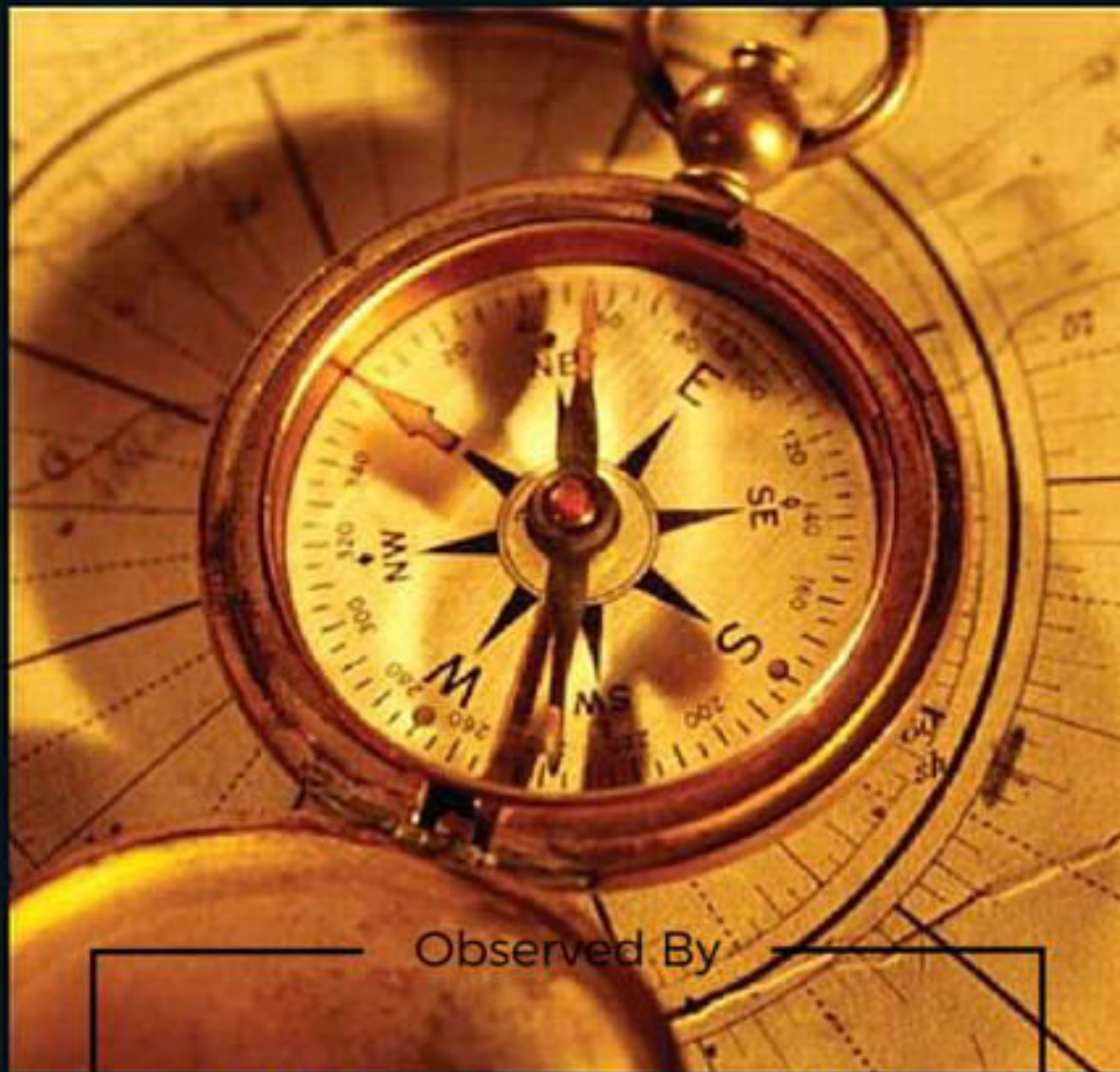


BUSINESS LAW

ASSINMENT

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1.QUESTION 1

Maju Jaya Supermarket (MJ Supermarket) advertises in the newspapers that there is a vacancy for the post of manager. The advertisement stated that those who are interested can come anytime to MJ Supermarket for an interview from 11th April 2014 until 21st April 2014. Ahmad who was very interested with the post came to MJ Supermarket on 20th April 2014 and was informed by the owner that the post was already filled. Ahmad was very angry as he has already tendered his resignation to his former company.

On the day that Ahmad came to the MJ Supermarket, he saw Mr Chan, his neighbor, entering the MJ Supermarket and selected some canned food, shampoo, eggs and vegetables. He put all the items into his trolley. However, while he was still looking for other items, Mr Chan received a call from his son asking him to pick him up from the train station. Mr Chan left the items in the trolley and went out from the MJ Supermarket. Advise Ahmad and Mr Chan whether there is any contract between them and the MJ Supermarket.

