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THE HIRER'S RIGHT TO WALK AWAY AND THE OWNER'S RIGHT TO REPOSSESS: REVISITING TERMINATION UNDER NIGERIAN HIRE-PURCHASE LAW[1]

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Abstract

This article critically examines the legal framework governing the termination of hire-purchase agreements in Nigeria, with a focus on the rights and remedies available to both the owner and the hirer under common law and the Hire-Purchase Act. Under common law, termination is primarily shaped by principles of contract and bailment, which grant the hirer an unfettered right to terminate and allow the owner to reclaim goods in the event of breach. However, the Nigerian Hire-Purchase Act introduces statutory modifications aimed at balancing these rights, particularly by providing protective mechanisms for the hirer and regulating the process of repossession. Key provisions such as Sections 8 to 10 of the Act impose procedural conditions on termination and empower the courts to supervise or restrict recovery by the owner. This article adopts a doctrinal and comparative approach to analyse the substantive and procedural aspects of termination under both legal regimes. It also assesses judicial interpretations that have influenced the practical application of these rules. In doing so, the paper highlights existing legal gaps, enforcement challenges, and ambiguities in the law. The article concludes by proposing legislative and judicial reforms to ensure greater fairness, predictability, and consumer protection in hire-purchase transactions in Nigeria.

Keywords: Hire Purchase, Termination, Repossession, Hirer, Owner

1. Introduction

The hire-purchase system has become an essential mechanism for facilitating consumer access to goods, particularly in jurisdictions where full upfront payment for durable items may be financially burdensome. In Nigeria, hire-purchase agreements are a

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common form of instalment credit arrangement through which an individual acquires the use of goods while deferring ownership until the fulfilment of certain payment conditions. These agreements are governed by a combination of common law principles and statutory provisions under the Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004.

A key feature of the hire-purchase relationship is the right of either party, that is the owner or the hirer, to terminate the agreement under specified conditions. Termination rights are crucial because they reflect the balance of contractual freedom and statutory protection, particularly in situations where the agreement has become burdensome, breached, or no longer economically viable. At common law, these rights were shaped by doctrines of bailment, contract, and property, often affording the hirer a broad liberty to repudiate the agreement without legal consequence. However, statutory intervention through the Hire-Purchase Act has significantly altered this legal landscape by codifying specific procedures for termination and imposing limitations on unilateral repossession by the owner. Moreover, the Act introduces a supervisory role for the courts, empowering them to oversee and regulate the process of termination and recovery of goods. These judicial powers serve to mediate disputes, ensure fairness, and prevent abuse of contractual or statutory rights by either party.

This article examines the legal framework for termination of hire-purchase agreements in Nigeria, focusing on both the common law and statutory dimensions. It analyses the substantive and procedural aspects of termination, highlights the powers of the court under the Hire-Purchase Act, and conducts a comparative evaluation of the two legal regimes. Through a doctrinal approach, the paper seeks to provide clarity on the current legal position, identify challenges in interpretation and enforcement, and propose reforms aimed at promoting fairness and legal certainty in hire-purchase transactions.

1.1 Definition and Nature of Hire Purchase Agreements

A hire-purchase agreement is a contractual arrangement whereby the owner of goods permits the hirer to take possession and use the goods in return for periodic payments, with the option—but not the obligation—for the hirer to purchase the goods upon completion of the payments. It is distinguished by its hybrid legal character, combining elements of bailment, contract, and conditional sale. Ownership of the goods does not transfer to the hirer until all stipulated conditions, particularly payment of the hire-purchase price, are fulfilled.

Under Nigerian law, hire-purchase agreements are governed by the Hire-Purchase Act,[2] which defines a hire-purchase agreement as "an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee."[3] This definition emphasizes the conditional nature of ownership and the distinction between possession and title. The legal foundation of hire-purchase is rooted in common law, where it is classified as a species of bailment with an option to purchase. [4]The hirer is initially a mere bailee, and only acquires an equitable or proprietary interest upon completion of the agreed instalments or the exercise of the purchase option. The agreement therefore imposes obligations on both parties: the owner retains title and the right to recover goods upon breach, while the hirer enjoys possession and the right to terminate the agreement at will, subject to statutory and contractual limitations.[5]

The commercial utility of hire-purchase lies in its flexibility. It allows individuals and businesses with limited capital to access and use expensive goods such as vehicles, machinery, and appliances, without immediate outright purchase. [6]This makes the system particularly attractive in developing economies like Nigeria, where access to credit facilities remains limited for many consumers. However, the dual legal character of the arrangement can also create legal complexities, especially in matters relating to default, repossession, or termination, necessitating statutory intervention to protect vulnerable hirers and regulate owner conduct. [7]While the traditional understanding of hire-purchase originated from English common law as illustrated in *Helby v Matthews*[8], where the House of Lords held that a hirer who had not agreed to purchase could not be compelled to pay the balance upon default[6] the Nigerian legal system, through legislative enactments, has sought to balance the interests of both parties through provisions such as minimum payment thresholds and judicial oversight of recovery proceedings.

[2] Cap H4, Laws of the Federation of Nigeria 2004.
[3] ibid
[4] Femi Akinseye-George, *Commercial Law in Nigeria* (2nd edn, Advanced Legal Studies Publishing 2019) 245.
[5] G. Akanki (Ed), *Nigerian Commercial Law and Practice* (University of Lagos Press 2007) 362.
[6] Olakunle Orojo, *Law of Commercial Transactions* (Sweet & Maxwell 1992) 232.
[7] ibid
[8] [1895] AC 471 (HL).

