

**HIRE PURCHASE ACT 2009 TO PROTECT CONSUMERS AGAINST
UNFAIR TRADE PRACTICES**

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A DISSERTATION PROPOSAL SUBMITTED IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS OF AWARD OF THE DIPLOMA OF LAW, KAMPALA
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SEPTEMBER, 2010

DECLARATION

I Ellepo Hermann declare that this report on the "Hire Purchase Act 2009 to protect consumers against unfair credit practices" is my original work and to the best of my knowledge has not been submitted to any academic institution or university.

Student: Ellepo Hermann

Signed:  Date 16/September/2011

APPROVAL

This report on the "Hire Purchase Act 2009 to protect consumers against unfair credit practices," it has been supervised by me as the University Supervisor.

Supervisor: Mr. Duncan Ondimu

Signature

D. Ondimu

Date

16/09/11

DEDICATION

I dedicate this piece of work, to my Brother Ellepo Seka Didier for the wonderful' contribution in my academic career.

LIST OF ACRONYMS

HP Hire Purchase

UCPA Uganda Consumers Protection Association

NCO None Governmental Organization

U.S.A. United States of America

STATUTORY INSTRUMENT

- The 1902 order in council
- The Sales of Goods Act chapter (82)

(Laws of Uganda (1932)

- Contract Act chapter 73

(Laws of Uganda (1963)

- The hire Purchase Act, 3, 2009

ACKNOWLEDGEMENT

Above all I owe my gratitude God for providing me with this opportunity to live and for making me what I am today.

My- special gratitude goes to my supervisor Mr. Duncan Ondimu for her corrections and guidance. Thanks for your patience and understanding, with special appreciation attached to all the lecturers in the Faculty of Law for imparting professionalism in me.

I also acknowledge, Mr. Brou Djekou Lazare, Mr. Kone Aboulaye and Ms. Ekra Kobenan

Therese for their contribution in my academic career as well as my sister-in-law Nakysa

Mujahire and Kra Bati Glawdys for their moral support.

To my dear classmates and friends, it was more than a reward pursuing my studies you.

Finally, I greatly appreciate all my informants for their great contribution towards the accomplishment of this work.

May God bless you all

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ABSTRACT

The law of consumer credit, embodied in statutes, protects consumers and provides guidelines for the credit industry. The overall purpose of such consumer protection statutes are to protect consumers obtaining credit to finance their transactions, ensure that adequate credit is provided, and govern the credit industry in general.

Uganda has not had a consumer credit protection law, and consumer protection generally has been regulated by general contract laws and common law principles. The new law, the hire purchase act, is the first attempt at legal protection of consumers who undertake the services of consumer credit from credit companies offering hire purchase services. However, hire purchase law, like other *sill generic* legislations addressing consumer credit protection, need to be alive to certain core principles of consumer credit protection. The purpose of this study was to examine the potential of the hire purchase act of 2009 to protect consumers against unfair credit practices. The research was conducted in Uganda, as an analysis of the hire purchase legal regime. The study analyzed the Hire Purchase Act of 2009 to determine its potential to protect the consumer from unfair credit practices of the credit institutions. Further, the study carried out a comparative jurisdictional analysis to determine how hire purchase legislations have guaranteed consumer credit protection in other countries. The type of data collected for analyses and which was the basis of this study was obtained from secondary sources.

The study found there is need for clarity in the contract, so that the consumer, who is usually having less information, is protected. Further, there is need for the two principles of recovery and re-negotiation to be taken into consideration in the law. Again, the author posits that the act should be further amended to guarantee the rights of the consumer further, to equitably provide for protection of the property, and to remove and delete unnecessary provisions and make the law more clear since clarity is an important component of hire purchase law.

The study recommends various proposals, including the need for the hire purchase act should be actualized immediately to encourage protection of consumers who may want to use this kind of business practice. Further, the act should be amended as proposed in the chapter four and herein above to encourage a better and more vibrant regime for protection of the consumer against unfair trade practices. Finally, from the study, there is need for an understanding of the role that consumer credit protection plays in the economic system. The conclusion and summary of the findings is that the law is effective in protecting the consumer, though there can be amendments to improve it further, as stipulated in chapter four. This study was centered on the hire purchase act only as a means of consumer credit, leaving out credit cards, bank loans, etc. which are also means of consumer credit. It would be beneficial to conduct a study on other legislations as well for a cross referencing of the results in a comparative study.

CHAPTER ONE

INTRODUCTION

1.1 GENERAL INTRODUCTION

Consumer is defined as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.¹

Credit allows consumers to finance transactions without having to pay the full cost of the merchandise at the time of the transaction. A common form of consumer credit in developed world is credit card account issued by a financial institution. Another form, which is prevalent in developing countries, is hire purchase. Hire purchase (HP) is the legal term for a contract where persons usually agree to pay for goods in parts or a percentage at a time.²

"Consumer law" is considered an area of law that regulates private law relationships between individual consumers and the businesses that sell those goods and services. Consumer protection covers a wide range of topics, including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation and other consumer/business interactions.

The law of consumer credit, embodied in statutes, protects consumers and provides guidelines for the credit industry. The overall purpose of such consumer protection statutes are to protect consumers obtaining credit to finance their transactions, ensure that adequate credit is provided, and govern the credit industry in general. Such laws deal with credit repair, debt repair, product safety, service and sales contracts, bill collector regulation, pricing, utility turnoffs, consolidation, personal loans that may lead to bankruptcy and much more.

¹ West Encyclopedia of American Law. Consumer. www.answers.com. Retrieved on January 31, 2010"

² Black H. Campbell: Black's Law Dictionary, West Publishing co. St. Paul, Minnesota, U.S.A. 1990. pp 2087

Consumer interests can also be protected by promoting competition in the markets which directly and indirectly serve consumers, consistent with economic efficiency, but this topic is treated in Competition law. Consumer protection can also be asserted via non-government organizations and individuals as consumer activism.