Advise Ahmad and Mr Chan whether there is any contract between them and the MJ Supermarket.



Answer

1.1.Proposal and Acceptance

Elements of contract should exist in all contracts to valid, two of the most important element are proposal and acceptance. To make contract and fulfill the condition of contract, first thing is to fulfill the condition of proposal. According to **Section 2(a) Contracts Act 1950** - The meaning of proposal in the law of contract is that a **proposal is made... When one person signifies to another his willingness to do or abstain from doing, with the view to obtaining the assent of that to the act or abstinence, he is said to make a proposal**'.

First requirement for proposal is that the parties between 2 or more should have reached agreement. A proposal can be made either to a specific individual, to a group of people, or to the world at large. Acceptance is usually made by some performance of condition of proposal such as conduct, orally, and of course in writing. In *Carlill v Carbolic Smoke Ball Co.*[1893]case, acceptance could be made by conducts. valid and can be called a counter-offer. Acceptance of offer must exist the communication about proposal between parties or people

Acceptance must be absolute, unqualified expression of agreement to the terms of offer. A just acknowledgement of an offer cannot be an acceptance. Because it can cause the difficulty offeror to bind and conduct contract if offeror does not know that the offer was accepted.

Section 4(2) CA 1950 states that the communication of acceptance is complete a) as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, and b) as against the acceptor, when it comes to the knowledge of the proposer
Acceptance requires the offeree's intention to assent to a proposal.]

It requires some positive act not like silence, absence of response or just total disregard of the offer. This is implied in section 2(b) CA 1950 that the person to whom the proposal is made to signify his assent to a proposal. So acceptance is related to positive act. For example

Felthouse v. Bindley (1862) 11 CB (NS) 869

The plaintiff wrote to the defendant, offering to buy a horse for £30.75p and added as follows: „If I hear no more about him, I consider the horse is mine at that price.“ The defendant did not reply.

The court held that there was no contract between the plaintiff and the defendant because the defendant had never communicated his acceptance to the plaintiff. Silence is no acceptance.

in *Felthouse v bindley* [1862] case, if there is not any reply like silence to an offer, then acceptance is not communicated which mean that it cannot be an contract. . In the postal rule of acceptance, acceptance is take placed when the letter is posted.

The case of *Adams v Lindsell* [1818] clearly informed that the acceptance is made when the letter is posted in the post box and not when letter is reached the offeror. The proposer is bound when the offeree posted the letter without proposar's knowledge about acceptance of offeree.

Adams v Lindsell (1818) 106 ER 250, Lord Ellenborough

D wrote to P offering to sell some wool, and asked for a reply "in course of post". This offer was delayed two days in the post, and consequently P's acceptance was late in coming back. On the day before it arrived (but after it had been expected), D sold the wool elsewhere.

The court said P was entitled to damages: his acceptance was complete when his letter was posted, before the wool was sold to the third party.

In the section 4(2)(c) and 4(2)(d), the communication of an acceptance is complete c) as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor, and d) as against the acceptor, when it comes to the knowledge of the proposer.

1.2.Explanation of the law application

According to *Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd. (1953)* case, display of goods with a price tag in a self-service shop is an invitation to treat. And According to *Carlill v Carbolic Smoke Ball Company (1892)* case, an advertisement, catalogues and brochures are an invitation to treat unless the advertiser commits himself.

An invitation to treat is invitation to people make offers but not an offer. Advertisement in the newspaper is an invitation to treat (*Carlill v Carbolic Smoke Ball Company(1892)*).

Display of groceries in MJ supermarket is an invitation to treat (*Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd. (1953)*)

In s2(b) CA 1950, it states that "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise;" Acceptance is made by performance of the condition of a proposal, or the acceptance of any condition for a reciprocal promise which may be offered with a proposal in s8 CA 1950.

According to *Carlill v Carbolic Smoke Ball Company(1892)* case, acceptance can be made by conduct, orally and in writing-Even though he has already tendered his resignation to his former company, MJ supermarket informed to Ahmad that the post was already filed when he came to MJ supermarket that means there is no acceptance. Then there is no contract. It means that the offerer who is Ahmad came to MJ supermarket to offer for the vacancy but MJ supermarket which is offeree already filed the post and did not accept his offer.