1.2 Importance of Termination Rights and Legal Framework

Termination rights are a fundamental feature of hire-purchase agreements, serving as a legal safeguard for both the owner and the hirer. These rights provide a mechanism for either party to exit the contractual relationship in response to changing circumstances, financial hardship, breach of terms, or the hirer's unwillingness to proceed with the eventual purchase. The significance of termination lies in its role in protecting contractual autonomy, mitigating financial risk, and ensuring commercial fairness. For the hirer, the right to terminate is particularly vital because it reflects the non-committal nature of a hire-purchase agreement. The hirer is not under a legal obligation to complete the purchase, and may, at any time before ownership passes, bring the agreement to an end by returning the goods and fulfilling certain payment obligations. [9]This ensures that hire-purchase does not become a disguised credit sale, and it protects consumers from being unduly burdened by long-term financial commitments. [10]On the other hand, the owner's right to terminate and recover possession of the goods upon the hirer's default serves to preserve the owner's proprietary interest in the goods.[11]

However, to prevent abuse and arbitrary repossession, especially after substantial payments have been made by the hirer, the statutory framework under the Hire-Purchase Act imposes limitations on the owner's right to terminate without court involvement. For instance, Section 9 prohibits repossession without a court order once the hirer has paid at least one-half of the hire-purchase price. [12]This statutory intervention reflects a policy shift toward protecting weaker contracting parties, particularly in consumer transactions. The legal framework for termination under Nigerian law thus performs a balancing function. It incorporates both common law principles and statutory controls to ensure that neither party is unjustly prejudiced. Common law offers broad termination rights, particularly to the hirer, with minimal procedural requirements. [13]The statutory regime, by contrast, introduces formalities and judicial oversight to promote fairness and legal certainty. [14]In essence, termination rights and the surrounding legal framework are integral to the effective functioning of

[9] Hire-Purchase Act, Cap H4, LFN 2004, s 8(1).
[10] Femi Akinseye-George, (n.4) 248.
[11] G. Akanki (ed), (n.5) 368.
[12] Hire-Purchase Act, s 9(1).
[13] *Helby v Matthews* [1895] AC 471 (HL).
[14] Olakunle Orojo, (n.6) 235.

hire-purchase arrangements. They enhance predictability in contractual dealings, protect economic interests, and reduce the likelihood of litigation by setting clear rules for ending the relationship.

2.0 Termination Under Common Law

At common law, the right to terminate a hire-purchase agreement arises from the inherent nature of the transaction itself. A hire-purchase agreement is not a sale, but rather a bailment coupled with an option to purchase. [15]It is a sui generis contract wherein possession of the goods is transferred to the hirer. At the same time, ownership remains with the owner until the conditions for passing title, usually the full payment of instalments and the exercise of the purchase option, are met. [16]As such, termination rights are built into the legal structure of the agreement, permitting either party to bring the arrangement to an end under specified circumstances. The common law recognizes that the hirer, who has not yet acquired title, retains the right to terminate the agreement at any time before exercising the option to purchase.[17] This right stem from the voluntary nature of the hirer's obligation to complete the transaction. In the seminal case of *Helby v Matthews*, [18]the House of Lords held that where the hirer had the mere option to purchase and was not legally bound to do so, he could terminate the contract by returning the goods and was not liable for the remaining instalments. The decision established the principle that the hirer under an actual hire-purchase agreement is not a buyer under a credit sale, and cannot be compelled to complete payment beyond what is due at the point of termination.

This flexible termination structure at common law is reinforced by the absence of statutory formalities governing the process.[19] Unlike in sale of goods contracts, where termination for breach or rescission may involve detailed rules, the common law hire-purchase framework allows termination through either the terms of the agreement or the conduct of the parties.[20] For instance, express clauses may stipulate the conditions upon which the hirer may terminate, such as the return of the goods or payment of a minimum amount. In the absence of such clauses, termination may still be implied from conduct, mutual consent, or failure of performance. Furthermore, common law

[15] G. Akanki (ed) (n.11) 362

[16] Femi Akinseye-George (n.4) 245.

[17] Olakunle Orojo, (n.6) 232.

[18] n.13

[19] A O Idowu, 'The Nature and Legal Framework of Hire Purchase Transactions in Nigeria' (2016) 7(1) *Ekiti State University Law Journal* 91, 93.

[20] R Goode, *Commercial Law* (5th edn, Penguin 2016) 442.

principles permit the owner to terminate the contract upon a fundamental breach by the hirer, such as persistent default in payment or misuse of the goods.[21] In such cases, the owner is entitled to repossess the goods and recover damages, subject to the rules

against unlawful interference or breach of peace during repossession.[22] The termination by the owner must, however, be based on an express or implied term of the contract that permits such action, failing which the owner may be liable for wrongful interference with the hirer's possessory rights.

Termination may also arise from extraneous legal doctrines. For example, a hire-purchase agreement may be terminated by frustration, where unforeseen circumstances render performance impossible, or by effluxion of time, where the contract is for a fixed duration.[23] Additionally, mutual discharge or novation may bring the agreement to an end where both parties consent to its termination or substitution with a new arrangement.

Overall, the common law approach to termination reflects the principle of contractual autonomy and the equitable allocation of risk. The hirer's right to exit the contract without penalty and the owner's right to reclaim their goods for breach serve as checks and balances within the hire-purchase system. However, the perceived inadequacy of standard law protections, especially for the often economically weaker hirer, has led to legislative intervention, such as the Nigerian Hire-Purchase Act, which seeks to regulate the termination process and introduce judicial oversight.