Hire purchase, as a distinct type of consumer contract, is a system in which something hired becomes the property of the person hiring it after an agreed payment has been made. Hire purchase was a favourite mode of buying household goods, electronic assets like radios, TVs and fridges, utensils and furniture.

A *hire-purchase agreement* differs from a *credit-sale agreement* and *sale by installments* (or a *deferred payment agreement*) because in these transactions ownership passes when the contract is signed. It also differs from a *contract of hire*, because in this case ownership never passes.

In hire purchase, the so-called buyer who has the use of the goods is not the legal owner during the term of the hire-purchase contract. If the buyer defaults in paying the installments, the owner may repossess the goods, a vendor protection not available with unsecured-consumer-credit systems. In between the hirer and the owner is another party, the guarantor. He is supposed to perform the hirer's obligations in case of default by the hirer. Terms governing this transaction must be written and clearly stipulated in a hire purchase agreement, signed by the hirer, guarantor and owner. The agreement then shall spell out details about the commencement date, hire purchase price and the cash price, amounts and frequency of installments to be made, a clear description of the goods and late payment charges, if any.

HP is frequently advantageous to consumers because it spreads the cost of expensive items over an extended time period. However, Hire purchase prices are normally higher than the actual if one paid cash. This is because the payment in instalment attracts interest, charges, deposit and other administrative costs. Further, according to research in neighboring Kenya on the decline of hire purchase, some civil servants took up loans

and hire purchase schemes that consumed all their salaries.³ There is hence need for consumers to be protected from the credit companies, and this protection is only efficient when it comes from the act, backed by law.

There is hence need for any legal regime purporting to regulate the hire purchase industry to align itself with the ideals and principles of consume protection. Such ideals will include, but not be limited to regulating the rights of owners and hirers; and of persons claiming under them in certain circumstances. Such law should also require creditors to disclose credit terms to consumers. The act should also protect consumers from loan sharks, restricts the garnishing of wages, and establish an entity to investigate the consumer finance industry. Further, the law should prohibit discrimination based on sex or marital status in the extending of credit, while regulating the debt collectors. All these will cumulatively operate to protect the consumer from consumer credit institutions.

1.2 BACKGROUND

Uganda did not have specific laws relating to consumer protection. Instead, there has been reliance to other laws, most of which were received from Britain under the 1902 Order in Council⁴, like the Sales of Goods Act⁵, Contract Act⁶ and the common law which evolves through court decisions.

³ Kenya: Hire Purchase On Its Death Bed. <http://allafrica.com/stories/201101311563.html> accessed on February 19, 2011

⁴ The year 1902 marked a very important landmark. In that year an Order-in-Council was passed; and under this ordinance new provisions for the administration of Uganda were made. It also designated an official responsible for administration; the Commissioner. Article 12 of the ordinance empowered the Commissioner to make ordinances for the administration of justice, raising of revenues and generally for the peace, order and good government of all persons in Uganda. In effect, the 1902 ordinance established a system of legislation through the promulgation of personal decrees by the representatives of the British Crown, namely the Commissioner. This system continued up to 1920. See HISTORY OF PARLIAMENT, available at http://www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3 accessed on February 19, 2011

⁵ Chapter 82, Laws of *Uganda*

⁶ Chapter 73, Laws of *Uganda*

Consumer protection in Uganda has also had a civic activism angle, with the registration of the Uganda Consumers' Protection Association (UCPA), a None Governmental Organization (NGO) duly registered with the NGO Board, Ministry of Internal Affairs. The UCPA is an Affiliate Member of Consumers International and has a membership of 365. They have six very vibrant branches (called chapter) in Mbarara, Mbale, Busenyi, Fort Portal, Soroti and Gulu.⁷

In May 2009, the Parliament of Uganda enacted legislation to govern all trade transactions under hire purchase arrangement, termed the Hire Purchase Act. Various commercial laws are currently undergoing reform in Uganda. The Hire Purchase Act 2009 is among these laws.

The key objective of the Act is to provide for the regulation and registration of hire purchase agreements and the licensing of persons carrying out hire purchase business and for related purposes.⁸

However, it has not been in operation because of lack of accompanying regulations. The trade ministry is working in conjunction with the Uganda Law Reform Commission to spearhead the exercise. The statute contains several provisions that constrain the practices of financial institutions that consumer credit cards. These include bans on practices such as retroactive or unfair rate increases and late fees that result from bills that arrive close to the due date, among other prohibitions. The statute also includes various requirements for credit card issuers, including that contract terms be written in language that consumers can see and understand, and remain stable for the first year of the contract. Moreover, the Act contains monitoring and enforcement provisions, including increased penalties for companies that violate the law.

⁷ Uganda Consumers' Protection Association (UCPA) available at <http://www.eac-quality.net/quality-affects-your-life/consumer-organizations/uganda.html> accessed on February 19, 2011

⁸ The *Hire Purchase Act*, 3, 2009

According to leading commercial lawyer, author and jurisperude, Senior Counsel Feisal Mukasa, who also lectures at Makerere University, ' *the hire purchase law is welcome to address the regulatory vacuum of the poorly packaged, inappropriately priced and badly delivered hire purchase products offered by Uganda's financial institutions*'.⁹

On reviewing the Bill, one wonders whether there is a policy shift from financial liberalization to financial repression. Section 19 of the Act gives the Minister of Trade power to declare the licensing authority. Section 22 provides for appeal to the minister for a person who is denied a license. Section 20 outlines the process of issuing a license. These, and others, indicate the existent lacuna in the new law.

The Act also stipulates that goods bought under hire purchase must be of satisfactory quality.

In other words, they must be fit for the purposes for which such goods are normally supplied, safe to the consumer and durable. The hirer is expected to carefully inspect the goods to establish the price, model or make and other important details pertaining to them. The owner, on the other hand, must also disclose all the relevant information about the goods before the hire purchase agreement is signed. The agreement then shall spell out details about the commencement date, hire purchase price and the cash price, amounts and frequency of installments to be made, a clear description of the goods and late payment charges, if any.

Exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law should solve. Exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law should solve. For any person or company to carry out hire purchase business, the law stipulates that they have to be duly licensed by the trade minister.

⁹ See Uganda: Fill the Many Gaps in the Hire Purchase Bill, 2007. Available at <http://allafrica.com/stories/200807280363.html> accessed on February 19 2011

This study will determine to what extent the law makes hire purchase safe and safeguards the public from the credit operators.

1.3 STATEMENT OF THE PROBLEM

Uganda has not had a consumer credit protection law, and consumer protection generally has been regulated by general contract laws and common law principles. The new law, the hire purchase act, is the first attempt at legal protection of consumers who undertake the services of consumer credit from credit companies offering hire purchase services. However, hire purchase law, like other *sui generis* legislations addressing consumer credit protection, need to be alive to certain core principles of consumer credit protection.

1.4 PURPOSE OF THE STUDY

The purpose of this study is to examine the potential of the hire purchase act of 2009 to protect consumers against unfair credit practices

1.5 OBJECTIVES OF THE STUDY

- i. To determine the basic tenets and requirements of consumer credit law
- ii. To critically and comparatively analyze the hire purchase act;
- iii. To determine the efficacy of Uganda's hire purchase law protecting consumer against unfair credit practices

1.6 SIGNIFICANCE OF THE RESEARCH STUDY

- The legal community especially advocates and judicial services will benefit from an analysis of the efficacy and potential of the new hire purchase law to protect consumers against unfair credit practices.

- The researcher will gain insight and advanced knowledge in the role of consumer credit in commerce, the various types of consumer credit modes and particularly the efficacy and potential of the new law, the hire purchase act o of 2009, to guarantee consumer protection from unfair credit activities san practices.
- The results of this study will provide useful academic knowledge and resource to students, academicians, policy makers and other stakeholders who wish to understand in depth the role of credit consumerism and the efficacy and potential of the current legislation, the hire purchase act of 2009, to protect consumers.
- The research will benefit the public by exposing the various strengths and weaknesses of the hire purchase law in protecting them from unfair trade practices of credit institutions.

1.7 RESEARCH METHODOLOGY

1.7.1 Data Type

The type of data to be collected for analyses and which shall be the basis of this study shall be obtained from both secondary sources.

1.7.2 Data Source

Secondary data collected shall include, but not be limited to journals articles, books and online resources and legislative analyses and reviews. The researcher shall also carry out jurisdictional analyses of the phenomena of Hire Purchase and the legal, policy and institutional infrastructure in regulation of Hire Purchase.

1.7.3 Method of Study

The researcher shall adopt a desk top research method to carry out the literature review and analyses of secondary data.

1.7.4 Scope of the Research Study

The research shall be conducted in Uganda, as an analysis of the hire purchase legal regime. The study shall analyse the Hire Purchase Act of 2009 and determine its potential to protect the consumer from unfair credit practices of the credit institutions. Further, the study will carry a comparative jurisdictional analysis to determine who hire purchase legislations have guaranteed consumer credit protection in other countries.

1.8 LITERATURE REVIEW

1.8.1 Summary

This literature review aims to expose the critical points of historical and current knowledge on contracts of hire purchase and the law regulating the same in Uganda. The review will bring the reader up to date with current literature on the laws, policies and practice in promotion of hire purchase as sales contract with special reference to Uganda's scenario, and to identify the gap, which necessitates this research study. The literature reviews are secondary sources and case studies or new or original experimental work.

1.8.2 Consumer Credit Protection

*Wikipedia*¹⁰ states that consumer rights are the rights given to a "consumer" to protect him/her from being cheated by salesman/manufacturer/shopkeeper. It further states that *consumer protection laws* are designed to ensure fair trade competition and the free flow of truthful information in the marketplace. The laws are designed to prevent businesses that engage in fraud or specified unfair practices from gaining an advantage over competitors and may provide additional protection for the weak and those unable to take care of themselves.

Reid & Priest (1998) argue that Consumer Protection laws are a form of government regulation which aim to protect the rights of consumers. For example, a government may require businesses to disclose detailed information about products—particularly in areas where safety or public health is an issue, such as food. Consumer protection is linked to the idea of "consumer rights" (that consumers have various rights as consumers), and to the formation of consumer organizations which help consumers make better choices in the marketplace.

West Encyclopedia (2010) defines Consumer as someone who acquires goods or services for direct use or ownership rather than for resale or use in production and manufacturing.¹¹

Investopedia (2011) defines consumer credit as a debt that someone incurs for the purpose of purchasing a good or service. This includes purchases made on credit cards, lines of credit and some loans. A common form of consumer credit in developed world is credit card account issued by a financial institution. Another form, which is prevalent in developing countries, is hire purchase.

¹⁰See Consumer Protection available at en.wikipedia.org/wiki/Consumer_protection, accessed on March 27, 2011

¹¹West Encyclopedia of American Law. Consumer. www.answers.com. Retrieved on January 31, 2010"

Ingham, G. (2004) states that consumer law" is considered an area of law that regulates private law relationships between individual consumers and the businesses that sell those goods and services. Consumer protection, eh avers, covers a wide range of topics, including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumer/business interactions.

Finlay, S. (2009) writes on the law of consumer credit, arguing that its overall purpose is to protect consumers obtaining credit to finance their transactions, ensure that adequate credit is provided, and govern the credit industry in general. Such laws, he posits, deal with credit repair, debt repair, product safety, service and sales contracts, bill collector regulation, pricing, utility turnoffs, consolidation, personal loans that may lead to bankruptcy and much more.

Wikipedia (2010) states that consumer interests can also be protected by promoting competition in the markets which directly and indirectly serve consumers, consistent with economic efficiency, but this topic is treated in Competition law. Consumer protection can also be asserted via non-government organizations and individuals as consumer activism.

