



Examining the Nigerian Hire Purchase Act: Addressing Monetary Limitations and Imbalances in Legal Protection to Enhance Commercial Development

NATHAN IBRAHIM

Edo State University, Uzairue, Nigeria

ADEREMI OLUBUNMI OYEBANJI

Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria

IFESINACHI CHARLES OKONJI

Kampala International University, Uganda

COLLINS EKPENISI

Kampala International University, Uganda

KHADIJAT IBRAHIM MAIFADA

Kampala International University, Uganda

Abstract. A hire purchase agreement is intended to make goods available to customers through installment payments and automatic transfer of ownership upon full payment after the specified time, thereby facilitating trade and commerce. This, however, proves that the act, now obsolete, hinders growth commercially. It is specifically Section 1(a), which places monetary limits on goods except motor vehicles, whereas Sections 9(2) and (5) protect the hirer excessively at the expense of the firm owner. None of these provisions reflects the modern economic realities. In this regard, hire purchase transactions have associated inefficiencies. This study is a critical appraisal of the Nigerian Hire Purchase Act and the limitations and imbalances therein. Specific objectives include an evaluation of monetary limitations contained in Section 1(a) to assess the implications of Sections 9(2) and (5) and propose reforms to bring this act in tandem with the sharply changing economic realities. The research adopts qualitative methodology and doctrinal analysis of statutory provisions and case law along with using secondary data sources from legal and commercial literature. Findings show that monetary limits under Section 1(a) are not at all realistic in light of inflation and changing market conditions, while Sections 9(2)

and (5) put off owners from entering into hire-explore agreements. The study, therefore, concludes with recommendations for legislative amendment to address these, as a balanced and progressive framework for hire purchase in Nigeria is thereby formed.

Keywords: Nigerian, Hire Purchase, Act, Legal, Commercial

1. Introduction

The hire purchase system is the system that allows the owner of the goods to grant credit to a person who is unable to pay outrightly in full the purchase price of the goods he or she wants to buy (Agbonika & Agbonika, 2014). Under the hire purchase agreement, the owner of the goods will agree to let the goods to the prospective buyer on hire and the hirer will agree to take the goods into consideration for either weekly, quarterly, monthly or annual installment payments of the hire purchase price of the goods and along with the right of the hirer to exercise an option to purchase the goods or return the goods at the end of the hire purchase agreement (Agbonika & Agbonika, 2014).

In a hire purchase transaction, the goods are let out on hire by an owner of the goods to the hirer, the hirer is required to pay an agreed amount in periodical installments during a given period (Vaines, 1973). The ownership of the property remains with the owner of the goods and passes on to the hirer on the payment of the last installment. Hire purchase is characterized by an arrangement where goods are hired out by the owner to the hirer. Under the arrangement, the owner of the goods will agree to let the goods to the hirer and the hirer will agree to take the goods and pay the hire purchase price by instalments (Edwards, 1878). The hirer is given an option to purchase the goods, after paying all the installments and most importantly under hire purchase transaction except the hirer complete his installment payment of hire purchase price and then exercise his right to purchase the goods at the end of the installment payment (Aidonojie et al., 2024), that is the ownership of the goods will revert back and remains with the owner of the goods (Alobo, 2021).

The importance and the need for hire purchase were brought about by two notable English case of *Lee v Butler* (1893) 2 QB 318, and *Helby v Matthews* (1895) AC. 471, HL. In the case of *Helby v Matthews*. Wherein, Helby a dealer, delivered a piano to one Brewster on terms that Brewster would pay a monthly rent of 10 shillings, 6 pence and that after 36 payments, the piano would become Brewster's property. In the meantime, the property would remain in Helby (Borrie, 1970). Brewster could terminate the hiring at any time by returning the piano to Helby and stopping the payment of instalments. Meanwhile, after making a few payments, Brewster pledged the piano to a third party, Matthew, who took it in good faith and without notice of Helby's rights. Helby tried to recover the piano from Matthew, and the question which had to be answered was whether Matthew had a good title to the piano (Alewo, 2014). The House of Lords unanimously decided that the agreement between Helby and Brewster did not constitute an agreement for Brewster to buy within Section 9 of the Factors Act, 1889. All that he undertook to do was to make monthly payments in instalments, although he had the option to buy the piano. If he had exercised the option, he would have become the purchaser of the piano instead of the hirer (Umenweke, 2009). The judicial stamp of approval thus given by the court to the practice of hire-purchase increased the popularity of the practice, both on the part of the owner and the hirer.

However, with education, the Nigerian consumers started to understand and embrace the fact that the hire-purchase system gives him access to one of the simplest and least expensive forms of secured

financing for trade operations (Ofo, 2010). One of the most popular ways that owner of goods gives their consumers extended credit is through hire-purchase. Most people would consider this type of agreement to be a contract of sale in which the amount is paid in installments. Yet the fact that sales contracts and hire-purchase agreements differ. The hire-purchase system was fully embraced by both investors and customers by the early 1960s. In Nigeria, hire purchase transactions are governed by the Nigerian Hire-purchase Act and the English Common Law Rules (Afolayan & Kumapayi, 2021). The objectives of this is to determine the issue of monetary limitation on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act if is realistic in the current economic reality in Nigeria. And to also appraise Section 9(2) and (5) of the Hire Purchase Act, as an over protection of the hirer to the detriment of the owner and as such a detriment to the advancement of the hire purchase transaction in Nigeria.

