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**RIGHTS OF HIRER UNDER THE
HIRE PURCHASE ACT, 1967**

BY

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ABSTRACT

The hire purchase transaction was devised as a means of enabling a hirer of goods to enjoy the use of them before he paid for them in full while at the same time preserving for the owner's security over the goods in the event that the hirer defaulting in his obligations. Since more than three decades ago, the issues confronting the hirer are much more daunting as his ignorance and desperation has led him to unwittingly purchase the goods without realizing that he has been extortionately exploited by the owner or dealer. For this reason, the problems affecting the rights of hirer would require to be viewed with a wider-angled lens.

It is the purpose of this dissertation to analyse and examine in Chapters Two and Three, whether the Hire Purchase Act 1967 has sufficiently protected the substantive rights of hirer, the mischief and the remedy of the hirer's rights, and to offer a few constructive criticisms of certain rights of hirer as they stand at present. Chapter Four concerns with the rights of hirer from Islamic perspective. The dissertation is based on library research and fundamentally concentrates on the above said Act as well as on decided cases particularly Malaysian cases.

The major finding of this research is that it demonstrates how piecemeal the changes made to the 1967 Act despite the convulsive development of hire purchase business. The judiciary are evidently doing their best to make a fair adjudication upon each case as it comes before them, but in a broader context, the present legislation may still

be castigated for its inadequacies and loop-holes with regard to the protection of hirer's rights. In conclusion, the writer emphasizes the need to further amend or add the current legislation to enable it to function more effectively and less circuitously the needs of millennial society and more restrictive measure should be introduced by the government to curb the predatory instincts of some of less scrupulous perpetrators.

ملخص البحث

إن هذه الدراسة تروم بإلقاء الضوء على معاملة الشراء بالتقسيط من حيث إنه قد اخترع كوسيلة تمكن مشتري السلع من استخدامه إياها قبل أن يدفع الثمن بالكامل، وفي نفس الوقت يحافظ المالك على السلع في حالة تخلف المشتري عن الوفاء بتعهده. ومنذ أكثر من ثلاثين سنة، كانت نقطة التنافس التي تتحدي المشتري محددة بأكثر حيث إن الجهالة واليأس قد جعلتا المشتري لأن يشتري السلع دون رغبة، ودون تحقيق بأن المالك أو البائع قد استغله ابتزازيا. ولأجل هذا، فإن المشاكل التي تؤثر في حقوق المشتري تحتاج إلى النظر بأوسع الوجوه.

يهدف الفصل الثاني والثالث من هذه الدراسة إلى تأصيل قانون "الشراء بالتقسيط عام ١٩٦٧م"، وتحليل قدرة هذا القانون على حمايته الحقوق الأساسية للمشتري، ويبرز الأعمال المزعجة التي تحيط بحقوق المشتري وكيفية معالجتها، ويقدم النقد الإيجابي للميزة المعينة في الحد الذي تقوم به الباحثة حاليا. وأما الفصل الرابع فهو يهتم بحقوق المشتري من المنظور الإسلامي. وقد اعتمدت هذه الدراسة على البحث في المكتبية وتحليل قانون الشراء بالتقسيط، فضلا عن تركيزها على الوقائع المحددة المتعلقة به خاصة الوقائع في ماليزيا.

ولقد توصلت هذه الدراسة إلى توضيح التغيير التدريجي الذي يجري على ذلك القانون، على الرغم من التطور المتسارع في معاملة الشراء بالتقسيط، فإن القضاة قد أصدروا الحكم القضائي العادل لكل الوقائع التي تواجههم، ولكن في حالة أوسع، كانت القوانين الحالية المتعلقة بحماية حقوق المشتري، قد انتقدت بأنها غير ملائمة، وأنها غامضة. وفي الختام، تؤكد الباحثة على الحاجة إلى تنقيح أو إضافة القوانين الحالية لتؤدي وظيفتها، وتغطي حاجات المجتمع الألفي القادم بتأثير أكبر، وعلى الحكومة أن تعمل بالقانون الذي تضعه لضبط التصرفات السلبية التي تصدر من مرتكبي المخالفة للقانون.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.



Asst. Prof. Dr. Naemah Amin

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I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.



Asst. Prof. Dr. Mahanoon Yusoff

Examiner

Date: 6/11/2000

This dissertation was submitted to the Kulliyah of Laws and is accepted as partial fulfilment of the requirements for the degree of Master of Comparative Laws.