1.9.3 Hire Purchase

Definition of HP

*Wikipedia*¹² defines hire purchase (abbreviated HP) as a contract where persons usually agree to pay for goods in parts or a percentage at a time.

*Investopedia*¹³ states that hire purchase, as a distinct type of consumer contract, is a system in which something hired becomes the property of the person hiring it after an agreed payment has been made.

¹² See Hire Purchase, available at http://en.wikipedia.org/wiki/Hire_purchase accessed on March 27, 2011

Sullivan, Arthur, et al,¹⁴ differentiate between different consume credit facilities, arguing that *hire-purchase agreement* differs from a *credit-sale agreement* and *sale by installments* (or a *deferred payment agreement*) because in these transactions ownership passes when the contract is signed. It also differs from a *contract of hire*, because in this case ownership never passes.

Lewis D. Eige posits that such agreements for consumer credit must be written in clear language for legibility and audibility. He adds that such contracts must be written at reasonable readability levels as a large proportion of contracts cannot be understood by most consumers who sign them.¹⁵

1.9.4 The Hire Purchase Agreement

Wikipedia (2010) outlines the following essential elements of a valid hire purchase agreement.

Written and signed

To be valid, HP agreements must be in writing and signed by both parties.

Clarity

The agreement must clearly set out the following information in a print that all can read without effort:

1. a clear description of the goods
2. the cash price for the goods

¹³ See Hire Purchase, available at <http://www.investopedia.com/terms/h/hire-purchase.asp> accessed on March 27, 2011

¹⁴Sullivan, Arthur; Steven M. Sheffrin (2003). *Economics: Principles in action*. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. pp. 512. ISBN 0-13-063085-3.

¹⁵Lewis D. Eige, *A Solution to the Problem of Consumer Contracts That Cannot be Understood by Consumers Who Sign Them*, Scriptamus, 2009,

3. the HP price, i.e., the total sum that must be paid to hire and then purchase the goods
4. the deposit
5. the monthly installments (most states require that the applicable interest rate is disclosed and regulate the rates and charges that can be applied in HP transactions) and
6. a reasonably comprehensive statement of the parties' rights (sometimes including the right to cancel the agreement during a "cooling-off" period).
7. The right of the hirer to terminate the contract when he feels like doing so with a valid reason.

This provision for clarity is also stated by *Lewis D. Eige (2009)*¹⁶, when he contends that such agreements must be in a language that can be palatable to the consumer.

Parties to the hire purchase contract

A hire purchase agreement is an agreement between the consumer and the lender of the good, the owner.

1.9.5 HP in Uganda

Uganda did not have specific laws relating to consumer protection. Instead, there has been reliance to other laws, most of which were received from Britain under the 1902 Order in Council¹⁷, like the Sales of Goods Act¹⁸, Contract Act¹⁹ and the common law which evolves through court decisions.

¹⁶ *Id*

¹⁷ The year 1902 marked a very important landmark. In that year an Order-in-Council was passed; and under this ordinance new provisions for the administration of Uganda were made. It also designated an official responsible for administration; the Commissioner. Article 12 of the ordinance empowered the Commissioner to make ordinances for the administration of justice, raising of revenues and generally for the peace, order and good government of all persons in Uganda. In effect, the 1902 ordinance established a system of legislation through the promulgation of personal decrees by the representatives of the British Crown, namely the Commissioner. This system continued up to 1920. See HISTORY OF PARLIAMENT,

Consumer protection in Uganda has also had a civic activism angle, with the registration of the Uganda Consumers' Protection Association (UCPA), a None Governmental Organization (NGO) duly registered with the NGO Board, Ministry of Internal Affairs. The UCPA is an Affiliate Member of Consumers International and has a membership of 365. They have six very vibrant branches (called chapter) in Mbarara, Mbale, Busenyi, Fort Portal, Soroti and Gulu.²⁰

In May 2009, the Parliament of Uganda enacted legislation to govern all trade transactions under hire purchase arrangement, termed the Hire Purchase Act. Various commercial laws are currently undergoing reform in Uganda. The Hire Purchase Act 2009 is among these laws.

The key objective of the Act is to provide for the regulation and registration of hire purchase agreements and the licensing of persons carrying out hire purchase business and for related purposes.²¹

However, it has not been in operation because of lack of accompanying regulations. The trade ministry is working in conjunction with the Uganda Law Reform Commission to spearhead the exercise. The statute contains several provisions that constrain the practices of financial institutions that consumer credit cards. These include bans on practices such as retroactive or unfair rate increases and late fees that result from bills that arrive close to the due date, among other prohibitions. The statute also includes various requirements for credit card issuers, including that contract terms be written in language that consumers can see and understand, and remain stable for the first year

available at http://www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3 accessed on February 19, 2011

¹⁸ Supra

¹⁹ Supra

²⁰ Uganda Consumers' Protection Association (UCPA) available at <http://www.eac-quality.net/quality-affects-your-life/consumer-organizations/uganda.html> accessed on February 19, 2011

²¹

of the contract. Moreover, the Act contains monitoring and enforcement provisions, including increased penalties for companies that violate the law.

According to leading commercial lawyer, author and jurisperite, Senior Counsel Feisal Mukasa, who also lectures at Makerere University, '*the hire purchase law is welcome to address the regulatory vacuum of the poorly packaged, inappropriately priced and badly delivered hire purchase products offered by Uganda's financial institutions*'.²²

On reviewing the Bill, one wonders whether there is a policy shift from financial liberalisation to financial repression. Section 19 of the Act gives the Minister of Trade power to declare the licensing authority. Section 22 provides for appeal to the minister for a person who is denied a licence. Section 20 outlines the process of issuing a licence. These, and others, indicate the existent lacuna in the new law.

The Act also stipulates that goods bought under hire purchase must be of satisfactory quality.