However, the scope of this research centers on the appraisal of the Hire Purchase Act which has outlived its usefulness. It is now an impediment to the development of rapid commercial activities (Igweike, 1999). This is because it contains some provisions which negatively impact on commercial activities or it does not provide for critical issues which have developed over time. The study will embark on the voyage of critical appraisal of those provisions of the Hire Purchase Act which are inappropriate posing an impediment to the development of rapid commercial activities (Afolayan, 2021). In appraising the provision of the Hire Purchase Act the focus of this research is not the entire Act but rather it is going to be limited to the provision of Section 1, 9(2) and (5) of the Hire Purchase Act. Therefore, this research is guided by the following question: Whether the monetary limit on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act is realistic given the current economic reality in Nigeria. Whether the provision of Section 9(2) and (5) of the Hire Purchase Act is an over protection of the hirer to the detriment of the owner and as such hinders the advancement of hire purchase transaction in Nigeria.

2. The History of Hire Purchase Law in Nigeria

The concept of Hire Purchase is an important aspect of commercial law and commercial transactions. The system of hire purchase was developed in the United Kingdom (Adelaju, 2017). The first English Hire Purchase Act was in 1938. The origin of the modern

Hire Purchase agreement is the mid-Victorian custom in furniture trade under which persons who were unable to pay for the furniture at the time they desired to purchase it or who were not sufficiently worthy of open credit were allowed to take them (Antai et al., 2024). In the case of household furniture, it was successful for it prevented the property passing until full payment was received (Raimi, 2015).

The true Hire Purchase agreement did not come to being until the Factors Act 1889 and Sale of Good Act 1893 which contain overlapping provisions to the effect that enable a person who has bought or agreed to buy or who is in possession of goods or document of title of goods with the consent of the owner to pass a valid title to a third party who bought without notice of the right of the original owner (Achike, 1985). This situation caused great anxiety and hardship to sellers and owners of goods who under the circumstance lose their ownership of their goods as well as their possession and therefore, all the rights accruing to such ownership and possession (Okany, 1996). As was held in the case of *Lee v. Buttler*, in that case, A, being in possession of some piece of furniture under a purported hire purchase agreement with the plaintiff sold and delivered the same to the defendant before the last installment had accrued or been paid. The defendant received the goods in good faith and without knowledge of the plaintiff's right in respect of them (Agbonika & Agbonika, 2014). The court held that the sale and delivery of the goods to the defendant were within the provision of Section 9 of the Factors Act 1889. It was also held further that A was person who bought or agreed to buy and therefore the sale to defendant was valid and the furniture could not be recover by the owner. After this case there was intense desire to avert this kind of pitfall arising from such situation. It was this desire that led to development and recognition of hire purchase. Hire purchase system received judicial approval and blessings in the case of *Helby v. Matthews*, In that case, the owners of a piano agreed to let it on hire to H at a monthly rent of ten shillings and six pence (Izevbuwa et al., 2024; Majekodunmi et al., 2024). The agreement gave possession of the piano to H and permitted him to return it to the owner at any time subject to payment by him all the installment due at the date of return. It further provided that if and when the installment paid by H totaled (18) Eighteen guineas, the piano becomes his property but until such payment, it remained the property of the owner who will be entitled to resume possession of it, if H defaulted in his installmental payment or failed to keep the piano at his own address. Having taken possession and having paid some installments, H pledged the piano to a pawnbroker, as a security for a loan (Budiyanto et al., 2024; Haruna et

al., 2024). The owner took this action to recover possession, the House of Lords, unanimously held that the action succeeded. It was held further that H was not a person who has bought or agreed to buy the piano within the meaning of Section 9 of the Factors Act, 1889. The holding of Lord Herschel is stated below:

“All that he undertook was to make the monthly payments of ten shillings and six pence so long as he kept the piano. He has an option no doubt to buy it by continuing the stipulated payments for a sufficient length of time. If he has exercised that option, he would have become the purchaser. I cannot see under these circumstances how he can be said either to have bought or agreed to buy the piano. The terms of the contract did not upon its execution bind him to buy, but left him to do so or not as he pleased.”

In Nigeria, Originally, the Nigeria Hire Purchase Act 1965 is modeled after the United Kingdom Hire Purchase Act 1938 and the advertisement (Hire Purchase) Act 1957 with some modification to meet local needs. The Nigeria Hire Purchase Act was originally passed in 1965 applicable to only Lagos State but by virtue of Hire purchase (Application) Degree No. 42 of 1966 it was made applicable to the rest of the country. It came into force in October 1, 1968 by virtue of Hire Purchase Act, 1965 (Application Day) order 1968. The Hire Purchase (Amendment Decree No.23 of 1970) made minor changes to section 8 and 9 of the Act. The Hire Purchase Regulation of 1968 was made and published by Commissioner for Trade and Industries in exercise of his power under Section 5 and 8 of Hire Purchase Act of 1965. These amendments and further adjustment were made when the Act was re-enacted in 1990. The practice of hire purchase in Nigeria existed before this 1965 Act was enacted. Local traders sold items on credit basis.

Prior to 1965, Nigeria had no legislation governing hire purchase transaction. The principle of contract at common law governed hire purchase transactions. At that time, the owners of goods which are the subject matter of the hire purchase transaction, subjected the practice to abuse (Ekpenisi et al., 2024). Take for instance, an owner of a goods under a hire purchase transaction could at any time enter the premise of the hirer to repossess their goods from the hirer for a minor default. That situation was seen clearly in *Atere v Amao* wherein the total sum of a hire purchase price was N2, 000. The hirer had paid N1, 990 leaving a balance of N10. When this N10 fell due, the hirer could not pay. The owner seized the vehicle and sold it and was held to have acted rightly (Vaines, 1973). In the light of that situation, consequently, were

immediate repossession of goods became the order of the day by the owner of goods on a tiny delay in the payment of instalment by the hirer. The owner of a goods made a considerable profit at the detriment of the hirers whose right to exercise an option to purchase has been brought to an end and this in turn rendered the hire purchase system unattractive to potential hirers (Safi' et al., 2024). Besides this abuse, unjust hardship on the hirer, they only enjoyed a minimum legal protection.

