country is about 45 years old having been originally enacted in 1965. Matters are even made worse if cognizance is taken of the fact that the Hire-Purchase Act enacted in 1965 was modelled after the Hire- Purchase Act of the United Kingdom enacted in 1938; that is, 72 years ago. Little wonder therefore that the Hire-Purchase Act has become inadequately suited to cater for the challenges in the modern world of business.