

Hire-Purchase Law

MGM3352

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Content

- Characteristics of hire purchase contract and formation of hire-purchase contract
- Rights and obligations of owner and hirer
- Termination of hire-purchase contract

Hire-Purchase Contract



S. 2(1) of the Hire-Purchase Act 1967:

- i- Letting of goods with an option to purchase
- ii- An agreement for the purchase of goods by instalments

Section 2(1) of HPA 1967:

“goods” includes any replacements or renewals by the hirer of any part or parts thereof and any accessories added or additions made thereto by the hirer during the period of the hiring;

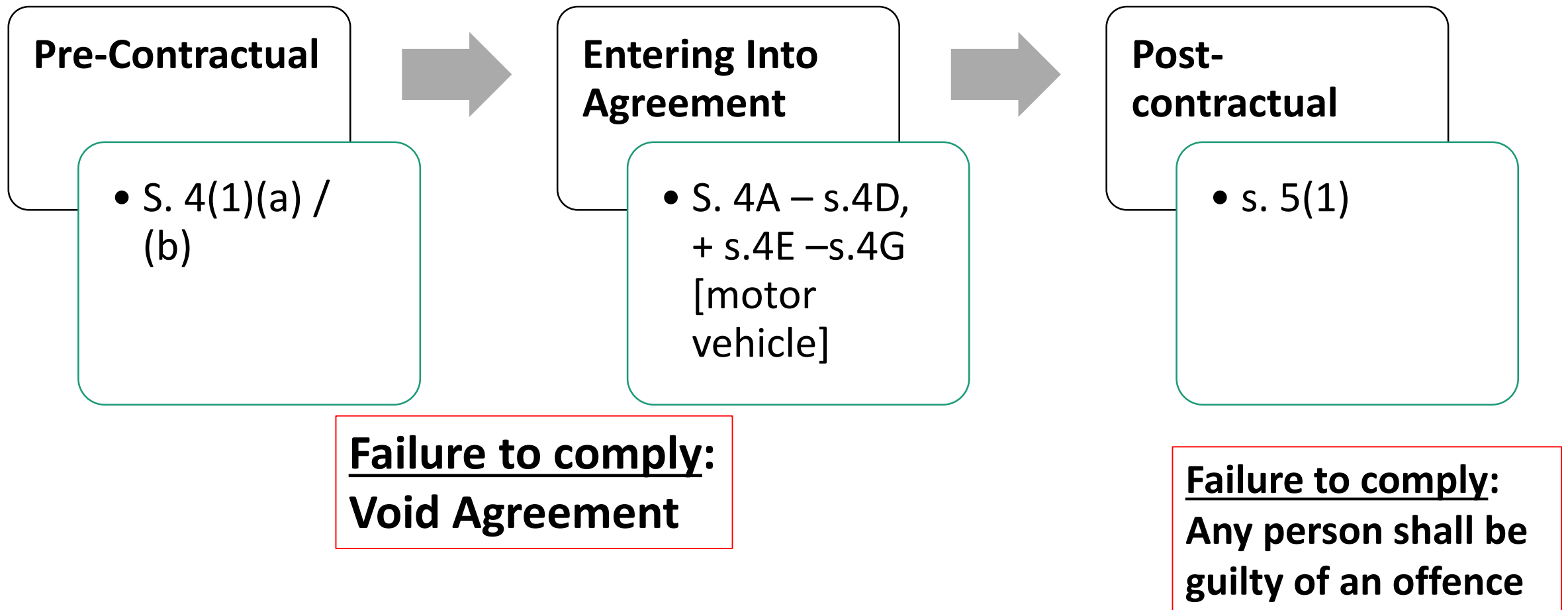
“hire-purchase agreement” includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise), but does not include any agreement—

- (a) whereby the property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods; or
- (b) under which the person by whom the goods are being hired or purchased is a person who is engaged in the trade or business of selling goods of the same nature or description as the goods comprised in the agreement;

Credit sale

**Transaction
among dealers
of same goods**

Formation of Contract of HP



1- Pre-contractual Stage

- Negotiation stage: Legal obligations on owner, dealer or dealer's agent.
- **S. 4(1) (a)** Written statement duly completed & signed by would be owner / agent as in Part I of the Second Schedule served to prospective hirers

[s. 4(1) (b): if by dealer = Part I ~ written, duly completed & signed by dealer, & also as Part II ~ written, duly completed & signed by dealer & prospective owner)

- *Prospective/intending hirer/agent shall acknowledge receipt of the written statement.*
- **NO obligation to enter into hp agreement & NO payment or consideration** imposed for preparation / service of the statements.