In a bid to protect the hirer from the hardship cost by the principles of common law, the Hire Purchase Act, was enacted in Nigeria as the first statute governing hire purchase transaction in Nigeria. Notwithstanding the tremendous change and advancement in commerce and industry in Nigeria, the law and policy makers have done nothing to make the Hire Purchase Act move with the tremendous change and advancement of commerce and industry in Nigeria. In this light, the Hire Purchase Act, has only been amended once in 1970. And as such, there are still some provisions in the Hire Purchase Act that are begging for amendment.

3. The Concept of Hire Purchase

On the concept of hire purchase, it is enough to ask the question, "What is hire purchase?" Different scholars, statutes, and judicial decisions have provided answers to this question. This will be looked at in a bid to provide a proper understanding of the concept in question (Edwards, 1878). Under Section 20 of the Hire Purchase Act, the term hire purchase is defined as the "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." And this is to say that hire purchase is that agreement under which goods are given on hire and the hirer is given an option to purchase at the end of full payment of instalment (Alobo, 2021).

In Halsbury's Law of England Vol. 9(1), fourth Edition at page 15, referred to contract of hire purchase as a contract of bailment under which goods are hired by the owner and although the hirer is not obliged to buy the goods, he has the contractual option to purchase them should he so choose (Borrie, 1970). Furthermore, Crossley Vaines, in his book did explained hire purchase contract as that agreement in its accepted sense is a complex transaction, not a contract of sale but a bailment whereby the owner of a chattel lets it out on hire for a periodic rent with the provision that on due compliance with the various terms of the agreement, the hirer shall have the option of purchasing the chattel upon the completion of the

agreed number of payments of rent or of returning the chattel at any time before their completion.

Meanwhile, the courts have also had to lend a definition to the term. For instance, the court per Okagbue, JCA in *Samuel Aro v. Joe Allen & Co. Ltd [1979] 2 FNR 292,295* defined Hire-Purchase as: "A system whereby the owner of the goods lets them on hire 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 the further balance of rent accruing after return; until the conditions have been fulfilled the property remains in the owner's possession".

Flowing from the above definitions, hire purchase is characterized by the following. It is an arrangement where goods are hired out by the owner to the hirer. Under the arrangement, the owner of the goods will agree to let the goods to the hirer and the hirer will agree to take the goods and pay the hire purchase price by installments (Alewo, 2014). The hirer is given an option to purchase the goods, after paying all the installments and most importantly under hire purchase transaction except the hirer complete his instalmental payment of hire purchase price and then exercise his right to purchase the goods at the end of the instalmental payment, the property in the goods, that is the ownership of the goods remains with the owner of the goods (Igweike, 1999).

4. Hire Purchase Distinguish from Other Similar Commercial Transactions

It's possible to mistake hire-purchase for other transactions with like features. As is evident, the word is a combination of the words "hire" and "purchase," the combination of these words will mean hire plus an option to purchase (Okany, 1996). It is not surprising, given this context, that this construct, "Hire-Purchase," exhibits similarities to other commercial transactions (Umenweke, 2009). As can be seen, a hire-purchase transaction has unique characteristics that may not be present in other commercial transactions of a comparable nature. These similar commercial transactions include hire Purchase and Sale of Goods, hire purchase and credit sale, hire purchase and loan, hire purchase and hire, hire purchase and conditional sale agreement:

(i) Hire Purchase and Sale of Goods

Sale has been defined by section 1(1) of the Sale of Goods Act as 'a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer

for a money consideration called the price.’ In other words, per the dictum of Wilde C.J, when two parties amicably agree that one of them shall purchase the goods of the other, it amounts to a contract purporting that the one shall sell and the other shall buy. In *Yakassi v Incar Motors (Nig.) Ltd.* the Supreme emphasized the clear difference between the hire purchase and sale of goods by saying that the difference between an outright sale and hire purchase agreement is that in the former the property in the goods passes to the purchaser as soon as the contract is entered into whereas in the latter, the property in the goods remains vested in the owner until payment is made. In a sale of goods transaction, the buyer pays the full purchase price of the goods outrightly and takes ownership of it immediately, while in a hire purchase transaction, the hirer make payment for the hire purchase instalmentally with the option to buy the goods at the end of instalmental payments (Achike, 1985).

Thus, for a contract to be said to be a sale, four ingredients must be present to wit:

- A contract between the buyer and the seller.
- A contract which the subject matter is goods.
- A contract which purpose is for the transfer of the property in the goods.
- A contract for which the transfer of the property in the goods is for money consideration.

While a sale may appear similar to a hire purchaser, they are in no wise the same. In the first instance, a contract of sale is governed by the Sale of Goods Act, 1893, whereas the hire purchase contract is governed by the Hire Purchase Act, 1965.

(ii) Hire Purchase and Credit Sale

The Hire Purchase Act in Section 20 defines credit sale as the sale of goods in pursuance of an agreement under which the whole or part of the purchase price is payable in five or more installments. This is a situation where a person wants to make an outright purchase of goods but may find out that he does not have sufficient money to make full payment for them. In this instance, the person may pay in installments, while the goods pass to the buyer on credit.