2.1. Hirer's Right to Terminate under Common Law: Unfettered and Unqualified Right

One of the most distinctive and protective features of the hire-purchase relationship under common law is the hirer's unilateral right to terminate the agreement at any time before exercising the option to purchase. This right is not only contractually recognized but is also judicially reinforced, underscoring the legal character of a hire-purchase transaction as a bailment with an option to buy, rather than an outright sale on deferred payment terms.[24]

[21] *Lee v Butler* [1893] 2 QB 318.
[22] Femi Akinseye-George (n.4) 248.
[23] G Akanki (n. 5) 368.
[24] G Akanki (n.5) 362.

At common law, the hirer is not bound to complete the purchase and may elect to terminate the agreement without being liable for instalments not yet due, so long as they surrender possession of the goods. This right is often referred to as unqualified and unfettered, in the sense that it does not require justification and can be exercised irrespective of the hirer's motive.[25] The rationale is that since the title in the goods remains with the owner until the full payment of the agreed instalments and the express exercise of the purchase option, the hirer cannot be forced into ownership against their will.[26]

This position was authoritatively established in the leading case of *Helby v Matthews*,[27] where the House of Lords held that a hirer who was under no obligation to buy the goods could validly terminate the agreement and return the goods, without incurring liability for future payments. The court emphasized that an agreement which gives the hirer the mere option to purchase, rather than an obligation, does not amount to a contract of sale. Lord Herschell observed that "the appellant was not a buyer under a contract of sale, but a hirer with an option to buy, and he was not under a legal obligation to complete the purchase."[28] This distinction between a contract of sale and a hire-purchase agreement is fundamental, and it underpins the hirer's right to terminate without further financial exposure.

The common law's position on this point has been followed and applied in Nigerian jurisprudence, particularly in interpreting contracts that resemble hire-purchase in form and function.[29] Even in the absence of express clauses granting the right to terminate, courts are likely to infer such a right where the agreement gives the hirer the option, rather than an obligation, to purchase. Thus, the hirer's liberty to walk away from the agreement, by returning the goods and paying accrued charges, preserves the voluntary nature of the hire-purchase framework. This right is particularly significant from a consumer protection standpoint. It offers an exit mechanism to individuals who may, due to unforeseen financial difficulty or a change in circumstances, no longer be able or willing to complete the instalment payments. It prevents the owner from enforcing the entire balance as a debt, provided the hirer complies with the terms for returning the goods and discharging accrued liabilities.[30]

[25] Olakunle Orojo (n 6) 234.
[26] Femi Akinseye-George (n 4) 254.
[27] N.13
[28] Ibid, 475 (Lord Herschell).
[29] AO Idowu, (n.19) 91, 95.
[30] R Goode (n 20) 147

However, it is also common for hire-purchase agreements to include minimum payment clauses, stipulating that the hirer must pay a certain proportion of the price (e.g. one-third or one-half) before being entitled to terminate. While these clauses are enforceable under contract law, they do not necessarily negate the hirer's fundamental right to exit; instead, they may impose financial consequences as a condition of valid termination.[31] So long as such clauses do not amount to penalties or unconscionable terms, courts will likely uphold them.

In conclusion, the hirer's right to terminate at common law is broad, flexible, and protective. It reflects the non-binding nature of the option to purchase and provides critical legal relief in a commercial environment where instalment-based contracts are common. The emergence of statutory regulation, such as the Nigerian Hire-Purchase Act, has modified this right by imposing procedural requirements. Still, the common law foundation remains a vital reference point in understanding the rights and obligations of parties in hire-purchase transactions.

2.1.1 Procedure for Termination under Common Law: No Formalities Required

Under common law, the hirer's right to terminate a hire-purchase agreement is unfettered in substance and minimalistic in procedure. Unlike statutory regimes that may prescribe formal notices and obligations, the common law allows the hirer to bring the agreement to an end by simply returning the goods or unequivocally expressing the intention to terminate the contractual relationship.[32] This approach is grounded in the conceptual structure of the hire-purchase agreement, which is essentially a bailment coupled with a purchase option, not a binding sale.[33]

The case of *Helby v Matthews* remains the leading authority on this point.[34] The House of Lords made it clear that the hirer could terminate the agreement unilaterally without being liable for instalments not yet due, provided the goods were returned to the owner.

No particular formality, such as a written notice, a prescribed period, or a legal filing, was required to make the termination effective.[35] This flexible procedure promotes ease

of exit for hirers and reflects the commercial reality that hire-purchase contracts often cater to consumers or individuals with limited bargaining power. In practice, the

[31] *Cactor v Newborne* [1951] 2 All ER 668.
[32] G Akanki (ed), (n.5)366.
[33] Olakunle Orojo (n.6) 232
[34] N.13
[35] Ibid, 475 (Lord Herschell).