When Mr. Chan put all the items into his trolley and went out from the MJ Supermarket, offer and acceptance were not made. Offer was made by MR. Chan, when he chose the groceries and presented them for payment to the cashier (s2(a) CA1950). And acceptance took place the moment the cashier accepted payment for the products from Mr. Chan. Chan (s2(b) CA 1950)

1.3.Concluding Advice

1.3.1.Ahmad and MJ supermarket

There is no contract between Ahmad and MJ supermarket because the advertisement was a entitle for interviews and not a proposal. It was an invitation to treat and by the Ahmed turning for the interview it was only the proposal stage. The acceptor has the right to revoke the proposal before he makes the acceptance. In the case of Coelho v.The Public Services Commission [1964] MLJ 12, the High Court ruled that the newspaper advertisement was an invitation for qualified persons to apply and the applications were treated as offers.

1.3.2.Mr. Chan and MJ supermarket

There is no contract between Mr. Chan and MJ supermarket even though Mr. Chan put all items into the trolley. Contract is formed at the cashier so there is no contract. Because the displacement of goods on the shelves in the supermarket is also an invitation to treat and not a proposal by the shopkeeper. The proposal is made by the buyers when the buyers take the goods from the shelves and bring it to the counter for payment. The acceptance takes place when the seller accepts the payment from the buyer. So there is no contract between Mr Chan and the Supermarket as he only selected the items and the buyer didn't receive the payment yet.

In short, the contract was formed at the payment counter. A relevant case to explain the above principle is the case of: Pharmaceutical Society of Great Britain v. Boots Cash Chemist (Southern) Ltd (1953) 1 QB 401.

2.QUESTION -2

“In a sale of goods contract, there are terms which exist even though they are not expressly stated in the written contract”.

With reference to the Sales of Goods Act 1957 and the relevant case law, discuss the above statement. Recommend any amendment that needs to be done to the Sales of Goods Act in relating to this statement.

Answer

2.1.Sales of Goods Act 1957

In a sale of goods contract, there are terms which exist even though they are not expressly stated in the written contract. The parties are normally free to consent between themselves the details of their contract. However, the Act also involuntarily includes a number of situations and warranties in every contract for the sale of goods. These are known as the implied terms (Rahman,2011).

2.2.Implied Terms

The SOGA implies a number of stipulations in every contract for the sale of goods. These terms apply only when the parties to the contract of sale have not excluded or modified them. Implied terms are terms that are usually left unspoken and understood between the parties.

S. 14 to s. 17 of SOGA have laid down these implied terms. The Act deems these terms to be incorporated into contracts whether the parties state the terms or not. However, the statutory terms may be varied or excluded by the parties to the contract as provided under s. 62 of SOGA.

“where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties or by usage, if the usage is such bind both parties”.

2.2.1..Implied Conditions

a) Implied condition as to Title

S. 14 (a) of SOGA provides that unless a different intention is shown in the contract, there is an implied condition on the part of the seller, that, in the case of a sale, he has a right to sell the goods, and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

It means that the seller is not necessarily the owner of the goods as it is allowed by s. 14 (a) of SOGA "...will have a right to sell the goods..." A seller with no title to sell goods at the time of the agreement to sell but later acquires title, can hold the buyer to the bargain provided the title is acquired before the buyer repudiates on discovery.

Case: Rowland v. Divall [1923] 2 K.B. 500

Facts: The Plaintiff bought a car. However, after using the car for 4 months he discovered that the car was a stolen car. He returned the car to the owner.

Held: The Defendant had breached the condition as to title and court allowed recovery by the Plaintiff to the full price on the basis that there was a total failure of consideration.

b) Implied condition that goods correspond with description

S. 15 of SOGA reads as follows:- "where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description". Sale of goods by description covers:- All cases where the buyer has not seen the goods but is relying on the description alone.

BEALE V. TAYLOR (1967) 1 WLR 1193

Facts: Previous contracts between the parties for the sale of flour had been sold in bags bearing a well-known trade mark. Further flour was ordered described as “the same as our previous contracts”. Flour identical in quality was delivered but it did not bear the same well-known trade mark, and it was ruled that it did not comply with the description.

b) Cases where the goods have been seen by the buyer but the defect may be concealed

Case: Beale v. Taylor [1967] 1 WLR 1193

Facts: It was a contract for the sale of a ‘Herald Convertible, white 1961, twin carb entered between both parties. Held: The delivery of a vehicle consisting of parts of two cars welded together, one being earlier than 1961 was held as a breach of implied condition that the goods did not correspond with the description.

The buyer however, is not entitled to claim that there is a breach of this condition, if he sees the goods before making the contract and it is obvious to him that the description is inaccurate.

In cases where the written contract have specified conditions of weight, measurement and the like, those conditions must be complied with, If a condition is not preformed the buyer has a right to reject the goods.

Case: Moore & Co. and Landauer & Co. [1921] 2 KB 519

Facts: There was a contract for 3100 cases of Australian canned fruit packed ‘30 tins to case’.