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Exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law should solve. Exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law should solve. For any person

²² See Uganda: Fill the Many Gaps in the Hire Purchase Bill, 2007. Available at <http://allafrica.com/stories/200807280363.html> accessed on February 19 2011

or company to carry out hire purchase business, the law stipulates that they have to be duly licensed by the trade minister.

1.9.7 Conclusion: The Gap

The HP law in Uganda is new, and has not been critically analysed and differentiated with other forms of payment by installment, so as to determine to what extent it safeguards both parties while promoting the ideals of hire purchase contract. This study is an analysis of the HP law in Uganda, and a comparison with the provisions of the same law in other jurisdictions, so as to come up with a detailed statement as to the efficacy of the current HP law in Uganda to promote accessibility to goods by consumers.

1.10 CHAPTER BREAKDOWN

This study will be organised into four chapters. Chapter one is the introduction to the research study, comprising the background information on hire purchase; the significance of the study; the research methodology, including research scope and limitations; and the literature review. Chapter two seeks to explain the history, origins and sources of Hire Purchase and the need for hire purchase, while also covering the various challenges facing hire purchase contracts. Chapter three is an analysis of the Hire Purchase law of Uganda, exploring the modes of implementation, enforcement, and regulation. Chapter four is the summary, conclusion and recommendations of the study.

CHAPTER TWO

A STUDY OF THE HISTORY OF HIRE PURCHASE

SUMMARY

This chapter seeks to explain the history, origins and sources of Hire Purchase and the need for hire purchase, while also covering the various challenges facing hire purchase contracts.

2.0 INTRODUCING HIRE PURCHASE: DEFINITION

*Wikipedia*²³ defines hire purchase (abbreviated HP) as a contract where persons usually agree to pay for goods in parts or a percentage at a time. The debtor will lease the property from the creditor (who is also normally the seller), his title becoming absolute when the payments have been made.²⁴

*Investopedia*²⁵ states that hire purchase, as a distinct type of consumer contract, is a system in which something hired becomes the property of the person hiring it after an agreed payment has been made.

Sullivan, Arthur, et al,²⁶ differentiate between different consume credit facilities, arguing that *hire-purchase agreement* differs from a *credit-sale agreement* and *sale by installments* (or a *deferred payment agreement*) because in these transactions ownership passes when the contract is signed. It also differs from a *contract of hire*, because in this case ownership never passes.

²³ See Hire Purchase, available at http://en.wikipedia.org/wiki/Hire_purchase accessed on March 27, 2011

²⁴ "hire-purchase." *Encyclopædia Britannica. Encyclopædia Britannica Online*. Encyclopædia Britannica, 2011. Web. 27 Mar. 2011. <<http://www.britannica.com/EBchecked/topic/266789/hire-purchase>>.

²⁵ See Hire Purchase, available at <http://www.investopedia.com/terms/h/hire-purchase.asp> accessed on March 27, 2011

²⁶ *Sullivan, Arthur; Steven M. Sheffrin (2003). Economics: Principles in action*. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. pp. 512. ISBN 0-13-063085-3.

Lewis D. Eige posits that such agreements for consumer credit must be written in clear language for legibility and audibility. He adds that such contracts must be written at reasonable readability levels as a large proportion of contracts cannot be understood by most consumers who sign them.²⁷

Hire purchase differs from a mortgage and similar forms of lien-secured credit in that the so-called buyer who has the use of the goods is not the legal owner during the term of the hire-purchase contract. If the buyer defaults in paying the installments, the owner may repossess the goods, a vendor protection not available with unsecured-consumer-credit systems. HP is frequently advantageous to consumers because it spreads the cost of expensive items over an extended time period. Business consumers may find the different balance sheet and taxation treatment of hire-purchased goods beneficial to their taxable income. The need for HP is reduced when consumers have collateral or other forms of credit readily available.²⁸

2.1 HISTORY OF HIRE PURCHASE

Hire Purchase was first used in the 19th Century as a means of enabling carriers to purchase wagons for use in their business. Basically, it means exactly what its name suggests; a hiring of the goods until a certain condition is met, when they become the property of the hirer.²⁹ This condition is usually the completion of all of the payments. The advantage to the finance company is obvious, the property in the goods remains theirs until the goods are paid for. Therefore the finance company has, at least a partial security for their debt.

Over the years, in other countries, like Kenya³⁰ it has acquired a bad reputation. This is due to the way that some finance companies were dealing with their customers. This

²⁷Lewis D. Eige, *A Solution to the Problem of Consumer Contracts That Cannot be Understood by Consumers Who Sign Them*, Scriptamus, 2009,

²⁸ http://en.wikipedia.org/wiki/Hire_purchase, accessed on March 27, 2011

²⁹ *Black's Law Dictionary* 7th ed. (West Group, 1999) at p.182

³⁰ *Ibid*

lead to the first Hire Purchase Acts which established two fundamental and far reaching legal principles:³¹

1/ Once one third of the total amount payable has been paid, the finance company cannot recover the goods without the hirers consent. Unless the finance company first obtains a Court Order.

2/ If an innocent "private buyer in good faith" purchases the goods from the hirer, the finance company cannot take those goods from the innocent purchaser. That is, the finance companies property in those goods is lost. To meet those conditions the innocent buyer must:

A/ Be a genuine private buyer, that is not be engaged in any way in the motor trade.

B/ Be ignorant of the fact that the person from whom the goods was purchased was hiring them under a Hire Purchase agreement.

These principals have remained intact up to the present day, however, there was now a requirement for businesses engaged in the offering of credit to be licenced.

In later years, civil procedures have been the subject of two judicial reviews, the first instigated by the then Lord Chancellor, the other (recent) following a report by Lord Woolfe.³² Although neither of these has lead to any legislative changes, radical changes have been made to the County Court system. The result of all this is that the system is now much faster, slicker, and easier to use. Under the present system, anyone running a finance company, would do well to consider undertaking their own legal work.