termination may occur through actual return of the goods to the owner or by conduct that unequivocally demonstrates the intention to discontinue the agreement. For instance, abandonment of the goods or voluntary surrender accompanied by a communication of withdrawal from the agreement may suffice.[36] Oral communication of termination may also be valid, except where the contract stipulates a written notice requirement.[37] Courts are generally prepared to infer termination from factual circumstances, provided the intent to relinquish further contractual obligations is clear. Nonetheless, many hire-purchase agreements include minimum payment clauses or termination conditions which may affect the procedural simplicity of this right. A typical clause might require that the hirer must have paid a certain proportion of the hire-purchase price, such as one-third or one-half, before the termination is deemed valid.[38] Such conditions do not invalidate the common law right to terminate, but they introduce financial preconditions which, if not met, may result in residual liability. The validity of these clauses has been upheld so long as they are not punitive or unconscionable.[39] In *Cactor v Newborne*,[40] the court enforced a clause requiring minimum payments before termination and held that it did not contradict the nature of the hire-purchase agreement as long as the clause did not convert the contract into a sale. Moreover, suppose the termination involves a breach, such as failure to pay accrued instalments or loss of the goods. In that case, the hirer may be liable in damages, even though the procedural right to terminate remains intact.[41] It is therefore essential to distinguish between the procedural act of termination, which is informal and unilateral, and its consequences, which may depend on contractual clauses and factual circumstances. In summary, the common law adopts a liberal approach to the procedure of termination by the hirer. No statutory formality or elaborate process is required. However, the legal effect of termination may be shaped by agreed contractual terms, particularly minimum payment conditions or return obligations. Nigerian courts, applying English common law principles, continue to respect this flexibility while enforcing contractual terms that are not manifestly unfair or contrary to public policy.[42]

[36] AO Idowu, (n.19) 91, 95.
[37] Femi Akinseye-George, (n.4) 246.
[38] G Akanki (n 5) 369.
[39] R Goode, *Commercial Law* (5th edn, Penguin 2016) 447.
[40] *Cactor v Newborne* [1951] 2 All ER 668.
[41] *Lee v Butler* [1893] 2 QB 318.
[42] AO Idowu (n 19) 96.

2.1.2 Minimum Payment Clause under Common Law: Purpose and Judicial Interpretation

The minimum payment clause is a recurring feature in hire-purchase agreements. It serves a dual purpose: to secure a basic level of payment for the owner in the event of early termination, and to deter arbitrary or premature withdrawal by the hirer. While the common law recognizes the hirer's unfettered right to terminate a hire-purchase agreement, the effect of a minimum payment clause is to impose a financial threshold that must be met before termination can be exercised without adverse legal consequences.[43] Typically, such a clause requires the hirer to pay a specified minimum proportion, often one-third or one-half, of the total hire-purchase price before gaining protection from repossession or avoiding additional liability upon termination.[44] Its practical function is to ensure that the owner recovers at least part of the capital value of the goods, particularly in the early stages of the contract when depreciation is steep.[45]

In *Cactor v Newborne*,[46] the court upheld the enforcement of a clause requiring that a minimum sum be paid before the hirer could validly terminate without incurring further liability. It was held that such a provision did not contradict the hirer's common law right to terminate, provided it was not a disguised penalty. Similarly, in *Lee v Butler*,[47] the court accepted that a minimum payment clause could determine the point at which ownership or possession rights become enforceable by the owner, especially in cases of repossession after partial performance.

The clause is not, however, without limitations. Courts have consistently examined such provisions to ensure they do not amount to penalty clauses or operate oppressively against the hirer. A clause that purports to forfeit all instalments paid upon early termination, or that imposes excessive payment obligations far beyond reasonable compensation for use and depreciation, may be struck down as unconscionable or void for public policy.[48] In assessing enforceability, the courts look at the commercial

[43] G Akanki (ed), (n.5) 369.
[44] R Goode, *Commercial Law* (5th edn, Penguin 2016) 447.
[45] Olakunle Orojo,(n.6) 234.
[46] [1951] 2 All ER 668.
[47] [1893] 2 QB 318.
[48] Femi Akinseye-George, (n.4) 247.

fairness of the clause, the nature of the goods, the duration of use by the hirer, and the actual damage suffered by the owner.[49]

Under Nigerian law, while there is no express statutory provision regulating minimum payment clauses, the courts may apply common law and equitable doctrines to prevent abuse. The doctrine of freedom of contract allows parties to agree on such clauses, but this is counterbalanced by the courts' duty to prevent manifest injustice.[50] In *Olowu v African Continental Bank Ltd*,[51] the Supreme Court of Nigeria reiterated that courts can intervene to strike down contractual terms that are unconscionable or contrary to public policy, even if freely agreed. This principle has been extended to financial arrangements and could apply by analogy to oppressive minimum payment clauses in hire-purchase transactions.

Importantly, even if the hirer has not met the minimum payment threshold, this does not eliminate the right to terminate outright. The hirer can still terminate, but may be liable to compensate the owner for the shortfall or breach of the clause. The clause, therefore, governs the effect of termination rather than the existence of the right.[52] In conclusion, while the minimum payment clause plays a vital protective role for owners in hire-purchase agreements, its enforceability depends on its proportionality, clarity, and fairness. Following English common law principles, Nigerian courts will uphold such clauses provided they do not operate as penalties or unduly restrict the hirer's autonomy in terminating the agreement.

2.2 Owner's right to terminate under common law: breach of conditions and recovery of goods

While the hirer benefits from broad termination rights under common law, the owner also retains the right to terminate the hire-purchase agreement in certain circumstances, especially if the hirer breaches a fundamental term of the contract. This right is based on the owner's continued legal ownership of the goods throughout the agreement, as title does not pass to the hirer unless all payments are made and the option to purchase is exercised.[53] Although the hirer is in possession, they hold only a limited and conditional interest, which is lost upon breach.

[49] AO Idowu,(n.19)91, 97.
[50] R Goode (n 2) 450.
[51] [1997] 6 NWLR (Pt 509) 573 (SC).
[52] G Akanki (n 5) 370.
[53] Femi Akinseye-George, (n.4) 249.