Held: The buyers were entitled to reject the goods when half of the cases contained only 24 tin. The goods were held did not correspond with the contractual description.

c) Implied condition as to time

S. 14 (a) of SOGA states that unless a different intention is shown in the contract, stipulation as to time of payment are not deemed to be of the essence of a contract of sale.

It means that if a buyer fails to pay by an agreed date, it does not automatically entitle the seller to repudiate the contract unless there is any specific terms in the contract allow him to do so. Whether other terms as to time is of the essence of the contract depends on the intention of the parties as provided in the contract.

d) Implied condition as to fitness for particular purpose

S. 16 (1) (a) of SOGA states that there would be an implied condition that the goods purchased shall be reasonably fit for the purpose for which it was required provided four (4) pre-conditions have been satisfied:- the purpose for which the goods are required is made known, either expressly or impliedly to the seller at or before the time when the contract is made.

- ✓ the buyer relies on the seller's skill or judgment.
- ✓ the goods are of a description which it is in the course of the seller's business to supply.
- ✓ If the goods are specific, they must not be sold under their patent or trade name.
- ✓ Where the goods have only one obvious use, no further indication is required.

Example: If A buys a loaf of bread which contains a stone on which he breaks a tooth on eating, there is a breach of the implied condition that the bread is fit to be eaten.

However, even when goods may have only one obvious use, if the goods are required for a special purpose, the buyer must expressly notify the seller of that purpose and rely on the seller to provide him with a suitable article.

Case: Griffiths v. Peter Conway Ltd [1939] 1 All ER 685

Facts: A woman with an unusually sensitive skin who bought a Harris Tweed coat without disclosing that fact to the seller.

Held: The woman could not succeed in her claim because:-She did not disclose to the seller the fact that her skin is sensitive to the tweed. The coat will not harm a normal person.

S. 16(1) (a) further provides that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.

It means that if a buyer asks for specific goods under a patent or trade name with the impression that he is not relying on the seller's skill or judgment, then he cannot later complain if the goods are not fit for the purpose which he requires them.

e) Implied condition that the goods must be of merchantable quality

What is merchantable quality?

It means the goods sold are fit for the particular use to which they were sold. If they are defective for the purpose, they are unmerchantable.

Case: David Jones v. Willis [1934] 52 CLR 110

FACT: W needed walking shoes for bunion. Few wears, heel broke off and she broke leg.

HELD: condition can be implied where:

- a) buyer makes known to seller the particular purpose for which he requires the goods;
- b) buyer indicates his reliance on seller's skill or judgment (not to be presumed).

Reliance must be substantial/effective inducement → leads buyer to agree to purchase

A pair of shoes whose heels came off on the third occasion was held unmerchantable.

S. 16 (1) (b) of SOGA provides that where goods are brought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not) there is an implied condition that the goods shall be of merchantable quality provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to reveal.

This provision invokes that it needs not have made known to the seller the particular purpose for which the goods are required so long as they are bought:-by description; and they must be bought from a seller who deals in goods of that description.

This provision however does not apply where the buyer has examined the goods 'as regards defects which such examination ought to have revealed'. If the buyer has an opportunity of examining the goods there would be no implied condition.

Case: Thornett & Fehr v. Beers & Sons [1919] 1 KB 486

It was held that though the buyer had conducted a superficial look at the outside of some barrels of glue, there was an examination and therefore, the condition did not apply.

Unlike the implied condition as to the fitness (s. 16 (1) (a) of SOGA), this implied condition of merchantable quality applies even where goods are sold under their patent or trade name.

Case: Wilson v. Ricket, Cockerall & Co. Ltd. [1954] 1 All ER 868

Facts: A lady ordered fuel by its trade name 'Coalite' from a fuel merchant. The consignment included a piece of coal in which a detonator was embedded, resulting in an explosion in the fireplace.

Held: The consignment as a whole was unmerchantable. It had defects making it unfit for burning.

f) Implied condition that the goods must be in accordance to the sample when there is sale by sample.

S. 17 (1) of SOGA states that a contract of sale by sample is where there is a term in the contract express or implied to that effect.

Samples are usually used in the sale of bulk goods like rice, wheat or flour and in household item like tiles, floor covering, carpets and so forth.

S. 17 (2) of SOGA provides that there is an implied condition for a contract of sale when:-

- a) the bulk shall correspond with the sample in quality;
- b) the buyer shall have reasonable opportunity of comparing the bulk with sample.
- c) the goods are free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

A breach of anyone of the three conditions entitles the buyer to reject the goods and treat the contract as at an end.