The difference between hire purchase and credit sale is clearly shown in the judicial case of *Ajagbe v Idowu* where the Supreme Court held that in a credit sale agreement for the purchase of a property, the buyer pays a deposit followed by installment payments. Once the agreement is entered into by the parties, ownership of the vehicle is transferred to the buyer

(Raimi, 2015). If the buyer defaults or is unable to meet his financial obligations to the seller, the option open to the seller is an action to recover that balance of payment owed by the buyer. On the other hand, in a hire purchase agreement, ownership of a property remains with the seller until payment is fully made. Failure of the buyer or hirer to pay the installments entitles the owner to take possession of the property (Imoisi & Aidonojie, 2023; Aidonojie et al., 2022). Continuing, the court clarified that the difference between a contract of sale at a price payable by installment and a contract of hire purchase is that in the former, the purchaser has no option of terminating the contract and returning the chattel, whereas in the latter, the hirer has the option to terminate the hire purchase contract and return the goods to the owner (Adelaju, 2017).

In a hire purchase agreement, where there is a default of payment by the hirer, the owner may take repossession of the goods, but in the case of credit sale, where there is a default by the buyer to meet up with his or her financial obligation, the only option open to the seller is to institute an action to recover the balance of the payment owed by the buyer.

(iii) Hire purchase and Loan

The basic difference between a loan and hire-purchase is that, the title in the subject matter of a loan agreement is never intended to revert to the beneficiary of the loan even though he/she might be expected to pay back the loan with interest. Again, most often than not, the subject matter of a loan agreement is usually money, on the other hand, money cannot reasonably be the subject matter of a hire-purchase agreement (Afolayan & Kumapayi, 2021).

Oftentimes, a buyer may desire to obtain goods on credit but a seller may be unwilling to grant such. The only alternative may be by way of a loan obtained from a third party to finance the credit. In this manner of the transaction, the buyer may be granted the loan on conditions that the ownership of the goods be given to the third-party finances until the loan is repaid in full with interest. This type of transaction is different from hire purchase

(iv) Hire Purchase and Hire.

Hire is a transaction under which a party lets out his goods, property, or services and a fee for a period agreed by the parties. The hirer takes possession of the subject matter of the hire, though the title in same is not transferred to him, he however hands over the

possession of the subject matter of the hire at the expiration of the hire period (Adelaju, 2017).

Hire is a kind of contract that does not pass title of the goods at a future date. Hire Purchase is different from the concept of hire. Hire only enables a person who does not want to own the goods or property to use the goods for his immediate use. The hirer will return the goods to the owner after its use. It is also a kind of bailment in which the hirer is given possession of an article during the period of the particular hiring agreement.

(v) **Hire-Purchase and Conditional Sale Agreement**

A conditional sale agreement was defined by Okay Achike in his book titled, "Commercial Law in Nigeria", as an agreement for the sale of goods in which the purchase price or part thereof is payable instalmentally and it is expressly agreed that the property in the goods is to remain in the seller. Notwithstanding that the buyer is in possession of the goods, until the instalments are fully paid or upon the fulfilment of other conditions contained in the agreement (Afolayan & Kumapayi, 2021). A conditional sale agreement is seen as a sale agreement in which the buyer gains immediate possession but the seller retains the title until the buyer performs a condition, especially payment of the full purchase price.

Given the above definition of conditional sale agreement, the question of option to return the goods, as will be observed in a hire-purchase agreement, does not arise. Therefore, in a conditional sale agreement the buyer must buy the goods, because the agreement is one for sale and it is governed by the provision of Sale of Goods Act.

It suffices at this juncture to state that hire purchase is an arrangement where goods are provided for hire with the possibility of purchasing them after the full payment of installments (Aidonjioje & Francis, 2022). This concept has been defined by scholars, statutes, and court decisions in various ways. Essentially, it involves lending goods to a person (bailee) who may choose to buy them or gain ownership of the goods (Afolayan, 2021). In hire purchase, a contract is established allowing the hirer to pay installments, possess, and use the goods. Once the agreed number of payments is completed, the hirer becomes the rightful owner of the goods. Key characteristics of hire purchase include being a contract, a bailment (temporary transfer of possession), the transfer of property, the ability to determine the agreement, and

the option to purchase. In Nigeria, the law governing hire purchase is influenced by English common law, and the first English Hire Purchase Act was enacted in 1938. The distinctive aspect of hire purchase is its combination of temporary hire and the opportunity to buy the goods.

5. Legal Analysis of Nigeria Higher Purchase Act

The main purpose of enacting the Hire-Purchase Act is to regulate the hire-purchase transactions which have hitherto been executed under the ordinary law of contract, and under which some owners have exploited the ignorance of the people to enforce oppressive agreements (Afolayan, 2021). The legislation is intended to strike at the root of many injustices which were highlighted during the debate on the Bill in Parliament.

Under the common law principles then, the recovery of goods by the owner under a hire-purchase agreement could be effected with or without proceedings in court. But such acts of repossession have serious pitfalls. For example, if an owner were interested in retaking possession, he could execute his action at any time of the day or night and at any place he finds the goods (Aidonjioje et al., 2021). In the case of motor vehicles, the practice is that the owner retains a spare key until the last instalment has been paid, so that in the event of any default by the hirer, the car may be conveniently recovered by the owner (or his agents) with dispatch. In some instances, the hirer had to put up with a strong resistance to attempts to seize the goods. This practice has led to unpleasant scenes and far-reaching consequences and in some instances unwary parties were exposed to criminal prosecutions for breach of peace or affray for the scuffles which ensued (Afolayan, 2021). Lamenting on this unsatisfactory state of affairs, Hon. Ukegbu, member for Owerri in the Federal Parliament, contributing to the debate on the Bill on Hire-Purchase Act, 1965, declared that:

"Strong and thug-like people are employed by the finance companies to seize the vehicles and these people normally charge a certain percentage of the money paid in order to recover the vehicles".

