



ANALYSIS

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1971, No. 147

An Act to reform the law relating to hire purchase

[17 December 1971]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Hire Purchase Act 1971.

(2) This Act shall come into force on the 1st day of August 1972.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Cash price”, in relation to goods comprised in a hire purchase agreement, means the price at which at the time of the signing of the agreement the purchaser might have purchased the goods for cash from the vendor:

“Contract of guarantee”, in relation to a hire purchase agreement, means a deed or contract whereby any person guarantees the performance of the purchaser's obligations under the hire purchase agreement or indemnifies the vendor against any loss which he may incur in respect of that agreement; but does not include any such deed or contract under which the only obligor is—

(a) The vendor; or

(b) A person who executes the deed or enters into the contract in the course of a business carried on by him;

and “guarantor” shall be construed accordingly:

“Court” means the Supreme Court or a Magistrate's Court that has jurisdiction under section 47 of this Act:

“Dealer” means a person, not being the purchaser or his agent or the vendor or his servant, who assigns or procures the assignment to the vendor of goods for the purpose of enabling the vendor to enter into a hire purchase agreement in respect of those goods or goods of that kind with the purchaser:

“Disposed of” means let, hired, or agreed to be sold:

“Goods” includes all chattels personal other than money or things in action:

“Hire purchase agreement” means an agreement whereby goods are let or hired with an option to purchase and an agreement for the purchase of goods by instalment payments (whether the agreement describes the payments as rent or hire or otherwise) under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid; but does not include any agreement—

(a) Under which the property in the goods comprised in the agreement passes absolutely, to the person who agrees to purchase them, at the time of the agreement or upon or at any time before delivery of the goods; or

(b) Made otherwise than at retail:

“Holding company” has the same meaning as in section 158 of the Companies Act 1955:

“Purchaser” means the person to whom goods are disposed of under a hire purchase agreement, and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights:

“Subsidiary” has the same meaning as in section 158 of the Companies Act 1955:

“Total amount payable” means the total amount to be paid or provided whether by way of cash or other consideration by or on behalf of the purchaser under a hire purchase agreement; but does not include amounts payable only as a result of defaults by the purchaser:

“Total cost of credit” or “cost of credit”, in relation to a hire purchase agreement, means the total amount payable less—

(a) The cash price of the goods; and

(b) Any amount included in the total amount payable to cover the expenses of delivering the goods or

any of them to the order of the purchaser, if that amount is separately specified in the agreement and described as "freight"; and

(c) Any amount included in the total amount payable to cover fees or insurance payable pursuant to the provisions of any enactment, if that amount is separately specified in the agreement; and

(d) Any amount included in the total amount payable for insurance (other than insurance taken out pursuant to the provisions of any enactment) in respect of the goods in the agreement, if—

(i) The insurance is taken out at the option of the purchaser; and

(ii) That amount is separately specified in the agreement and described as "optional insurance"; and

(e) Any amount included in the total amount payable for installation of the goods, if that amount is separately specified in the agreement and described as "installation"; and

(f) Any other amount which is included in the total amount payable and which is common to cash and terms transactions, if that amount is—

(i) Separately specified in the agreement; and

(ii) The purpose for which it is payable is clearly described:

"Variable credit account" means an account under which the vendor under a hire purchase agreement is the creditor and the purchaser is the debtor and—

(a) To which the balance payable under the agreement is debited, whether alone or together with other amounts that the purchaser is liable to pay to the vendor; and

(b) To which the purchaser is obliged to make payments in reduction of that balance but is not limited as to the maximum amount that he may pay at any one time or during any accounting period; and

(c) In respect of which the purchaser is liable to pay interest at a fixed rate on either—

(i) The average daily balance outstanding over each accounting period; or

(ii) The balance outstanding at the end of each monthly or other accounting period; or

- (iii) The balance outstanding at the end of each monthly or other accounting period less any payment made during the subsequent accounting period:

“Vendor” means the person disposing of goods under a hire purchase agreement, and, if the rights of that person are transferred by assignment or by operation of law, includes the person for the time being entitled to those rights.

(2) For the avoidance of doubt, and without limiting the circumstances in which a hire purchase agreement may be made at retail, it is hereby declared that for the purposes of this Act a hire purchase agreement shall be deemed to be made at retail if—

- (a) The transaction leading to the agreement was arranged by a dealer or on his behalf; and
 (b) The agreement would have been made at retail if the dealer had been the vendor.