³¹ See **History of Hire Purchase** available at <http://www.iriscom.co.uk/Iris/hphistory.htm> accessed on March 27, 2011

³² See Woolf H. *Access to Justice: final report to the Lord Chancellor on the civil justice system in England and Wales*. London: HMSO, 1996., accessed at <http://www.bmj.com/content/313/7052/242.full> on March 27, 2011

2.2 CHALLENGES FACING HIRE PURCHASE

Despite the benefits of hire purchase as a means of buying goods on credit, it is literary on its death bed in various countries due to various reasons.

The hire purchase business, once a hugely popular mode of payment, has lost its lustre. In Kenya, for instance, at its peak between the 1970s and 1990s, hire purchase was a favourite mode of buying household goods, electronic assets like radios, TVs and fridges, utensils and furniture. Demand and competition was so intense such that dealers invoked various marketing strategies, the most popular being Kenya Broadcasting Corporation radio programme, Sanyo Juu Sanyo Tops by veteran broadcaster Fred Obachi Machoka.³³ However, this is no longer the case due to the following reasons.

Liberalization

The removal of foreign exchange controls opened the floodgates for electronic items heralding a major challenge to the hire purchase industry. Further, the scrapping of the requirement that one must get a licence to own a TV set or radio also changed the playing surface for hire purchase dealers overnight. Acquiring and, therefore, possession of, especially television sets and radios was no longer in the hands of a select few.

³³ See hire purchase on its death bed. Available at <http://creditkenya.blogspot.com/> accessed on march 2011

Increased access to financial services

The decline of hire purchase also came as a result of increased access to financial services especially personal loans, from either financial institutions or savings and credit cooperative societies (Saccos). Increased accessibility especially by low income earners, who formed the bulk of hire purchase clients, found it easier to take loans whose proceeds they could then use to purchase the items they needed. It gave them the flexibility of choosing the item, dealers and even time of acquiring it. The idea of repossessing the "hired" item in case of failure to repay for it also played a great role in the system's decline.

Lack of Independence

Lack of independence in the system in form of guarantors etc, which banks and Saccos offer, saw a majority of the customers fall out with the hire purchase also. This is understandable. Besides the final cost of the item being by far higher than its actual price, the hire purchase process is cumbersome since it needs things like a guarantor and letters from the employer.

Check Off System

If a customer is employed, especially as a civil servant, he or she can opt for the check-off hire purchase system where he or she has to, among others, provide a letter of approval from the employer. Alternatively, if a customer is employed and is a member of a Sacco, he or she can take a loan to buy the item while repaying the loan. As a business model, hire purchase system had these and other inherent challenges.

Weak Marketing

Further, weak or lack of effective marketing of hire purchase as a viable and available mode of payment has hindered the system's visibility in the market.

Debt Collection

The success of credit depends on how efficient debt collection is, besides the commission paid to those involved, which is a challenge to the system. The operators have to perfect the art of collecting the monthly installments. Otherwise, they will not survive in this field.

Defaulting Customers

Another challenge has been defaulting when customers, especially civil servants, have committed much of their salaries to repaying other loans. A report, *Introduction of a Payroll Deduction Management Service*, revealed in July last year that some civil servants took up loans and hire purchase schemes that consumed all their salaries. This is beyond the two thirds (of salaries) allowed by the government to cater for their other needs. In a bid to address the challenge, the government signed an agreement with Payment Solutions Kenya late last year to enable hire purchase operators to access the credit history of civil servants before a transaction is made. The Union of Kenya Civil Servants has, however, called upon authorities to cancel the deal. The system, if effected, will develop and run the payroll management service to validate all payroll data with a view to verifying employees' credit status before they get loans from banks, microfinance institutions and hire purchase organisations.

2.3 CONCLUSION

From the foregoing, it is very important to note that hire purchase, as a form of credit payment, is very beneficial to the customer, but it has inherent challenges, which need to be addressed by any legislation for effective business processes and so that it can contribute to effective economic development.

CHAPER THREE

OBJECTS OF HIRE PURCHASE LAW

CHAPTER SUMMARY

This chapter gives an analysis of the important aspects of hire purchase law.

3.0 STANDARD PROVISIONS

3.1 The Two Fundamental Principles

This lead to the first Hire Purchase Acts which established two fundamental and far reaching legal principles:³⁴

1/ Once one third of the total amount payable has been paid, the finance company cannot recover the goods without the hirers consent. Unless the finance company first obtains a Court Order.

2/ If an innocent "private buyer in good faith" purchases the goods from the hirer, the finance company cannot take those goods from the innocent purchaser. That is, the finance companies property in those goods is lost. To meet those conditions the innocent buyer must:

A/ Be a genuine private buyer, that is not be engaged in any way in the motor trade.

B/ Be ignorant of the fact that the person from whom the goods was purchased was hiring them under a Hire Purchase agreement.

³⁴See History of Hire Purchase available at <http://www.iriscom.co.uk/Iris/hphistory.htm> accessed on March 27, 2011

3.2 Validity

To be valid, HP agreements must be in writing and signed by both parties. They must clearly set out the following information in a print that all can read without effort:

1. a clear description of the goods
2. the cash price for the goods
3. the HP price, i.e., the total sum that must be paid to hire and then purchase the goods
4. the deposit
5. the monthly installments (most states require that the applicable interest rate is disclosed and regulate the rates and charges that can be applied in HP transactions) and
6. a reasonably comprehensive statement of the parties' rights (sometimes including the right to cancel the agreement during a "cooling-off" period).
7. The right of the hirer to terminate the contract when he feels like doing so with a valid reason.

3.3 The Seller and the Owner

If the seller has the resources and the legal right to sell the goods on credit (which usually depends on a licensing system in most countries), the seller and the owner will be the same person. But most sellers prefer to receive a cash payment immediately. To achieve this, the seller transfers ownership of the goods to a Finance Company, usually at a discounted price, and it is this company that hires and sells the goods to the buyer. This introduction of a third party complicates the transaction. Suppose that the seller makes false claims as to the quality and reliability of the goods that induce the buyer to "buy". In a conventional contract of sale, the seller will be liable to the buyer if these representations prove false. But, in this instance, the seller who makes the representation is not the owner who sells the goods to the buyer only after all the installments have been paid. To combat this, some jurisdictions make the seller and the

finance house jointly and severally liable to answer for breaches of the purchase contract.