2.2.1. Termination for Breach of Condition

In hire-purchase contracts, the right to terminate the agreement upon breach of condition is a fundamental enforcement mechanism vested in the owner. This right is anchored in both the doctrine of contractual obligations and the legal character of hire-purchase arrangements, in which ownership remains with the owner until all contractual conditions, particularly full payment, are fulfilled.[54] A breach of condition, particularly a failure to pay instalments as agreed, is typically treated as a repudiatory breach, entitling the innocent party—usually the owner—to elect whether to affirm the contract or to terminate it and repossess the goods. [55]Under common law, a condition is a term so central to the agreement that its breach gives rise to a right of termination, regardless of actual damage suffered.[56] In the context of hire-purchase, conditions are often expressed (e.g., regular monthly payments, keeping the goods in good condition, restrictions on assignment or sub-letting) or implied (such as the obligation to take reasonable care of the goods).[57] The failure to comply with any such condition, particularly where it goes to the root of the agreement, permits the owner to regard the contract as discharged. One of the most common breaches in practice is default in instalment payments. In *Lee v Butler*,[58] the court held that failure to make payments amounted to a repudiation of the hire-purchase agreement, thereby entitling the owner to recover possession. The court reasoned that the retention of ownership by the owner until the final payment is a core structural feature of the hire-purchase arrangement. Therefore, the hirer's failure to pay undermines the legal and commercial basis of the contract. This principle has been consistently upheld in Nigerian courts. In *U.B.A. Trustees Ltd v Nigergrob Ceramic Ltd*,[59] the Court of Appeal affirmed the right of a financier to enforce recovery against a defaulting party who failed to meet their financial obligations, even where partial payments had been made. The court emphasised that the legal consequences of breach cannot be avoided by invoking sympathy or hardship once the contract terms are clear and unambiguous. The Nigerian case of *Animashaun v CFAO Ltd*[60] is particularly illustrative. The hirer defaulted in payment after having made a substantial number of instalments. The Federal Supreme

[54] G Akanki (ed), (n.5) 370.
[55] Femi Akinseye-George, (n.4) 249–250.
[56] P S Atiyah and S A Smith, *Atiyah's Introduction to the Law of Contract* (6th edn, Clarendon Press 2005) 127.
[57] Olakunle Orojo,(n.6) 236–238.
[58] N.13
[59] 1992) 3 NWLR (Pt 226) 709 (CA).
[60] (1961) All NLR 504 (FSC).

Court held that since ownership of the goods remained with the owner, the hirer's default entitled the owner to terminate the agreement and repossess the goods without needing judicial sanction. The decision confirmed the doctrine that title does not pass until the hirer has exercised the option to purchase and that a serious breach—such as non-payment—entitles the owner to determine the contract.

In the more directly relevant case of *Atare v Dada*,[61] the High Court addressed a hire-purchase dispute involving partial payments. The hirer had paid over two-thirds of the hire-purchase price but defaulted on the remaining instalments. The court held that while the owner had the legal right to terminate and recover the vehicle, the action was inequitable, and the court was prepared to intervene to prevent an unconscionable enrichment. While the courts have consistently upheld this strict interpretation, its harsh consequences have generated legal and academic criticism. In *Animashaun*, the court did not consider restitution or equitable relief for the hirer, who had lost both the goods and the substantial sums already paid. Scholars have noted that the application of strict contractual remedies without regard to consumer protection or equitable balancing undermines the fairness of hire-purchase enforcement.[62]

The case of *Atare v Dada*[63] demonstrates a more sensitive approach. In that case, the hirer had paid over two-thirds of the hire-purchase price before defaulting. The court acknowledged the owner's right to terminate the contract due to the breach, but expressed concern about the disproportionate economic loss suffered by the hirer. Although the court did not explicitly overturn the enforcement right, it opened the door to judicial intervention in cases of apparent unfairness. In both Nigerian and English common law, where the breach is not fundamental, such as a one-time delay in payment or a technical default, the owner may not be able to terminate the agreement immediately unless there is an explicit acceleration clause or a term making time of the essence.[64] The presence and interpretation of such clauses are crucial in determining whether a particular breach constitutes a termination event.

[61] (1976) ECSLR 168.
[62] AO Idowu, (n.19)91, 98.
[63] N.61
[64] R Goode, *Commercial Law* (5th edn, Penguin 2016) 452.

2.2.2. Recovery of Goods and Procedural Concerns

Upon valid termination of a hire-purchase agreement due to the hirer's breach, particularly for non-payment of instalments, the owner is entitled to recover possession of the goods. This right is based on the principle that ownership of the goods only passes to the hirer once all terms of the agreement, including full payment of the hire-purchase price and the exercise of the purchase option, have been satisfied.[65] At common law, the owner's right of repossession is generally self-help, meaning the owner can physically reclaim the goods without needing a court order.[66] This right may be exercised immediately upon breach, provided that the repossession is peaceful and does not incite a breach of the peace.[67] The leading case in English law, *Sanders v Snell*[68], established that if repossession involves force, threats, or trespass, the owner may be liable in tort, despite having a legal right to the goods.[4] Nigerian courts have adopted this principle, but its enforcement remains inconsistent in practice.

In Nigeria, self-help repossession is common in practice, particularly in motor vehicle hire-purchase transactions. Many owners or financiers rely on agents or private enforcement firms to recover vehicles from defaulting hirers without judicial intervention. However, this practice is fraught with procedural abuse. Incidents of nighttime recovery, threats of violence, and seizure of vehicles in traffic or from private premises are not uncommon.[69] Such conduct, while perhaps effective commercially, raises serious questions about due process, consumer dignity, and the legality of extrajudicial enforcement. The problem is magnified where the hirer has paid a substantial portion of the hire-purchase price before defaulting. Under the common law, the owner may still repossess the goods in full, and the hirer loses both possession of the goods and any financial investment made through previous instalments. This creates an outcome that is commercially efficient but potentially unjust.