Affin Credit v Yap Yuen Fui

- **PART I of SECOND SCHEDULE -Summary of your financial obligations under the proposed hire purchase agreement**

[Paragraph 4(1)(a) and Subparagraph 4(1)(b)(i)]

~ a short description of the goods comprised in the hire-purchase agreement & a summary of hirer's financial obligations under the proposed hire-purchase agreement.

[Subparagraph 4(1)(b)(ii)]

CONSENT OF PROSPECTIVE OWNER

To.....
.....

TAKE NOTICE that NRIC No.....of Intends to enter into a hire-purchase agreement in respect of and a copy of a summary of his financial obligations under the proposed hire-purchase agreement has been served on him on the day of20....., a copy of which is attached herewith, pursuant to subparagraph 4(1)(b)(i) of the Hire-Purchase Act 1967.

2. If you agree to be a party as owner in the proposed hire-purchase agreement, kindly confirm by signing at the appropriate column of this document.

(Signature of Dealer)

Name:.....

Address:.....

Date:.....

To:.....

.....

*I/We..... hereby agree to be a party as owner in the proposed hire-purchase agreement.

(Signature of the prospective owner)

Name:.....

Address:.....

Date:.....

2. Entering into HP Agreement Stage

- S. 4A: Shall be in writing
- S. 4B: Shall be signed by / on behalf of all parties on the duly completed agreement
- S. 4C: Contents of the agreement: date of commencement, no. of instalments, amounts of each instalments & person to whom & place to pay, time for payment, sufficient description of goods & address of goods
- S. 4D: separate hp agreement for every item purchased
- S. 4E: motor vehicle: hirer may make a request in writing to an owner to keep the registration certificate (includes registration book) of the motor vehicle, upon which owner must furnish.(If not, owner shall be guilty of an offence under this Act.)

2. Entering into HP Agreement Stage

- S. 4F (1) A hire-purchase agreement shall not be entered into where the motor vehicle has been altered or modified in its construction and structure.
S.4F(2) A hire-purchase agreement that contravenes subsection (1) shall be void.
- S. 4G (1) For a second-hand motor vehicle, the person who intends to enter into the hp agreement shall declare in writing any defects in accordance with the inspection report by the relevant authority determined by the Controller.
“defect” includes defect to the mechanical or operational system, construction, structure and build-up and fitting of the motor vehicle.
- s.4G(3) Any person who contravenes this section shall be guilty of an offence under this Act.

3. Post-contractual Stage

- S. 5(1): owner must serve the hirer & guarantors (if any) a copy of hp agreement **within 21 days** after it is made.
- (2) At any time before the final payment has been made under a hp agreement the owner shall, within 21 days after he has received a request in writing from the hirer, supply to the hirer a copy of any memorandum or note of the agreement:
 - (a) on payment by the hirer of the prescribed fee; or
 - (b) where no fee is prescribed, one free copy, and thereafter a fee as may be prescribed shall be charged for the supply of a second or subsequent copy thereof.
- S.5(3): owner must serve the hirer a copy of the policy or statement in writing setting out the terms, conditions and exclusions of the policy that affect the rights of the hirer, within 7 days of receipt of the policy, if with insurance coverage.

Statutory Rights of Hirer

1. S.7: Implied terms
2. S. 8: Misrepresentation
3. s. 9: Copy of statement on his financial position
4. S.10: Appropriation
5. S.11: Applying order for removing goods
6. S.12: Assignment
7. S.13: Operation of law upon death/ bankruptcy
8. S.14: Early completion
9. S.15: Termination
10. S. 16: Repossession by owner

Implied Warranties

- S. 7 (1) (a): hirer shall have & enjoy quiet possession of the goods
- S. 7 (1) (c): goods free from charge / encumbrance in favor of 3rd party at the time property is to pass

Implied Conditions

- S. 7(1)(b): Owner **has right to sell at the time** when property is to pass

Ahmad Ismail v Malayan Motors: stolen car

- S. 7(2): Goods shall be of **merchantable quality**, **unless** hirer has examined & discovered the latent defect
 - ~ if 2nd hand goods:
 - i- agreement must indicate so; &
 - ii- all conditions & warranties as to quality has been expressly negatived & hirer acknowledges such in writing (owner to prove)

Implied Conditions

- S. 7(3): Goods shall be **reasonably fit for the purpose made known by the hirer, unless:**
 - ~ it is a 2nd hand goods: &
 - ~ agreement indicate it is 2nd ; &
 - ii- all conditions & warranties as to fitness & suitability are expressly negatived & hirer acknowledges such in writing (owner to prove)

Misrepresentation by Owner/Dealer

- S.8: misrepresentation during negotiation by owner/dealer leading to entering the HP agreement:

Hirer can:

~ vs Owner: rescind the agreement;

~ vs Dealer / agent : action in damages if hirer purchased goods from this person.