This unsatisfactory nature of right of recovery under the common law is best illustrated in where the hirer is in default of payment after he has already paid substantial instalments. The hirer is exposed to the danger of losing possession of the goods as well as the large percentage of the purchase price he has already paid. The injustice occasioned by such sudden termination of the hire-purchase agreement was aptly

illustrated in *Atere v Dada*." There, under a hire-purchase agreement in respect of a lorry whose purchase price was £1,000, the plaintiff paid a total of £995, leaving a balance of £5. The plaintiff failed to pay this balance when fell due, and in consequence the hire-purchase agreement terminated, and the owner became entitled to recover possession of the vehicle. This the defendant did. He then sold the vehicle in order to recover the balance of £5; in fact, he realized more than the short payment of £5 payable under the last instalment. It was held that, the defendant was not bound to account to the hirer for the excess recovered. In fact, even late payment agreed to with the owner which was not supported by any consideration is sufficient ground for exercising the right of seizure." The injustice to the hirer is really more disturbing, because the court does not, even on equitable grounds, come to the aid of the hirer from the consequence of his default." Nor will it make any difference that the hirer tenders the arrears of the instalments due which the owner refuses, for the owner's right to retake possession remains unassailable"

Another problem which arises under the common law is that even after the owner has retaken possession of the goods from the hirer and invariably has sold it, it is common practice for the owner and the hirer to stipulate in the agreement that the termination does not relieve the hirer from the liability to make further payments to the owner under the notorious 'minimum payment clause'." The Hire-Purchase Act, 1965 and the amendment made thereunder have reasonably curtailed the injustice occasioned to the hirer by these obnoxious conditions imposed on him under the common law (Ofo, 2010).

The Hire Purchase Act is the main law that majorly regulates hire purchase transactions in Nigeria. This Act, to mention but a few defines hire purchase transaction, the nature of hire purchase transaction, implied terms of hire purchase agreement, and the differentiating requirement of a valid hire purchase agreement and as well as how hire purchase agreement can be terminated. The hire purchase contains 20 sections and those sections contain provisions regulating and governing hire purchase transactions in Nigeria we will be studying some of those sections below:

Section 1 of the hire states that the provision of this Hire Purchase Act applies in regulating, defining, and governing hire purchase transactions in the country concerning two categories of goods and this is namely: First, goods other than motor vehicles of which total hire purchase price or total purchase price does not exceed two thousand naira and the other goods is all motor vehicles without any restriction to the total hire

purchase or total purchase and as well as the type of motor vehicles (Okongwu et al., 2022).

Section 2 of the Act provides for the formation and termination of the hire purchase agreement between the hirer and the owner of the goods. This section obligates the owner of the goods to ensure that he state the actual cash price at which the goods may be purchased by him in writing or state in note or memorandum to the prospective hirer. This obligation on the part of the owner of the goods by virtue of subsection one of this section must be met. Otherwise by virtue of subsection 2 of this section, an owner of the goods will be incapable in the event of the breach of the hire purchase agreement to enforce the hire purchase agreement or contract of guarantee made in relation to the hire purchase agreement or enforce any right to recover the goods from the hirer and no security given by the hirer in respect of money payable under the hire hire-purchase agreement or security given by the guarantor in respect of money payable under the contract of guarantee in relation to the hire purchase agreement.

6. Issues and Challenges of the Nigeria Higher Purchase Act

The hire purchase Act, even though it has been amended once in 1970, is still clothe with number of issues and inappropriate provisions that are begging for amendment, in fact the Hire Purchase Act seems to have outlived its usefulness. And this is to say that, the amendment of the Hire Purchase Act in 1970 was not a thorough one that would have taken care of all those issues and inappropriate provisions in the Hire Purchase Act, which this research has identified to deal with. However, this research has identified two issues and inappropriate provisions in the Hire Purchase Act and they include the followings:

6.1 Monetary Limit on Goods on Hire

The issue of monetary limit on goods is a challenge that has the effect of hindering the growth and advancement of the hire purchase practice in Nigerian. Since, the majority of consumer durables goods listed in the first schedule to the Hire Purchase Regulations, such as refrigerators, air conditioners, dishwashing machines, cookers, household furniture, and bicycles, which may have cost less than \$1,000 (2,000 naira) in 1965, are now in present day economic reality of Nigeria, there are marketed at much higher prices due to inflationary effect. Hence, the monetary limit placed on goods which is the subject matter of hire purchase transaction other than motto vehicle captured in Section 1(a) of the Hire Purchase Act is inappropriate,

as it has outlived its usefulness in the current economic reality in Nigeria.