This harshness was clearly demonstrated in the Federal Supreme Court decision in *Animashaun v CFAO Ltd*[70]., where the hirer defaulted on the remaining balance after paying a substantial part of the hire-purchase price. The owner repossessed the vehicle without securing a court order. The court ruled that the repossession was lawful and

[65] G Akanki (ed) (n.5) 373.
[66] (1961) All NLR 504 (FSC).
[67] Femi Akinseye-George, (n.4) 250.
[68] AO Idowu, (n.19)
[69] G Akanki (ed), (n.5) 373.
[70] (1961) All NLR 504 (FSC).

that ownership remained with CFAO until the final payment. Notably, the court refused to consider the hardship faced by the hirer, reasoning that the terms of the agreement were clear and enforceable. This decision highlights the severe consequences of applying strict common law principles without equitable considerations. The hirer lost both the vehicle and the substantial sums paid, with no remedy or restitution, a ruling widely criticised in legal scholarship.[71] This judicial approach has raised significant concerns in Nigeria. Legal scholars argue that it creates an imbalance of power, enabling owners to enforce repossession with disproportionate consequences for hirers, especially when most of the price has already been paid. [72]The decision in Animashaun exemplifies a legal formalism where contractual enforcement takes precedence over fairness. Conversely, a more progressive perspective appeared in *Atare v Dada*[73], where the court expressed concern about the unfairness of repossessing goods after the hirer had paid over two-thirds of the price. Although the court upheld the owner's legal right, it indicated a willingness to weigh the unconscionability of the outcome, particularly in the absence of statutory protection. While common law acknowledges the owner's right to recover goods upon breach, its procedural flexibility has often led to abuse and unjust outcomes, especially in Nigeria.

3. Termination under the Hire-Purchase Act

The Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, was enacted to regulate hire-purchase transactions and introduce statutory safeguards in a legal landscape that was previously dominated by harsh common law principles. The Act aims to balance the rights of the owner and the hirer, especially regarding matters of termination and recovery of goods. This section examines the key statutory provisions governing termination by both the hirer and the owner, as well as the obligations and liabilities that follow

3.1 Statutory Right of the Hirer to Terminate (Section 8)

One of the most important innovations of the Act is the formal acknowledgement of the hirer's right to terminate the agreement at any point before exercising the option to buy. Section 8(1) states that: "The hirer may, at any time before the final payment becomes due under the agreement, and after giving the prescribed notice in writing to the owner, terminate the agreement."

[71] Femi Akinseye-George, (n.4) 250.
[72] AO Idowu, (n.19) 91, 98.
[73] (1976) ECSLR 168

This formalizes an already established common law principle, namely, that the hirer has an unfettered right to terminate. However, it now introduces specific formal requirements that must be satisfied.[74] The statutory right emphasizes the non-sale character of hire-purchase agreements: the hirer is not obliged to complete the purchase and can choose to opt out, subject to financial consequences. Importantly, exercising this right does not necessitate a breach; the hirer may terminate for any reason, provided the proper notice is given and financial obligations are fulfilled.

3.2 Notice Requirements and Payment Obligations

The statutory right of the hirer to terminate a hire-purchase agreement under Section 8 of the Hire-Purchase Act is a significant departure from the severe consequences that often followed common law termination. It formalises the process by which a hirer can unilaterally withdraw from the agreement and sets out specific notice and payment requirements that determine the legal effect of such termination.

3.2.1. Written Notice of Termination: Under section 8(1) of the Hire-Purchase Act, a hirer who wishes to terminate the agreement must provide written notice to the owner, clearly indicating their intention to end the agreement. This requirement ensures procedural clarity, prevents misuse, and allows the owner to prepare for the return of the goods and any subsequent financial adjustments. The notice does not need to follow a specific form but must clearly express the hirer's intention to terminate.[75] Verbal communication or conduct implying a desire to return the goods may not be sufficient, especially if the parties dispute the timing or nature of the termination. The formal notice acts as the trigger for assessing the hirer's remaining obligations under the agreement, including whether further payments or damages are due. In practice, failing to give the required notice may make the termination invalid, possibly subjecting the hirer to ongoing instalments or accusations of wrongful repudiation of the contract.

Therefore, although the hirer's right to terminate is broad, it cannot be exercised arbitrarily, and adherence to the notice requirement is crucial for its validity.

3.2.2 Return of Goods: Section 8(2) (a) of the Act requires the hirer to return the goods to the owner or, as the owner reasonably directs, upon termination[76]. This underscores the owner's continued ownership of the goods and emphasises that the hirer merely has possession under a licence. The delivery obligation is a condition precedent to fulfilling

[74] G Akanki (ed), (n.5) 375.
[75] G Akanki (ed), (n.5) 376.

[76] Hire-Purchase Act, s 8(2) (a).

further obligations and is a necessary step in finalising the transaction. If the hirer fails or refuses to return the goods after notice of termination, the owner may be entitled to pursue legal remedies for detinue, conversion, or seek court-ordered recovery[77]. The responsibility for any costs or damages related to the return may also fall on the hirer if caused by their delay or negligence.

3.2.3 Payment Obligations upon Termination: The most significant obligation that arises upon termination under section 8 is the financial requirement outlined in section 8(2)(b), which states that the hirer must pay "…any instalments due and the amount (if any) by which one-half of the hire-purchase price exceeds the total of the instalments previously paid and any sum payable under paragraph (a) of this subsection."