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Date: 6.11.2000

DECLARATION

I hereby declare that this dissertation is the result of my investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

AZITA YONUS @ AHMAD

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Signature: 

Date: 20.10.2000

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LIST OF STATUTES

Hire Purchase Act 1967 (Act 212).

Sales of Goods Act 1957 (Act 382).

Consumer Protection Act 1999 (Act 599).

The *Mejelle* being an English translation of *Majallahel-Ahkam-I-Adliya* and a Complete Code of Islamic Civil Law.

LIST OF ABBREVIATIONS

©	copyright
CLJ	Current Law Journal
ed/eds	edition/editions; editor, edited by
e.g.	(<i>exempligrana</i>): for example
et. al	(<i>et alia</i>); and others
	(<i>et sequers</i>); and the following
etc	(<i>et cetera</i>); and so forth
ibid	(<i>ibidem</i>); in the same place
JMCL	Journal of Malaysian Comparative Laws
MLJ	Malayan Law Journal
p./pp.	page/pages
SAW	<i>Ṣallallāhu 'alayhi wasallam</i>
SWT	<i>Subhānahu wa Ta'ālā</i>
viz.	(<i>videlicet</i>): namely
vol./vols.	volume/volumes

INTRODUCTION

Hire purchase is a combination system of credit sale and hiring of a product whereby the seller of the goods is regarded as the dealer, the purchaser is regarded as the hirer and the finance company is the owner. However, a hire purchase contract is not a contract of sale in which the price is paid in instalments. The distinctive nature of hire purchase transaction is that the ownership of goods bought on hire purchase does not pass to the hirer at the time of the hire purchase agreement or upon delivery of the goods. Thus, it remains in the owner until the hirer has fully paid the price agreed upon in the hire purchase agreement. In short, the hirer merely possess the goods but not the ownership.

Generally, buying goods on hire purchase is a common form of financing utilised by consumers in Malaysia from the poor to the middle-income groups as well as the commercial sector. Today, hire purchase transaction is extensively used in the purchase of vehicles and most household items be it electrical or non-electrical products. In fact, if not for the hire purchase transactions, the whole business world would probably come to a standstill.

On the face of it, hire purchase seems an easy way of acquiring goods for consumers who cannot afford lump sum payments. Nevertheless, it has caused untold hardships for many people who are induced by advertisements and promotional gimmicks as well as by the pressure of the consumer culture to acquire goods they cannot afford which lead them to overcommit themselves financially on goods they do not need. Lord MacNaghten once remarked that:

“The learned counsel for the respondents spoke of dealings of this sort with an air of righteous indignation as if they were traps for the extravagant and the impecunious—mere devices to tempt improvident people into buying things which they do not want and for which at the time they cannot pay.”¹

This is an unfortunate reality that some consumers can be persuaded to agree to enter into hire purchase transactions for things that they do not actually need and incurring financial obligations that they can ill-afford by over-zealous salesman. Thus, it does not sound a very secure transaction but it is without doubt the most popular method of acquiring goods especially for the ordinary person.

In Malaysia, the law on hire purchase is governed by the Hire Purchase Act 1967 (hereinafter referred to as ‘the HPA’) and which came into force on 11th April 1968. It was patterned on the Hire Purchase Act 1960-1965 of the Australian state of New South Wales.²

Previously, hire purchase transaction was governed by the English Common Law. Nevertheless, the HPA is a statute which provides clearer and more protection for hirers. This is clearly illustrated by the numerous new protections for hirers introduced particularly by the 1992 Amendments which will be discussed in Chapter Two and Three of the dissertation. Despite the significant changes contemplated by the Ministry of Trade and Industry especially as regards to the abovesaid amendment, this study will critically analyse whether the relevant provisions of the HPA sufficiently provide needed protection to the hirers.

¹ *Helby v Mathews* [1895] AC 471.

² Wu Min Aun & Beatrix Vohrah, *The Commercial Law of Malaysia*, Revised ed., Longman, Kuala Lumpur, 1991, p. 257.

0.1 Objectives

The main objective of this study is to identify whether the HPA provides sufficient needed protection to the hirers. It is also to analyse the arising issues and the courts' decisions as regards to rights of hirers. Finally, it is the thrust of this study to propose suggestions and recommendations towards a better protection of the hirer's rights.