The question is whether the monetary limit on the goods, except for motor vehicles under a hire purchase transaction captured in Section 1(a) of the Hire Purchase Act is realistic given the current economic reality in Nigeria. Well given the community reading of the provision of Section 1(a) the Hire Purchase Act and the First schedule of the Hire Purchase Regulation the answer is strongly yes and nothing more. Consequently, the monetary limit imposed on goods eligible for hire-purchase transactions, as stipulated in Section 1(a) of the Hire Purchase Act, is no longer appropriate and has lost its relevance

6.2 Over Protection of The Hirer

Section 9(2) and (5) of the Hire Purchase Act, which pertains to the repossession of goods by the owner in the case of default in periodic payment of installments by the hirer under a hire purchase transaction, can be seen as inappropriate and an overprotection of the hirer. The provision heavily favors the hirer by making it difficult for the owner to repossess the goods in case of default, creating an imbalance in the rights and responsibilities of both parties involved in the hire purchase transaction. And we shall be subsequently looking at the issue of whether the provision of Section 9(2) and (5) of the Hire Purchase Act is an over protection of the hirer to the detriment of the owner and as such hinders the advancement of hire purchase transaction in Nigeria.

The Provisuon of section 9(2) to the Act has been criticized for being excessively harsh towards the owner of the hired goods. Ofo argues that this subsection completely disregards the purpose and structure of a hire purchase agreement. Forcing the owner of the goods to reimburse the hirer for previous installments paid is an unfair financial advantage given to the hirer without merit. Nat Ofo, in his research titled "Hire Purchase Legislation in Nigeria: Making a Case for Reform" believes that the installments paid by the hirer were meant to cover the periods when the hirer had possession and use of the goods. In this way, the hirer received something valuable in exchange for the payments made. It is not justifiable to compel the owner to refund previous installments due to a wrongful repossession of goods involved in a hire purchase agreement. Such an action does not align with the principles of justice in this situation.

It is also the findings of this research that the provision of section 9(5) is also a reflective of an over protection of the hirer since under the provision of

subsection (5), the law is that before an owner of the goods in relation to motor vehicle can exercise a right to recover his or her goods from a hirer who abuse and misuse the goods for safe keeping pending the determination of action in court. The condition is that the he hire must first default in three or more installments of the hire purchase price of a motor vehicle under the agreement if not the owner cannot remove the motor vehicle to any premises under his control for the purpose of protecting it from damage or depreciation and retain it there pending the determination of any action in court. The research identified that this provision still favors the hirer (the person leasing the goods) and shows an excessive level of protection towards them, on the ground that the provision has not clearly state whether the three or more instalments due and unpaid must be consecutive before the owner can exercise the right of interim repossession.

According to subsection (5) of section 9, the law states that in order for the owner of the goods (in this case, a motor vehicle) to recover their goods from a hirer who is abusing or misusing them, the hirer must first default in three or more installments of the hire purchase price. Only then can the owner remove the motor vehicle to their premises for protection and retain it there until any legal action is resolved.

Section 9 (5) which requires three or more instalments to fall due and unpaid before the owner could be allowed to remove a vehicle to keep it safe from damage and depreciation is rather unreasonable and unfair to the owner. Three or more instalments is rather long, in as much as the Act aims at protecting the hirer who seems to be negotiating with the owner from a weaker position, the owner should not be unnecessarily punished.

However, the research points out that this provision, which was initially intended to address the difficulties faced by owners who couldn't repossess their vehicles from mischievous hirers, still excessively favors the hirer. The provision allows the hirer to intentionally abuse and misuse the vehicle, even if they have paid a significant portion (three-fifths) of the hire purchase price through irregular installments or in breach of the hire purchase agreement.

Given the foregoing discussion, the Hire Purchase Act of 1965 imposes a financial limit of N2,000 for goods other than motor vehicles, which is considered inappropriate under the current economic situation in Nigeria. This monetary limit hinders the growth of the hire purchase practice in the country. Despite this, the Minister responsible for hire-purchase business lacks

the authority to adjust this limit. Additionally, the provisions of Section 9(2) and (5) of the Hire Purchase Act overly protects the hirer at the expense of the owner, making it difficult for owners to recover their goods or receive payment for outstanding amounts. To address these issues, it is crucial to reassess and adjust the monetary limit on consumer durables subject to hire purchase transactions and reconsider the provisions to achieve a fair balance between the rights of hirers and owners.

7. Conclusion And Recommendation

The extant Hire-Purchase Act has outlived its usefulness. This is because it contains some provisions which negatively impact on commercial activities. The Hire Purchase Act has become an impediment to the development of commercial activities and requires revision. The current financial limit set for goods other than motor vehicles is inappropriate and hampers the growth of hire purchase practice in Nigeria. The Act also provides excessive protection to the hirers, making it difficult for owners to repossess goods. To address these issues, the Act needs to be updated and amended to ensure a fair balance of rights between hirers and owners in hire purchase transactions.

The Hire Purchase Act, 1965 has several issues that need to be addressed. These issues include monetary limiting on goods other than motor vehicles and over protection of the hirer. The previous amendment in 1970 was not thorough enough to resolve these issues. The Act requires further revision to adapt it to the current economic situation and ensure a fair balance of rights between hirers and owners in hire purchase transactions. In proffering solution to the aforementioned issues with the Hire Purchase Act, this research makes the following recommendations:

First, the legislature should cure the effect of the provision of section 1(a) of the Hire Purchase Act by either amending the provision itself or by extending the Minister's powers captured in Section 5 of the Hire purchase Act

This minister's power can be extended by adding a subsection under it in this manner.

"Notwithstanding the provision of Section 1(a) of the Hire Purchase Act, the minister shall by regulations published in the Federal Gazette have power to adjust the financial limit placed on goods other than motor vehicles based on the prevailing market condition in terms of inflation or price increases".

Alternatively, the legislature can amend the provision of Section 1(a) of the Hire Purchase Act in this manner.