~ Owner is entitled to be indemnified by the person (agent) making the representation.

- S.9: **At any time** before the final payment has been made under a HP agreement the **owner** shall, within fourteen days after he has received a **request in writing from the hirer**, supply to the hirer a statement signed by the said person or his agent showing—
 - (a) the amount paid to the owner by or on behalf of the hirer;
 - (b) the amount which has become due under the agreement but remains unpaid;
 - (c) the amount which is to become payable under the agreement; and
 - (d) the amount derived from interest on overdue instalments:Owner **need not comply** with such a request **if he has sent the hirer a statement within a period of 3 months immediately preceding the receipt of the request.**

S.9(2) In the event of a **failure without reasonable cause** to comply with subsection (1) then, while the default continues—

(a) the owner shall not be entitled to enforce—

(i) the agreement against the hirer;

(ii) any right to recover the goods from the hirer;

(iii) any contract of guarantee relating to the agreement;

(b) any security given by the hirer in respect of money payable under the agreement or given by a guarantor in respect of money payable under such a contract of guarantee as aforesaid shall not be enforceable against the hirer or the guarantor by any holder thereof.

(3) If the default aforesaid continues for a period of one month, the owner shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit.

s.10: A hirer who is liable to make payments in respect of **two or more hire-purchase agreements to the same owner** shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements, **to require the owner to appropriate the sum so paid by him** in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions **as he thinks fit**, and, if he fails to make any such appropriation as aforesaid, the payment shall by virtue of this section be appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

s.11:Where, by virtue of a hire-purchase agreement, it is the **duty of a hirer to keep the goods** comprised in the agreement in his possession or control **at a particular place or not to remove the goods** from a particular place, **a court of a Magistrate** may, on **the application of the hirer, make an order** approving the removal of the goods to some other place, which place shall, for the purposes of the agreement, be substituted for the place mentioned in the agreement.

- s.12(1) The right, title and interest of a hirer under a hire-purchase agreement **may be assigned with the consent of the owner**, or if his consent is unreasonably withheld, without his consent.
- (2)..no payment or other consideration shall be required by an owner for his consent to such an assignment..
- (3) the **hirer may apply to the High Court** for an order declaring that the consent of the owner to that assignment has unreasonably been withheld..
- (4) As a condition of granting consent.., the owner may stipulate that all defaults under the agreement shall be made good & require hirer and assignee to execute & deliver a form & pay reasonable costs incurred by owner on stamping & registering assignment.

s. 13: The right, title and interest of a hirer under a hire-purchase agreement shall be **capable of passing by operation of law to the personal representative** of the hirer and if the hirer is a company the liquidator may exercise the same right under the agreement as the company but nothing in this section shall relieve any personal representative or liquidator from compliance with the provisions of the agreement.

s. 14 (1) The hirer under a hire-purchase agreement may, if he has **given notice in writing to the owner** of his intention to do so, on or before the day specified for that purpose in the notice, **complete the purchase of the goods by paying or tendering to the owner the net balance due under the agreement.**

(3) The rights conferred on the hirer by this section may be exercised by him—

(a) at any time during the continuance of the agreement; or

- (b) where the owner has taken possession of the goods, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) in addition to the net balance due together with the reasonable costs including costs (if any) of storage, repair or maintenance of the goods incurred by the owner incidental to his taking possession of the goods; or
- (c) where the hirer has returned the goods to the owner within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule, upon payment to the owner (within twenty-one days after the owner has served a notice in the form set out in the Fifth Schedule) the net balance due under the Act.

S.15(1) The **hirer may terminate the agreement** by returning the goods to the owner **during ordinary business hours at the place at which the owner ordinarily carries on business or to the place specified** for that purpose in the agreement.

(2) If it would be impracticable to return the goods to such a place, the hirer may terminate the agreement by returning the goods to any place agreed to by the parties to the agreement.