0.2 Significance

Any law relating to a common practice among the society needs various changes so as to uphold justice and to fulfill their urgent needed protection. In fact, the HPA has gone through numerous amendments for over the past thirty years. Yet, it is still lack of a few aspects which needs further attention, addition, or changes. Therefore, this study would reveal, examine and analyse the existing hirer protection provision conferred by the HPA in order to find out whether the hirers are adequately protected.

0.3 Statement Of Problem

Malpractices are widespread in hire purchase trade since a few decades ago. It ranges from defective products to outright swindling of instalment payments. The still existing loop-holes and flaws of the HPA allow both the owner and dealer to operate to their own advantages which jeopardise the rights of hirer. Hence, the legal problem in

this study is whether the existing statutory provisions of the HPA and the attitude of the court itself give hirer enough protection.

0.4 Hypothesis

This study would attempt to emphasize that the HPA requires further amendments and new provisions should be added in order to give more protection to the rights of hirer and a more strict approach should be taken by the government against the malpractice of the owner.

0.5 Scope And Limitation

The law of hire purchase is a very wide topic and it covers various aspects. However, for the purpose of this study, the writer would only exclusively cover the aspects of the rights of hirer conferred by the HPA particularly in Part IV, and a few in Part II and VII. As the discussion and analysis are strictly focussed on the actual rights of hirer, provisions regarding the protection of hirers with regard to implied conditions and warranties under Part III of the HPA as well as the hirer protection provisions conferred by the Consumer Protection Act 1999 would be omitted. In this respect, this particular dissertation is not the proper forum to incorporate the rights of hirer relating to usability and quality of the hired goods.

This research paper is arranged in five main chapters preceded with an introduction. In the introductory chapter, it lays down the objectives, significance, statement of problem, hypothesis as well as scope and limitation. The first chapter gives description on the definition, nature, historical development and applicable law of hire purchase.

It goes on in the second and third chapter to discuss the rights of hirer under the HPA together with relevant statutory provisions, related legal issues and decided cases. Chapter Four concentrates on a brief comparison as regards to the rights of hirer between Malaysian conventional system and Islamic system. The last chapter gives recommendations and suggestions towards a better protection of the hirer's rights and conclusion.

A GENERAL OVERVIEW OF THE LAW ON HIRE PURCHASE

1.1 Definition

In order to grasp a clear picture of this dissertation, the definition of certain key words shall be explained such as what is the meaning of “right”, who is or who are “hirer(s)”, what is “hire purchase” within the meaning of the HPA and what is “goods”.

First and foremost we go to the definition of “Right”. Right is defined as an interest recognised and protected by the law, respect for which is a duty, and disregard of which is a wrong. ... A right involves (1) a person invested with the right, or entitled; (2) a person or persons on whom that right imposes a correlative duty or obligation; (3) an act or forbearance which is the subject-matter of the right; (4) an object, that is, a person or thing to which the right has reference; and (5) a title or reason for the right becoming vested in the owner. Rights are perfect and imperfect; positive and negative; real and personal; proprietary and personal; principal and accessory; and legal and equitable.³

Who is or are “Hirer(s)”?. Section 2(1) of the HPA defines hirer as a person who takes or has taken goods from an owner under a hire purchase agreement and includes a person to whom the hirer’s rights or liabilities under the agreement have

³ Bird, R., *Osborn's Concise Law Dictionary*, London Sweet and Maxwell, London, 1983, pp. 293-294.

passed by assignment or by operation of law. The aforementioned interpretation covers the meaning of hirer as a person who hires goods from an owner under a hire purchase agreement as well as any person to whom the hirer's rights or liabilities under the same agreement have been passed either by assignment or by operation of law.

The most important term of this study is the words "hire purchase" itself. At Common Law, hire purchase is a letting or hiring plus an option to purchase. In Malaysia, the nature of hire purchase transaction is reflected in the definition of hire purchase agreement given by section 2(1) of the HPA which includes a letting of goods with an option to purchase and an agreement for the purchase of goods by instalments (whether the agreement describe 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 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.

From the above mentioned definition, it clearly shows that a hire purchase transaction is a transaction whereby the owner or dealer letting of the goods to the hirer who has an option to purchase the same by instalments concluded in the agreement. Clause (a) and (b) further lay down two kinds of agreement which do not constitute hire purchase agreement.