(3) Where, by virtue of two or more agreements, none of which by itself constitutes a hire purchase agreement, there is a transaction which is in substance or effect a hire purchase agreement, the agreements shall be treated for the purposes of this Act as a single agreement made at the time when the last of those agreements was made.

Cf. 1939, No. 14, s. 2 (1); Hire-Purchase Act, 1960–1965, ss. 2, 3 (2) (e) (New South Wales); Hire-Purchase Act 1965, ss. 1 (2), 58 (1) (U.K.); S.R. 1957/170, reg. 2 (2)

3. Act to bind the Crown—This Act shall bind the Crown.

Formation, Contents, and Variation of Hire Purchase Agreements

4. Enforcement—(1) Where the requirements of section 5 of this Act are not complied with in relation to any hire purchase agreement, then the agreement, any contract of guarantee relating to the agreement, and any security given by the purchaser or the guarantor in respect of money payable under the agreement, shall not be enforceable by the vendor.

(2) Subject to subsection (3) of this section, where the requirements of sections 6 and 7 of this Act are not complied with in relation to any hire purchase agreement, then—

- (a) The liability of the purchaser for the cost of credit shall be extinguished; and

(b) The vendor shall repay any money already paid to him by any person on account of or in satisfaction of the cost of credit.

(3) Subsection (2) of this section shall not apply if the vendor shows—

(a) That the non-compliance was not of such a nature as to mislead or deceive the purchaser to his prejudice; or

(b) In any other case, that the vendor has promptly remedied the non-compliance (in so far as it is capable of being remedied) on its being discovered or brought to his notice and has, where appropriate, compensated or offered to compensate the purchaser for the prejudice caused to him.

5. Agreement to be in writing—Every hire purchase agreement shall be in writing and shall be executed—

(a) Where the purchaser is an individual, by him personally or on his behalf by any person acting under authority conferred by a power of attorney;

(b) Where the purchasers are carrying on a business in partnership, by any person who has authority to execute it on behalf of the firm;

(c) Where the purchaser is a corporation, under the seal of the corporation or on its behalf by a person acting under its authority, express or implied.

6. Contents of agreements—(1) The requirements of this section, in relation to a hire purchase agreement, are that—

(a) The agreement shall contain a description of the goods to which the agreement relates; and

(b) The agreement shall specify—

(i) The number or the minimum number of instalments; and

(ii) The amount or the minimum amount of each of those instalments; and

(iii) The person to whom and the place at which the payments of instalments are to be made; and

(iv) The date, or the mode of determining the date, on which each such instalment is payable; and

(v) The full name and address of the vendor; and

- (vi) Where credit is extended through a variable credit account, the method by which periodic balances are calculated and by which interest is calculated on those balances; and
- (c) The agreement shall set out on its first page the financial details of the transaction in a form which is substantially the same as the form set out in Part I of the First Schedule to this Act; and
- (d) The agreement shall have endorsed on it a statement in the form set out in Part II of the First Schedule to this Act.

(2) Notwithstanding the provisions of subsection (1) of this section and of section 8 of this Act, but without limiting subsection (2) of that section, the Minister of Justice may from time to time, by notice in the *Gazette*, prescribe requirements that may be observed, in such cases and subject to such conditions as may be specified in the notice, instead of the requirements of paragraph (b) or paragraph (c) (as modified by section 8 of this Act) of subsection (1) of this section.

(3) Nothing in this section shall prevent the incorporation by reference in any hire purchase agreement of terms which are set out in full in an earlier agreement entered into between the same parties, but where terms are so incorporated the vendor shall, in complying with a request under section 19 of this Act, serve copies of both agreements.