(3) If fails to agree, hirer **may apply to Magistrate Court** to fix the place

Repossession: s.16 (1)

Repossession could only exercised by owner if:

- i) the payment of instalments amounts to **not more than seventy-five percent of the total cash price** of the goods comprised in the hire-purchase agreement*; and
- ii) there had been **two successive defaults of payment** by the hirer (**deceased: 4 successive defaults (1C)**); and
- iii) **Owner has served on the hirer a notice**, in writing, in the form set out in the **Fourth Schedule** and the **period fixed** by the notice has expired, which shall **not be less than twenty-one days** after the service of the notice.

Repossession: s.16 (1)

- (1A) Hirer paid instalments more than 75% of the total cash price of the hp goods + two successive defaults of payment : NO repossession unless Owner has obtained an order of the court to that effect
- (1B) owner can take possession when :
order of court obtained + served hirer notice of 4th
Sch in writing + period fixed expired (21 days)

- (2) **Owner can skip (1)** if there are reasonable grounds for **believing** that the goods will be **removed or concealed by the hirer** contrary to the provisions of the agreement, but the onus of proving the existence of those grounds lies upon the owner.
- (3) **Within 21 days after repossession**, owner shall serve on the hirer and every guarantor of the hirer a notice, in writing, in the form set out in the **Fifth Schedule**.

- 4) Where the owner takes possession of goods that were comprised in a hire-purchase agreement he shall deliver or cause to be delivered to the hirer personally a document acknowledging receipt of the goods or, if the hirer is not present at that time, send to the hirer immediately after taking possession of the goods a document acknowledging receipt of the goods.
- (5) The document acknowledging receipt of the goods, required under subsection (4) shall set out a short description of the goods and the date on which, the time at which and the place where the owner took possession of the goods.

- (6) If the notice required by subsection (3) is not served, the rights of the owner under the hire-purchase agreement thereupon cease and determine; but if the hirer exercises his rights under this Act to recover the goods so taken possession of, the agreement has the same force and effect in relation to the rights and liabilities of the owner and the hirer as it would have had if the notice had been duly given.
- (7) Before and when exercising the power of taking possession the owner or his servant or agent shall, in addition to the provisions of this Act, comply with any regulations relating to the manner of taking possession as may be prescribed.

A hirer who returns goods comprised in a hire-purchase agreement within twenty-one days after the service on him of the notice in the form set out in the Fourth Schedule shall not be liable to pay—

- (a)* the cost of repossession;
- (b)* the cost incidental to taking possession; and
- (c)* the cost of storage.

- **Section 17. Owner to retain possession of goods repossessed for twenty-one days.**

(1) Where an owner has taken possession of any goods under section 16 he shall not, without the written consent of the hirer, sell or dispose of the goods or part with possession thereof until after the expiration of twenty-one days after the date of the service on the hirer of the notice referred to in subsection 16(3) or, if notice under paragraph 18(1)(a) has been given, until the time for payment or tender pursuant to that notice has expired (whichever is the later).

- (2) An owner who sells or disposes of any goods or parts with possession of any goods in contravention of subsection (1) shall be guilty of an offence under this Act.

Section 17A. Permits for repossession

- (1) No person shall undertake repossession of goods comprised in a hire-purchase agreement without a written permit issued by the Controller.
- (2) Any person who contravenes subsection (1) shall be guilty of an offence under this Act.

Non-permit holder commits an offence: s.17B

- **Section 18. Hirer's rights and immunities when goods repossessed.**
 - (1) Where the owner takes possession of any goods under section 16—
- (a) the hirer may within twenty-one days after the service on him of the notice referred to in subsection 16(3) by giving to the owner a notice in writing signed by the hirer or his agent—
- (i) require the owner to re-deliver to or to the order of the hirer (subject to the compliance by the hirer with the provisions of section 19) the goods that have been repossessed; or
- (ii) require the owner to sell the goods to any person introduced by the hirer who is prepared to buy the goods for cash at a price not less than the estimated value of the goods set out in the first mentioned notice;

Void Provisions

- S.34: terms that seek to remove or dilute statutory rights conferred on hirer.
- Cannot:
 - restrict/exclude
 - impose greater liability
 - impose rate > 8% p.a interest
 - relieving owner/agent from liability
 - terminate / modify agreement / disregard repossession procedure upon bankruptcy / assignment
 - exclude/modify/restrict operation of any provision of HPA