Case: Godley v. Perry [1960] 1 WLR 9

Facts: A boy bought a catapult. While using it, the catapult broke and he lost the sight of an eye. The shopkeeper had bought it from a wholesaler by sample and tested it by pulling back the elastic. The shopkeeper was sued and the court held that the catapult was not fit for the purpose for which the buyer wanted it and that it was of unmerchantable quality. The shopkeeper then filed an action against the wholesaler.

Held: Although the shopkeeper had made reasonable examination, the defect was not one which was apparent on such examination. Thus, he had an action against the wholesaler.

2.2.2. Implied Warranty

a) Implied warranty that the buyer shall have and enjoy quiet possession of the goods

S. 14 (b) of SOGA provides that unless a different intention is shown, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

The phrase shall have and enjoy the quiet possession is not limited in its application to defects existing at the time of the contract or of the transfer of property in an agreement to sell but it also covers the future quiet enjoyment of the goods.

Case: Microbeads A.G. v. Vinhurst Road Markings Ltd. [1975] 1 WLR 218

Facts: The patentee, a third party, had brought an action against the buyer alleging the use of certain road marking machines was in breach of their patent, two years after the sale of the machines by the Plaintiff to the Defendant.

b) Implied warranty that the goods are free from encumbrance

s. 14 (c) of SOGA states that there is an implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party not declared or known to the buyer before or at the time when the contract is made.

Example:

A company sold a machine to B company. The latter did not know that A company had charged the machine to Bank C. A company has breached the warranty unless if B company knew about the charge and still decided to go ahead with the sale, there would be no breach.

2.3. My Suggested amendments that the law of Sale of Goods Act 1957

should consider are as follow:

Section 15-16(1)(a) and (b) of the sale of Goods Act 1957 should be reviewed in the light of development which has taken place in England. Lack of definition and interpretation of the key phrases in the provision of the Act require an immediate attention. Phrases such as description and sale by description should be accompanied by explanation or

illustration .Opinions of several researchers on the meaning of sale by description should be considered in providing for a definition on the phrase and has led to much confusion. It is thus proposed that this phrase be replaced with more realistic slandered of quality .The English slandered of satisfactory quality may be alternative in reforming Section 16(1)(b).

The remedial scheme contained in the sale of goods Act 1957 has adopted the classical approach to terms. It provides for automatic right of rejection for breach of condition and as such as beneficial to consumers. The act, however fails to provide for clear principle on 3 majors related to remedy. Section 13(2),thus has to be deleted. The rule on acceptance as a bar to rejection of goods by the buyer as contained in section 42 has to clearly defined .Although, damages have been provided for under the Act SOGA 1957 fails to provide the method of calculating the amount of damages. It is thus proposed that the provisions in Section 50 and 51 of the Sale of Goods 1979(UK)be adopted in Malaysia.

The law of Sale of Goods in Malaysia as contained in the Sale of Goods Act 1957 in archaic. It predominately reflects the provisions in the Sale of Goods Act 1893(United Kingdome). The change in the trading world has caused major concerns for the law of Sale of Goods in Malaysia .As this date ,the provisions contained in the 1957 Act do not adequately protect consumer in the Sale of Goods transaction .Changes in the way business is now being conducted call upon review of the present of law of sale of goods as contained in the Sale of Goods Act 1957.

3.QUESTION 3

Your friend, Samantha is interested to buy a brand new car which amounts to \$300,000. She has not enough money to pay for the car in cash. She seeks your advice on any possibility for her to own the said car, and what are her rights under the agreement.

Advise Samatha on the formation of the agreement and her rights under the said agreement.

Answer

3.1.For Samantha

As we know hire purchase is one of the best-known habits of buying goods on credit. Hire purchase is fundamentally an agreement for Samantha to take in consideration as she wants to wants the car and don't have enough cash, the only way is to go for a Hire and Purchase Agreement which will allow her to pay for the car in the form of instalments on a specific time agreed time frame if she can afford it.

3.2.About Hire and Purchase Act 1967

Hire Purchase Act 1967 is applicable to all business of hire purchase in Malaysia. Hire Purchase Act 1967 was adapted from Hire Purchase Act 1960 New South Wales, Australia and was amended several times down before this. All hire-purchase agreement shall satisfy the procedures relating to the establishment of a hire purchase agreement. Hire purchase also mentions conditions and warranties, merchantability and fitness articles for the hire purchase agreement. It also lists the statutory rights of tenants, secured rights and procedures for repossession of goods under a hire purchase agreement.