3.4 Implied Warranties And Conditions To Protect The Hirer

The extent to which buyers are protected varies from jurisdiction to jurisdiction, but the following are usually present:

1. the hirer will be allowed to enjoy quiet possession of the goods, i.e. no-one will interfere with the hirer's possession during the term of this contract
2. the owner will be able to pass title to, or ownership of, the goods when the contract requires it
3. that the goods are of merchantable quality and fit for their purpose, save that exclusion clauses may, to a greater or lesser extent, limit the Finance Company's liability
4. where the goods are let by reference to a description or to a sample, what is actually supplied must correspond with the description and the sample.

3.5 The Hirer's Rights

The hirer usually has the following rights:

1. To buy the goods at any time by giving notice to the owner and paying the balance of the HP price less a rebate (each jurisdiction has a different formula for calculating the amount of this rebate)
2. To return the goods to the owner — this is subject to the payment of a penalty to reflect the owner's loss of profit but subject to a maximum specified in each jurisdiction's law to strike a balance between the need for the buyer to minimize liability and the fact that the owner now has possession of an obsolescent asset of reduced value

3. With the consent of the owner, to assign both the benefit and the burden of the contract to a third person. The owner cannot unreasonably refuse consent where the nominated third party has good credit rating
4. Where the owner wrongfully repossesses the goods, either to recover the goods plus damages for loss of quiet possession or to damages representing the value of the goods lost.

Basically hirers have following rights

1. Rights of protection
2. Rights of notice
3. Rights of repossession
4. Rights of Statement
5. Rights of excess amount

3.6 The Hirer's Obligations

The hirer usually has the following obligations:

1. to pay the hire installments
2. to take reasonable care of the goods (if the hirer damages the goods by using them in a non-standard way, he or she must continue to pay the installments and, if appropriate, compensate the owner for any loss in asset value)
3. to inform the owner where the goods will be kept.
4. a hirer can sell the products if an only if he has purchased the goods finally or else not to any other third party.

3.7 The Owner's Rights

The owner usually has the right to terminate the agreement where the hirer defaults in paying the installments or breaches any of the other terms in the agreement. This entitles the owner:

1. to forfeit the deposit
2. to retain the installments already paid and recover the balance due
3. to repossess the goods (which may have to be by application to a Court depending on the nature of the goods and the percentage of the total price paid)
4. to claim damages for any loss suffered.

CHAPTER FOUR

4.0 HIRE PURCHASE LAW IN UGANDA

CHAPTER SUMMARY

This chapter is an analysis of the hire purchase legal regime in Uganda. It is topical analysis of the act, based on the principles that such a law ought to espouse for consumer credit protection.

4.1 HISTORY OF HP LAW IN UGANDA

Uganda did not have specific laws relating to consumer protection. Instead, there has been reliance to other laws, most of which were received from Britain under the 1902 Order in Council³⁵, like the Sales of Goods Act³⁶, Contract Act³⁷ and the common law which evolves through court decisions. Most of the laws have been in existence for at least twenty years and are not adequate to address effectively the issue of secured transactions.

In May 2009, the Parliament of Uganda enacted legislation to govern all trade transactions under hire purchase arrangement, termed the Hire Purchase Act. Various commercial laws are currently undergoing reform in Uganda. The Hire Purchase Act 2009 is among these laws.

³⁵ The year 1902 marked a very important landmark. In that year an Order-in-Council was passed; and under this ordinance new provisions for the administration of Uganda were made. It also designated an official responsible for administration; the Commissioner. Article 12 of the ordinance empowered the Commissioner to make ordinances for the administration of justice, raising of revenues and generally for the peace, order and good government of all persons in Uganda. In effect, the 1902 ordinance established a system of legislation through the promulgation of personal decrees by the representatives of the British Crown, namely the Commissioner. This system continued up to 1920. See HISTORY OF PARLIAMENT, available at http://www.parliament.go.ug/index.php?option=com_content&task=view&id=4&Itemid=3 accessed on February 19, 2011

³⁶ Supra

³⁷ Supra

According to leading commercial lawyer, author and jurisprude, Senior Counsel Feisal Mukasa, who also lectures at Makerere University, ' *the hire purchase law is welcome to address the regulatory vacuum of the poorly packaged, inappropriately priced and badly delivered hire purchase products offered by Uganda's financial institutions*'.³⁸

4.2 ANALYSIS OF THE HIRE PURCHASE ACT

Objective of the Act

The key objective of the Act is to provide for the regulation and registration of hire purchase agreements and the licensing of persons carrying out hire purchase business and for related purposes.³⁹ The law provides for the regulation and registration of hire purchase agreements and the licensing of persons carrying on hire purchase business and related purposes. It seeks to protect the rights of the hirer of goods under a hire purchase agreement and at the same time to keep a balance between the rights of the hirer and those of the owner of the goods under a hire purchase agreement.

Unfair Practices

The statute contains several provisions that constrain the practices of financial institutions that consumer credit cards. These include bans on practices such as retroactive or unfair rate increases and late fees that result from acts that arrive close to the due date, among other prohibitions. The statute also includes various requirements for credit card issuers, including that contract terms be written in language that consumers can see and understand, and remain stable for the first year of the contract. Moreover, the Act contains monitoring and enforcement provisions, including increased penalties for companies that violate the law.

³⁸ See Uganda: Fill the Many Gaps in the Hire Purchase Act, 2007. Available at <http://allafrica.com/stories/200807280363.html> accessed on February 19 2011

³⁹ Long title to the Hire Purchase Act, 2009, available at

Goods To Be Of High Quality!