"The provisions of this Act shall apply to all hire purchase transaction in relation to goods other than motto vehicle under which the hire-purchase price or total purchase price as the case may is not below two thousand naira"

Second, the provision of Section 9(2) of the Hire Purchase Act is very harsh on the owners of goods in hire purchase transaction, since it entitles the hirer to all sums paid to the owner of the goods in the event of wrongful repossession of the goods by the owner. It is unfair for the owner of the goods to suffer this huge penalty because the hirer had received value from the payment of the instalments of the use of the goods. Compelling the owner to make a refund of the whole instalment paid on account of wrongful repossession of the goods cannot be said to meet the justice of the matter and am very sure this is constituting an impediment to commercial growth. Hence, the legislature should amend this provision in this manner. "in the event of wrongful possession of the goods on hire purchase by the owner from the hirer. the hirer shall be entitled to damages for any loss the hirer suffered as a result of such wrongful possession of the goods".

Third, the provision of section 9(5) of the Hire Purchase Act should be amended by the legislature to provide that there should be two consecutive instalments of the hire-purchase price of a motor-vehicle under the agreement due and unpaid, instead of three or more installments the provision of this High Purchase Act contemplate, for the owner to remove the motor vehicle to any premises under his control for the purpose of protecting it from damage or depreciation and retain it there pending the determination of any action.

References

- Achike, O. (1985). *Commercial Law in Nigeria*. Enugu: Fourth Dimension Publishers.
- Adelaju, K. (2017). Repossession of goods under hire purchase transaction in Nigeria: An appraisal. *Journal of Commercial Law*, 3(1), 346.
- Adelobo, E. E. (2021). *Commercial Law and Practice*. Princeton & Associate Publishing Co. Ltd.
- Afolayan, M. S. (2021). Legal analysis of electronic payment systems and frauds associated with e-commerce transactions in Nigeria. *Nnamdi Azikwe University Journal of Commercial and Property Law*, 8(3).
- Afolayan, M. S., & Kumapayi, A. O. (2021). A comparative legal analysis of elements of the contract of sale under the laws regulating the

- contract of sale in Nigeria, South Africa, and the United States. *International Journal of Research and Innovation in Social Science*, 5(11).
- Agbonika, J. A. M., & Agbonika, J. A. A. (2014). *Hire-Purchase (Commercial Law)*. Ibadan: Ababa Press Limited.
- Aidonojie E. C., Aidonjio P. A., Eregbuonye O., Mutawalli M., Adebayo A. K., and Banki L. L., (2024), "Legal Issues and Consumer Awareness on the Effect of Poorly Processed Garri Edo North, Edo State, Nigeria", *Food Science and Technology Journal (Foodscitech)*, 7(1), 31-45, <http://dx.doi.org/10.25139/fst.vi.8190>
- Aidonojie P. A. and Majekodunmi T A, Adeyemi-Balogun O J, (2023), The Legal Issues Concerning the Operation of Fin-Tech in Nigeria, *Jurnal Media Hukum*, 30(20): 78-79
- Aidonojie P. A., Eregbuonye O., Inagbor M., Ogbemudia O., (2024), "Legal and Socioeconomic Issues Concerning the Nigeria Higher Institution Loan Act 2023", *JURNAL LEGALITAS*, 17(1), 1-23, <https://doi.org/10.33756/jelta.v17i1.23143>
- Aidonojie P. A., Esther Chetachukwu Aidonjio, Eregbuonye Obieshi, Adedoyin Olusegun Akinsulore, Antai Godswill Owuche, Adebayo Adesoji Kolawole (2024), "Combating the Silent Threat of Street Trading Resulting in Illegal Dumping of Waste in Uganda", *Kanun Jurnal Ilmu Hukum*, 26(2): 337-358
- Aidonojie P. A., Ikubanni O. O. and Okoughae N., (2022), The Prospect, challenges and Legal Issues of Digital Banking in Nigeria, *Cogito Multidisciplinary Journal*, Vol. 14(3), PP. 186 – 209,
- Aidonojie P. A., Ikubanni O. O., Okoughae N. and Ayodeji A. O., (2021), The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), PP. 149 – 170,
- Aidonojie P. A., Odojor A. O., and Agbale O. P., (2021), The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, Vol. 5(2), PP. 161-174, DOI:10.28946/slrev.Vol5.Iss2.852.pp161-174
- Aidonojie P.A., Aidonjio E. C., Majekodunmi T. A., Eregbuonye O, Adesoji K.A. (2024) "The Competence and Authority of Midwives in giving Birth without the assistance of a Doctor in Nigeria" *Jambura Law Review*, Vol. 6(1), 150-182
- Aidonojie P.A., Ikubanni O.O. and Oyebade A.A. (2022), 'Legality of EndSARS Protest: A Quest for Democracy in Nigeria' *Journal of Human Rights, Culture and Legal System*, Vol. 2(3), 209-224, <https://doi.org/10.53955/jhcls.v2i3.40>
- Aidonojie P.A., Mulegi T, Muwaffiq J., Imiefoh A.I., Owoche A.G. (2024), "International Laws Regulating Human Rights in Business Operations in Uganda: Issues and Challenges", *Fenomena*, 23(2), 131-144
- Aidonojie P.A., Toyin A. M., Obieshi E., and Ogbemudia I.O. (2024), "Legal Issues Concerning of Data Security and Privacy in Automated Income Tax Systems in Nigeria", *Hang Tuah Law Journal*, 8(1), 14-41, <https://doi.org/10.30649/htlj.v8i1.223>
- Aidonojie, P. A. (2023), 'Voluntary Assets and Income Declaration Scheme a Panacea to Tax Evasion in Edo State, Nigeria', *Administrative And Environmental Law Review*, 4(1): 1-20, <https://doi.org/10.25041/aclr.v4i1.2822>
- Aidonojie, P. A. (2023). The Legal Impact and Relevance of using the Concept of Plea Bargain in Resolving Tax Dispute in Nigeria. *Brawijaya Law Journal: Journal of Legal Studies*, 9(2). Retrieved from <https://lawjournal.ub.ac.id/index.php/law/article/view/508>
- Aidonojie, P. A., Nwazi, J. and Ugiomo E., (2022), The Legality, Prospect, and Challenges of adopting Automated Personal Income Tax by States in Nigeria: A Facile Study of Edo State, *Cogito Multidisciplinary Journal*, Vol. 14(2), PP. 149 – 170,
- Aidonojie, P. A., Okuoghae N., Agbale, O. P., Idahosa, M. E., (2022), Supervisor and Supervisee Relationship: The Legal and Ethical Issues Concerning Academic Theft in Nigeria Tertiary Institution, *Euromentor Journal*, Vol. 13(1), PP. 113-138
- Aidonojie, P.A., & Francis, E.C. (2022). Legal Issues Concerning Food Poisoning in Nigeria: The need for Judicial and Statutory Response. *Jurnal Media Hukum*, 29(1), 65-78, DOI:<https://doi.org/10.18196/jmh.v29i1.12595>
- Alewo, J. (2014). *Hire-Purchase (Commercial Law)*. Ibadan: Ababa Press Ltd.
- Antai, G., Okpoko, M., Obisesan, O., Ismaila, H., & Aidonjio, P.A. (2024). Legal Framework and Mechanism for Combating International Crimes: A Comparative Analysis between