3.2.1.Definition of hire purchase

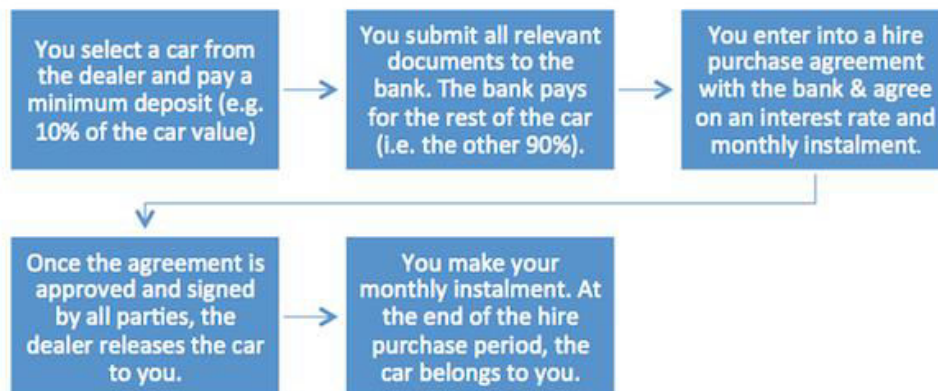
compliance with Sections 2 of the act of hire purchase, hire purchase agreement included allowing goods with an option to purchase agreement and an agreement for the purchase of

goods by instalments (whether the agreement stated instalments as rent or otherwise) but does not include any agreement:

- a) In which the property in the goods passes contained within the agreement or during or at any time prior to the delivery of goods or
- b) People renting or buying goods is a person engaged in a trade or business of selling the same goods or description of the items contained in the agreement.

3.2.2.The process of hire purchase

- Pay the installments along with the agreed interest to your financier regularly and on time.
- Possession is not ownership, so remember not to dispose or sell any part of the vehicle until you have fully paid off what is owing on your hire purchase agreement.
- Keep a copy of the agreement, receipts and relating documents safely.

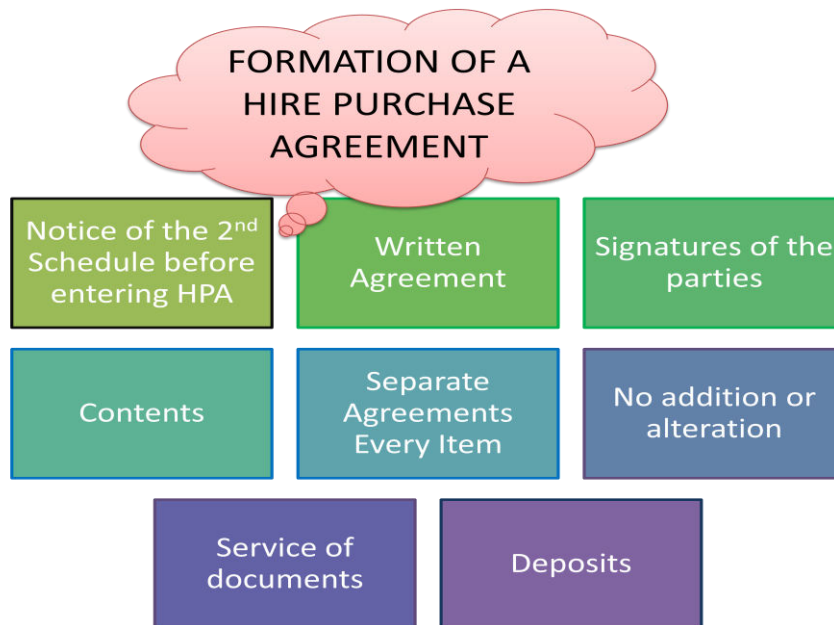


3.2.3.Meaning of “goods” under the HPA

The type of goods that fall within the coverage of Hire Purchase Act 1967 are;

- i. All consumer goods
- ii. Motor vehicles including invalid carriages, motor cycles, motor cars including taxi cabs and hire cars, goods vehicles (the maximum permissible laden weight does not exceed 2540 kilograms), buses including stage buses.

3.2.4. Formation of the Hire Purchase Agreement



3.2.5. Pre-contractual Obligations

- an owner have to give prospective hirer a written statement in accordance with the form set out in the Second Schedule of the 1967 Act.
- the schedule requires information on the description of goods and a summary of the financial obligations of the prospective hirer.
- he is not obliged to enter into a transaction and therefore is not bound to make any payment for the preparation or service of such statement.
- failure to observe the obligations shall render the hire-purchase agreement void.