This provision establishes a statutory minimum: the owner is entitled to receive at least half of the hire-purchase price in total, whether through initial instalments or a balancing payment upon termination.[78] This reflects a compromise between the hirer's freedom to terminate the agreement and the need to protect the owner's financial interests.

For example, if the hirer has paid ₦200,000 under an agreement with a hire-purchase price of ₦500,000, then upon termination, the hirer must pay an additional ₦50,000 to meet the one-half requirement (i.e., ₦250,000). This ensures that the owner does not suffer an unreasonable financial loss due to early termination, especially where the value of the goods may have depreciated during use. It is important to note that no refund is given to the hirer if they have already paid more than half of the hire-purchase price. This helps to discourage speculative or opportunistic terminations and encourages careful planning before entering or exiting a hire-purchase agreement. However, this may also produce unfair outcomes in some cases, particularly where the hirer's termination is due to financial hardship or unforeseen circumstances, and this has been a point of criticism among scholars.[79]

3.3. Non-Compliance and Legal Consequences

Where the hirer terminates the agreement but fails to comply with either the notice requirement or the payment of the remaining sum, such termination may be deemed ineffective or invalid, leaving the hirer potentially liable for ongoing obligations under the agreement, including additional instalments or even damages for wrongful

[77] Olakunle Orojo, (n.6) 241.
[78] Hire-Purchase Act, s 8(2) (b).

[79] AO Idowu, (n.19) 91, 98

repudiation. Although Nigerian case law on section 8 is limited, comparative case law and commentary indicate that courts may treat the notice and payment as linked conditions, both of which must be fulfilled for a lawful termination.[80] It is therefore essential for hirers to understand that the right to terminate, although protected by statute, is not absolute but depends on procedural and financial compliance.

3.4 Liability for Damages if Goods Are Not Reasonably Cared For

Section 8(3) states that the hirer shall also be liable to pay damages for failing to take reasonable care of the goods while in possession.[81] This imposes a duty similar to that of a bailee and holds the hirer accountable for negligent damage, loss, or deterioration of the goods beyond normal wear and tear. This provision balances the hirer's right to terminate with the owner's proprietary interest. It also ensures that hirers are discouraged from abusing the right to terminate by returning goods in poor condition to avoid further liability.

3.5. Termination and Repossession of Goods by Owner under the Hire Purchase Act / Owner's Restrictions on Recovering Goods without Court Order

Under the Nigerian Hire Purchase Act (HPA), the owner's right to repossess goods is subject to strict statutory restrictions designed to protect hirers from unfair recovery practices. The Hire-Purchase Act introduces an important statutory safeguard under section 9(1), which limits the owner's right to repossess hire-purchase goods without judicial involvement, especially when the hirer has made substantial payments. This provision aims to reduce the harshness of common law repossession practices, which often allowed owners to recover goods through self-help in a way that caused severe injustice to hirers.

3.5.1 The Statutory Restriction: Under the Nigerian Hire Purchase Act, the owner's right to recover possession of goods from the hirer is subject to significant statutory restrictions designed to protect the hirer, particularly after substantial payments have been made. Section 9(1) of the Act states that once the "relevant proportion" of the hire-purchase price has been paid or tendered by or on behalf of the hirer or any guarantor, the owner is barred from repossessing the goods except through court action. This

[80] Richard Stone and James Devenney, *The Modern Law of Contract* (12th edn, Routledge 2022) 478.
[81] Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, S 8(3)

relevant proportion is defined as three-fifths (3/5) of the hire-purchase price for motor vehicles and one-half (1/2) for other goods.[82] The statutory restriction marks a notable

departure from the common law position, where owners could repossess goods at will without recourse to the courts.[83]

The Act also states that if an owner repossesses goods in violation of this provision, the hire-purchase agreement is automatically terminated, and the hirer is freed from all obligations under the contract. Furthermore, the hirer has the right to recover all amounts paid under the agreement or any security provided in relation to it. Guarantors are similarly entitled to recover any amounts paid under the guarantee.[84] This position was confirmed in *Adesanya v. Balogun & Ors*[85], where the court ruled that wrongful repossession of goods by the owner after the hirer had paid a significant part of the price absolved the hirer of liability and allowed him to recover all payments made.[86]

There are, however, exceptions to this rule. If the hirer has not paid the relevant proportion of the hire-purchase price, the owner may repossess the goods without a court order.[87] Similarly, if the hirer terminates the agreement or abandons the goods, the owner can recover possession without going to court. In the case of motor vehicles, the Act under Section 9(5) allows the owner to seize the vehicle while a court case is pending if the hirer is in default of three or more instalments, provided the owner keeps the vehicle safe and is responsible for any damage or loss during this period.[88]

The Act also prescribes conditions for the owner when repossessing goods in these exceptional cases, such as keeping the goods safe and being liable for any depreciation or damage until the court decides the matter[89]. The statutory framework thus balances the interests of both parties: it protects hirers who have made significant payments from arbitrary loss of goods, while still allowing owners to recover their property in cases of

[82] Hire Purchase Act (Nigeria), s 9(2)(a)(b)
[83] CJ Okoye, 'Topic 21: Recovery under the Hire-Purchase Act' https://cjokoyelawview.com/law-332-law-of-commercial-transportation-ii/topic-21-recovery-under-the-hire-purchase-act accessed 23 June 2025.
[84]Hire Purchase Act Vis a Vis Restriction on the Recovery of Goods by the Owner' (DNL Partners) https://dnlpartners.ng/legalandstyle/2020/hire-purchase-act-vis-a-vis-restriction-on-the-recovery-of-goods-by-the-owner/ accessed 23 June 2025.
[85] (CCHCJ/11/73),
[86] N.85
[87] ibid
[88] ibid
[89] *Adesanya v Balogun & Ors* (CCHCJ/11/73) (Unreported)

substantial default or abandonment, subject to judicial oversight and procedural safeguards.[90]