- Nigeria and Uganda. *NIU Journal Of Social Sciences*, 10(3), 37-52. doi:10.58709/niujss.v10i3.1978
- Antai, G., Okpong, D., Jufri, M., Imiefoh, A., Collins, E., & Aidonojie, P.A. (2024). The Igbo Apprenticeship Model and Practice: A Legal Examination of the Contractual Status of the "Nwa Boyi" in South-East Nigeria. *NIU Journal Of Humanities*, 9(3), 127-138. doi:10.58709/niujhu.v9i3.1958
- Borrie, G. J. (1970). *Commercial Law*. London: Butterworths & Co.
- Budiyanto Budiyanto, Ahmad Masum, Paul Atagamen Aidonojie, Jamal Aslan, "Problems of Legal Implementation of the Criminal Offense of Spreading Fake News and Hate Speech in Papua", *Law Reform*, 20, no. (2024): 278-300
- Crossley Vaines. (1973). *Personal Property*. London: Butterworths & Co.
- Edwards, I. (1878). *A Treatise on the Law of Bailments: Contracts Connected with the Custody and Possession of Personal Property* (2nd ed.). Bank and Brothers.
- Ekpenisi C., Aidonojie P. A., Antai G. O., Akinsulore A., Okonji C. and Damina J. J., (2024), "Legal Issues Concerning the Role of Arbitration in Resolving Corporate Governance Dispute in Nigeria", *Nexus International University*, (2024) 10(1): 5-14
- Haruna, I. O., Aidonojie, P. A., & Beida, O. J. (2024). Prospects and Issues Concerning the Regulatory Regime of E-Payment System in Nigeria. *Journal of Digital Technologies and Law*, 2(2), 372-393. <https://doi.org/10.21202/jdtl.2024.19>
- Igweike, K. I. (1999). *Nigerian Commercial Law: Hire Purchase* (2nd ed.). Lagos: Malthouse Press.
- Imoisi S. E. and Aidonojie P. A., (2023). Legal and Socio-economic Issues Concerning Black Marketer's Activities of Petroleum Products in Nigeria. *Yuridika*, 38(2), 61-84, <https://doi.org/10.20473/ydk.v38i2.44999>
- Izevbuwa, O., Aidonojie, P. A, Imiefoh, A., Obieshi, E., & Antai, G. (2024). Concept of Automated Income Tax in Edo State Nigeria: Learning from the American System. *NIU Journal Of Legal Studies*, 10(2), 19-36. doi:10.58709/niujls.v10i2.2006
- Majekodunmi, T., Sogunle, B., Adeyemi-Balogun, M., Antai, G., Onwubiko, K., & Aidonojie, P.A (2024). Issues and Challenges concerning access to Justice in Nigeria: Clinical Legal Education Aid as a Panacea. *NIU Journal Of Legal Studies*, 10(2), 37-50. doi:10.58709/niujls.v10i2.2007
- Ofo, N. (2010). Hire-purchase legislation in Nigeria: Making a case for reform. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.30>
- Okany, M. C. (1996). *Nigerian Commercial Law*. Onitsha: Africana First Publishers Plc.
- Okongwu C. J., Ugbo S., Aidonojie P. A., (2022), Investigation of Companies' affairs and Ownership in Nigeria, *African Journal Of Law And Human Rights*, Vol. 6(2), 44-65
- Raimi, A. I. (2015). The right of the owner to recovery of the hired goods from the hirer under the Hire Purchase Act, 1965: A right in existence or extinction. *International Journal of Humanities and Social Science*, 5(10).
- Safi', Aidonojie P. A., Muwaffiq J. and, Garunja E. (2024). "Bhag-Rembhag Sabhala'an as a Method of Resolving Religious Conflicts in the Madura Legal Tradition", *El-Mashlahah*, 14(1), 95-126
- Umenweke, N. M. (2009). *Commercial Law and Practice in Nigeria*. Enugu: Nolix Educational Publications.