3.2.6. Construction of a Hire-purchase Agreement

- Section 4A(1) -any hire-purchase agreement must be in writing. Hence, failure to observe this requirement would render the agreement void and the owner will be guilty of an offence.
- Section 4B(1) -requires a HPA to be signed by, or on behalf of all parties, to the agreement. hirer must not sign a blank form as the requirement under
- Section 4B(1) provides that „No owner, dealer, agent or person acting on behalf of the owner shall require or cause any intending hirer or his agent to sign a hire-purchase agreement or any other form or document relating to a HPA unless such agreement, form or document has been duly completed

- Section 4B(3) failure to comply with the above requirements shall render the agreement void.
- Section 4C(1)(c) the following information shall be included in HPA and failure to comply with this provision will render the agreement void:
 - a) Date of the commencement of hiring;
 - (b) Number of installments to be paid by the hirer;
 - (c) Amount of each installment;
 - (d) Time for payment for each installment;
 - (e) Description of the goods; and
 - (f) Address where the goods are kept.
- Section 4C(1)(b), if any part of the consideration is in the form of other than cash money, the description of such consideration shall be stated in the agreement.
- Additionally, the hire-purchase agreement must include a table with the following particulars:
 - (a) Cash price of the goods;
 - (b) Amount of deposit paid in cash and other type of consideration given (other than cash);
 - (c) Delivery cost;
 - (d) Payment for vehicle (if any);
 - (e) Insurance;
 - (f) Total amount in (a) to (e) above, less the deposit;
 - (g) Term charges;(h) Annual percentage rate for term charges;
 - (i) Total amount in (f) and (g), (the balance originally payable under the agreement); and(j) Total amount payable.
- requires a separate hire-purchase agreement to be prepared for every item. Failure to this will void the agreement.

3.3.7. Post-contractual Obligations

- Section 5(1) -- requires a copy of the hire-purchase agreement to be sent to the hirer and guarantors (if any) within 14 days after it is made.
- Section 5(1A), such agreement will be unenforceable by the owner.

- Section 5(3), if any part of the total amount payable consists of an amount paid or to be paid under a policy of insurance, the owner must serve on the hirer a copy of the insurance payment receipt. The owner must also serve a copy of the policy within seven days of its receipt.

3.4.Samantha's Rights and Protections according to hire and purchase agreement .

A hirer shall enjoy his rights and protections that are available under the law of hire and purchase act 1967 after the fulfillment of the agreement's requirements . Rights and protections derived from the implied conditions and warranties as to the goods hired. This is provided in Section 7 of the Hire-Purchase Act 1967. In general, the implied conditions and warranties are similar to the implied conditions and warranties contained in Sections 14, 15 and 16 of the Sale of Goods Act 1957.

3.4.1 Implied Conditions

- (a) The owner has the right to sell the goods at the time when the property is to pass (Section 7(1)(b)).
- (b) merchantable quality (Section 7(2)). the condition of merchantable quality shall not be implied under the following situations:
 - (i) Where the hirer has examined the goods or a sample and the examination ought to have revealed the defects;
 - (ii) If the goods are used items (second-hand goods) and the agreement contains a statement that the goods are second-hand and all conditions and warranties as to quality are expressly negated; and
 - (iii) The owner proves that the hirer has acknowledged in writing that the statement was brought to his notice.
- (c) The goods must be fit for the hirers purpose .The implied condition as to fitness shall not apply to second-hand goods and where exclusion of the implied conditions and warranties as to fitness is expressly spelt out in the agreement.

3.4.2. Implied Warranties

(a) The hirer must enjoy quiet possession of the goods .quiet possession include interference by the seller and interference arising from lawful acts of third parties.

(b) The goods are free from any charge or encumbrance created by the owner in favour of any third party (Section 7(1)(c))

3.4.3. Liability of Owner and Dealer for Misrepresentation

- a hirer is also entitled to claim against the owner or any person making misrepresentation in the negotiations leading to HPA.
- This right of hirer cannot be excluded or limited by any contractual term. The remedies which the hirer may claim are the right to sue for damages against the dealer or its agent, and against the owner, the right to rescind the hire-purchase agreement.
- The owner is, however, entitled to be indemnified by the agent or dealer responsible for a misrepresentation.

3.4.4. Statutory Rights of the Hirer

1. Right to a copy of statement of financial position
2. Right to appropriation of payment when more than one agreement
3. Right to apply for an order to remove goods
4. Right to assign hirers rights under the agreement
5. Passing of right by operation of law
6. Right to early completion of agreement
7. Right to terminate the agreement

3.4.5. Repossession of Goods by the Owner And the hirer rights in Repossession.

- (a) When the hirer has defaulted in making payments for two consecutive months; or
- (b) When the hirer has defaulted in making the last payment.

Procedures for Repossession



3.4.5.1. Procedures Prior To Repossession

(a) the hirer has the rights to receive the service of Fourth Schedule notice (Section 16(1)). The notice period must not be less than 21 days after the service of the said notice. If the hirer fails to act within the period, the owner will have the right to repossess.