The Hire Purchase Act imposes strict procedural requirements on owners seeking to recover goods after the hirer has paid a significant portion of the purchase price, requiring judicial intervention to ensure fairness and protect the hirer's interests. Any repossession in violation of these statutory provisions results in severe consequences for the owner, including the termination of the agreement and liability to refund all payments received.[91]

3.6 Powers of the court in actions to recover goods

Under the Nigerian Hire-Purchase Act, the powers of the court in actions to recover goods are structured to ensure fairness and procedural justice at every stage of the process. The Act provides a statutory framework that governs what the court may do before, during, and after the hearing of a repossession action, especially where the hirer has paid a significant portion of the hire-purchase price.

3.6.1 Before the hearing, the court may grant interim orders to preserve the subject goods and protect both parties' interests pending the final determination of the case. For example, where the hirer is in default of three or more instalments in respect of a motor vehicle, section 9(5) of the Act allows the owner to seize the vehicle pending the outcome of the court's decision. However, the owner is under a duty to keep the vehicle safe and is liable for any loss or damage that occurs during this period. This ensures that the goods are not wasted or devalued while the legal process is ongoing and that the hirer's equity in the goods is not unfairly prejudiced. The court may also make orders restricting the use or movement of the goods, or direct that they be held in neutral custody, to prevent either party from taking unilateral action that could affect the outcome of the proceedings.

3.6.2 During the hearin**g**, the court exercises its discretion to determine the merits of the owner's claim and the hirer's defences. The court may order full repossession of the goods by the owner if the statutory requirements are met and the hirer is in substantial breach. Alternatively, the court may postpone repossession and allow the hirer to retain possession of the goods, subject to conditions such as payment of outstanding instalments or compliance with other terms. In some cases, the court may order partial repossession, requiring the hirer to deliver up part of the goods while transferring ownership of the remainder if the hirer has paid more than the relevant proportion as

[90] *C.D.C. (Nig.) Ltd. v. S.C.O.A. (Nig.) Ltd.* (2007) 6 NWLR (Pt. 1030) 300
[91] ibid

defined by the Act. The court's powers at this stage are designed to balance the owner's right to recover their property with the hirer's interest in not being unfairly deprived of goods for which substantial payments have already been made.

3.6.3 After the hearing, the court retains supervisory powers to enforce its orders and ensure compliance by both parties. If repossession is postponed, the court may vary the conditions of postponement or revoke the order if the hirer defaults on the new terms. The court may also make consequential orders regarding the return of goods, payment of any outstanding sums, or compensation for damage or loss suffered during the period of litigation. Where the owner is found to have repossessed goods in contravention of the Act, such as seizing goods after the hirer has paid the relevant proportion without a court order, the agreement is automatically terminated, the hirer is released from further liability, and is entitled to a refund of all sums paid, as affirmed in *Adesanya v Balogun & Ors*[92]. This strict consequence serves as a deterrent against unlawful repossession and underscores the importance of judicial oversight in hire-purchase disputes.

In summary, the court's powers before, during, and after a hearing under the Hire-Purchase Act are central to ensuring that repossession actions are conducted lawfully, transparently, and with due regard for the interests of both owners and hirers. The statutory requirements for judicial intervention, procedural safeguards, and remedies for wrongful repossession collectively reflect the Act's purpose of mitigating the harshness of common law and promoting commercial fairness.

3.7 Conclusion and Recommendations

The law of hire-purchase in Nigeria reflects a delicate tension between the hirer's contractual liberty to terminate and the owner's proprietary right to recover goods. While the common law grants broad termination rights to the hirer and repossession rights to the owner, the Nigerian Hire-Purchase Act tempers these freedoms with statutory safeguards intended to ensure fairness and protect vulnerable hirers. Through sections 8 to 10 of the Act, the legislature has attempted to strike a more equitable balance by imposing procedural controls and requiring judicial oversight before repossession can occur, particularly where the hirer has paid a substantial portion of the purchase price.

However, as this article has shown, several gaps and ambiguities continue to undermine the effectiveness of the statutory framework. These include the Act's limited scope of application, the lack of clarity in key provisions, and the absence of clear remedies for wrongful termination or repossession, as well as weak enforcement mechanisms.

[92] CCHCJ/11/73 (Unreported)

Judicial interpretations, while occasionally progressive, have not always been consistent or proactive in filling these gaps, leading to unpredictability in the law's application.

To address these challenges, this article recommends a two-fold reform agenda. First, legislative reform is necessary to expand the scope of the Hire-Purchase Act to cover a broader range of transactions and to clarify ambiguous provisions, particularly those relating to partial repossession, judicial discretion, and the definition of "relevant proportion." Statutory penalties for unlawful repossession should also be expressly stated to enhance deterrence and protect hirers' rights.

Second, the judiciary should adopt a more purposive and rights-protective approach in interpreting the Act, particularly in borderline cases involving premature or unlawful repossession. Courts should reinforce the principle that repossession without judicial sanction, especially after payment of the relevant proportion, renders the agreement unenforceable, as affirmed in *Adesanya v Balogun & Ors*. This would promote legal certainty and fairness, and restore public confidence in hire-purchase as a viable consumer credit mechanism.

Ultimately, a reformed legal framework, one that combines legislative clarity with judicial vigilance, will better safeguard the interests of both owners and hirers, and enhance the commercial utility of hire-purchase arrangements in Nigeria's evolving consumer economy.