The Act also stipulates that goods bought under hire purchase must be of satisfactory quality. In other words, they must be fit for the purposes for which such goods are normally supplied, safe to the consumer and durable. The hirer is expected to carefully inspect the goods to establish the price, model or make and other important details pertaining to them. The owner, on the other hand, must also disclose all the relevant information about the goods before the hire purchase agreement is signed. The agreement then shall spell out details about the commencement date, hire purchase price and the cash price, amounts and frequency of installments to be made, a clear description of the goods and late payment charges, if any.

Licensing and Registration

Exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law seeks to solve. For any person or company to carry out hire purchase business, the law stipulates that they have to be duly licensed by the trade minister.

The Requirements of Hire Purchase Agreements

The Act provides for the requirements of hire purchase agreements, termination and completion of agreements, recovery of possession by owners of goods sold on hire purchase and licensing of hire purchase business.

4.3 PROPOSED AMENDMENTS TO THE HIRE PURCHASE ACT, 2007

Ministerial Regulation, Too Much!

On reviewing the Act, one wonders whether there is a policy shift from financial liberalisation to financial repression. Section 19 of the Act gives the Minister of Trade

power to declare the licensing authority. Section 22 provides for appeal to the minister for a person who is denied a licence. Section 20 outlines the process of issuing a licence. These, and others, indicate the existent lacuna in the new law.

Lack of Clarity

In section 3, in the definition of the word "bailment" the word "...executing..." be substituted by the word "execution". This will make it easy for better reading.

In section 3, in the definition of the words "cash price" the word "consumer" be substituted by the word "buyer". Buyer is more inclusive.

In section 3, in the definition of the word "warranty" the words "...a contract of sale" be substituted by the words "...a hire purchase agreement" and wherever the word "contract" appears in the section, it be replaced by the word "agreement". The Act concerns hire purchase business.

In section 3(2), the words "the agreement" after the word "...bailee..." be substituted by the words "the agreements". This will enhance clarity.

In section 4(1), the words "in writing" be inserted after the word "executed". This will help in clarity.

In section 10(2), the words "any amounts, other than the deposit" be deleted and replaced with the words "any deposit paid". This is for clarity.

Redundant Provisions

In section 3, in the definition of the words "hire purchase business" the words "whatever the hire purchase price under any agreement" be deleted. They are redundant.

Section 6 should also be deleted since interest rates are contractual terms that are determined inter party.

Further, section 16 (3) (b) should be deleted and the whole section be renumbered. The courts are better left to handle the matter rather than creating a situation that gives rise to conflict of interests.

Also, section 16(5) should be deleted since it is a consequential amendment to section 16(3) (b).

Redemption of Property

There should be an insertion of new sub section 10(4) which should enable the hirer redeem the property before the expiry of the 28 days.

Delay In Issuing Licenses

In section 20(1) the words "within 30 days from the date of receipt of the application" should be added after the words "...or refuse to grant a licence" This will provide a time limit within which the licensing authority is to issue a licence and thus avoid unnecessary delay by the licensing authority.

Further, section 20(4) be replaced with phrasing for a period of twelve months from the date of issue so as to ensure equity to the applicant.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 CHAPTER SUMMARY

This chapter gives a brief summary of the findings, conclusions derived from the findings and recommendations based on the findings. It further outlines suggested areas for further research. The chapter is divided into three sections. The first section deals with summary of findings. The second section provides the conclusion of the research findings while the last section provides the recommendations and implications for future research together with suggested areas of further study.

5.2 SUMMARY OF FINDINGS

5.2.1 Findings on Objective 1

The first objective was to determine the basic tenets and requirements of consumer credit law. This has been extensively covered in chapter three, to cover issues of right of consumer, and the obligations of both parties in the hire purchase contract. Of specific reference to all is the need for clarity in the contract, so that the consumer, who is usually having less information, is protected. Further, there is need for the two principles of recovery and re-negotiation to be taken into consideration in the law.

5.2.2 Findings on Objective 2

The second objective was to critically and comparatively analyze the hire purchase act. This was done in chapter four, and gave the results therein indicated, with the overall resolution that the act is a brave and major step in protection of consumers' interest. However, the author posits that the act should be further amended to guarantee the rights of the consumer further, to equitable provide for protection of the property, and to remove and delete unnecessary provisions and make the law more clear since clarity is an important component of hire purchase law.

5.2.3 Findings on Objective 3

The third objective was to determine the efficacy of Uganda's hire purchase law protecting consumer against unfair credit practices, the conclusion and summary of the findings is that the law is effective in protecting the consumer, though there can be amendments to improve it further, as stipulate din chapter four.

5.3 GENERAL CONCLUSION

In conclusion, Uganda has had no statute governing hire purchase. The Act fills the gaping vacuum existing on the Statute Books. The bill is a good step to promote consumers access to goods which they cannot afford to have immediately. However, there is need for quick publishing of rules and subsequent operationalisation of the law. The law has the potential to limit exploitation of the public by leasing houses and big car importers is part of the mischief the Hire Purchase Law should solve."

5.4 RECOMMENDATIONS

Finally, based on the results of this research these can be proposed:

- That the hire purchase act should be actualized immediately to encourage protection of consumers who may want to use this kind of business practice.
- That the act should be amended as proposed in the chapter four and herein above to encourage a better and more vibrant regime for protection of the consumer against unfair trade practices.
- Finally, from the study, there is need for an understanding of the role that consumer credit protection plays in the economic system

5.6 AREAS FOR FURTHER STUDY

This study was centered on the hire purchase act only as a means of consumer credit, leaving out credit cards, bank loans, etc, which are also means of consumer credit. It would be beneficial to conduct a study on other legislations as well for a cross referencing of the results in a comparative study.

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¹ See Uganda: Fill the Many Gaps in the Hire Purchase Bill, 2007. Available at <http://allafrica.com/stories/200807280363.html> accessed on February 19 2011