3.4.5.2. Exception to the requirement of Fourth Schedule notice.

Section 16(2), the service of the Fourth Schedule notice is not necessary if the owner has reasonable ground to believe that the hirer will conceal or remove the goods to another place unknown to the owner.

- In the case of death of the hirer, under Section 16(1A), the owner can repossess the goods after there have been four consecutive defaults of payment.

Case.....In Public Prosecutor v. Mohamed Nor (1988), the accused was a hirer under the hire-purchase agreement with the Finance Company of KUBB. The hirer defaulted in making monthly installments and the KUBB had assigned its agent to repossess the car from the hirer without issuing any 4th Schedule Notice to him. The agent introduced himself to the hirer and informed the hirer of his intention but the agent had been forced to leave the house of the hirer. At that time, the hirer was holding a sword and another weapon in his hands.

Held: The act of KUBB to repossess the car without giving any 4th Schedule Notice was considered as invalid procedure under section 16(1) of the Hire-Purchase Act 1967.

- (b) Notice under Rule 3 of the Hire-Purchase. This notice is intended to inform the intention of the owner to take possession of the goods
- (c) Compliance or non-compliance of the hirer to the notice If the hirer returns the goods or voluntarily surrenders the goods within 21 days of the Fourth Schedule notice, *the hirer shall not be liable* for the cost of repossession, cost incidental to repossession and cost of storage.

3.4.5.3. Procedures during Repossession

- (a) Personal service of a document acknowledging receipt of the goods .Owner must prepare a short description of the goods and the date, time and place where the repossession of the goods had taken place.
- (b) Rule 4 of the Hire-Purchase 1976. Rule 4 lays down the following procedures to be observed by the owner:
 - (i) If the repossession is being carried out by the owner personally, he must produce and show his identity card and provide the name and address of the company, firm, body or organization to which he belongs, to the hirer, his servant or agent or occupant or person who is in possession of the goods.
 - (ii) If the repossession is being carried out by the owners agent or servant, such an agent or servant must likewise produce and show his identity card and also his authority card to the hirer, his servant or agent or person who is in possession of the goods.

3.4.5.4. Procedures after Repossession (Rights of The Hirer after Repossession)

- (a) The service of Fifth Schedule notice (Section 16(3)).

Within 21 days after repossession, the owner is required to serve the Fifth Schedule notice on the hirer and every guarantor (if any). The purpose of this notice is to inform the hirer of his rights after repossession.
- (b) Recovery of goods by the hirer (Section 18(1)(a)(i)).

Within 21 days of the service of the Fifth Schedule notice, the hirer may give a written notice to the owner to request the owner to redeliver the goods that have been repossessed. The goods may be redelivered to the hirer upon payment of the amount due by the hirer to the owner or when the hirer had remedied any breach of the

agreement or had paid the owner the costs and expenses incurred by the owner in remedying the breach.

(c) Restriction of selling or disposal of goods on the owner (Section 17).

Without the consent of the hirer, the owner cannot sell or dispose the goods until the expiration of the 21 days notice in the Fifth Schedule.

(d) Introduction of cash buyer (Section 18(1)(a)(ii)).

(e) Recovery of part of hirers payment (Section 18(b)).

The hirer has the right to recover the difference in sum where the value of the goods repossessed exceeds the money owed.

(f) Notice of auction (Section 18(4)(a)).

A notice must be given to the hirer if the owner intends to sell the goods repossessed through public auction.

(g) Option to purchase (Section 18(4)(b)).

sell the goods repossessed otherwise than by public auction, at a price less than the owners estimated value.

3.4.6. Insurance

An owner may, subject to section 26, require any goods comprised in a hire-purchase agreement to be insured in the names of the owner and the hirer against any risk that he thinks fit for the period of the agreement at the expense of the hirer.

3.4.6.1. Restrictions on owner's rights to require insurance Section 26.

- (1) An owner shall not require a hirer to insure any such risk with any particular registered insurer.
- (2) An owner shall not refuse to enter into a hire-purchase agreement with a person who effects insurance of the goods for the period of the agreement against such risks and subject to such reasonable terms, conditions and exceptions as are required by the owner in the names of the owner and the hirer with a registered insurer if the owner has no other grounds upon which the owner could reasonably refuse to enter into the agreement.

- (3) An owner shall not require a hirer to obtain insurance against risks or subject to terms, conditions and exceptions that the owner would not require if he arranged the insurance.
- (4) Where any goods comprised in a hire-purchase agreement are insured in the joint names of the owner and the hirer against any risk with a particular registered insurer, any hirer who during the period of the hire-purchase agreement insures those goods against any risk with another registered insurer without first informing the owner thereof shall be guilty of an offence.

4.REFERENCE

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