Cf. Hire-Purchase Act, 1960–1965, s. 3 (2) (New South Wales)

7. Requirements as to copies of agreement—(1) The requirements of this section, in relation to a hire purchase agreement, are that—

- (a) Except as provided in paragraph (d) of this subsection, a copy of the agreement shall be given to the purchaser before the end of the period of 10 days beginning with the day after the date of the execution of the agreement by or on behalf of the purchaser; and
- (b) The copy of the agreement given under paragraph (a) of this subsection shall be in the form in which the agreement was when it was executed by or on behalf of the purchaser except that, subsequent to its being so executed,—

- (i) The agreement may be executed by or on behalf of the other parties to it; and
 - (ii) Particulars that are identical with particulars contained in a sales docket that has been given to the purchaser under paragraph (c) of this subsection may be inserted; and
 - (iii) Additional particulars of the goods sufficient to enable them to be identified may be inserted; and
 - (iv) Clerical errors may be corrected if the corrections are initialled by or on behalf of the vendor; and
- (c) If the copy of the agreement required by paragraph (a) of this subsection is not given to the purchaser immediately after it is executed by him or on his behalf, the purchaser shall at that time be given a sales docket which shall set out clearly the information specified in the Second Schedule to this Act, and shall be otherwise in accordance with the provisions of that Schedule and any regulations made under this Act; and
- (d) If the agreement is executed by the purchaser on a day later than the day on which it is executed by or on behalf of all the other parties to it, a copy of the agreement, marked in conspicuous letters with the words "PURCHASER TO KEEP THIS COPY", shall be given to the purchaser when the original is given to him for execution.

(2) The Governor-General may from time to time, by Order in Council, amend the Second Schedule to this Act or revoke that Schedule and substitute a new Schedule.

8. Disclosure of cost of credit as an annual rate—(1) The financial details mentioned in paragraph (c) of subsection (1) of section 6 of this Act shall—

- (a) Except where credit is extended through a variable credit account, show the percentage (correct to within 1 percent) that the total cost of credit bears to the amount financed expressed as an annual rate applied to the unpaid balance of the obligation from time to time:
- (b) Where credit is extended through a variable credit account, show the effective annual rate (correct to within 1 percent) corresponding to the rate of interest charged periodically on the balances outstanding in that account,—

calculated in each case in accordance with tables or methods approved or prescribed, either generally or in respect of different types of transaction, by regulations made under this Act.

(2) It shall not be necessary to show the percentage or the effective annual rate in accordance with subsection (1) of this section where the cash price of the goods does not exceed \$50 or such larger sum as is from time to time prescribed by the Governor-General by Order in Council for the purposes of this subsection.

(3) This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

Cf. Consumer Protection Act 1966, s. 21 (Ontario)

9. Statement as to rebates for early completion—(1) Except where the purchaser is not entitled to statutory rebates by reason of paragraph (b), paragraph (c), or paragraph (d) of subsection (5) of section 23 of this Act, every hire purchase agreement shall contain one of the following statements, namely—

“Early completion of this agreement will entitle the purchaser to rebates greater than the statutory rebates, as follows: [*There shall follow a statement of the particulars.*]”

“Early completion of this agreement will entitle the purchaser to statutory rebates in accordance with section 23 of the Hire Purchase Act 1971.”

(2) Where any hire purchase agreement does not meet the requirements of subsection (1) of this section the vendor under the agreement commits an offence against this Act.

10. Variation of hire purchase agreements—(1) The parties to any hire purchase agreement may agree from time to time to vary that agreement but, subject to subsections (2) and (3) of this section, no such variation shall be enforceable by the vendor without the leave of the Court and subject to such conditions (if any) as the Court may impose unless—

(a) A note or memorandum in writing of the variation is executed by the purchaser in accordance with section 5 of this Act; and

(b) A copy thereof is given to the purchaser immediately after he executes it.

(2) The vendor may from time to time by notice in writing served on the purchaser change the person to whom or the place at which the payments of the instalments due under the agreement are to be made.

(3) Where the purchaser has made default in the payment of any money under a hire purchase agreement it shall not be necessary to comply with subsection (1) of this section in respect of any variation whereby—

(a) The lender agrees to forbear from exercising all or any of his remedies in respect of the purchaser's default for a specified period or until a demand is made for payment or so long as the purchaser continues to make specified payments; and

(b) The purchaser agrees to observe the conditions of the hire purchase agreement as varied by the variation— if neither the amount of money owing nor the amount of any of the instalments is increased except in accordance with any provision in the agreement for the payment of interest upon money payable under the agreement; and any such variation shall be enforceable by the vendor without the leave of the Court.

(4) The note or memorandum given for the purposes of subsection (1) of this section shall contain all the terms of the variation and shall, in particular, show:

(a) The date on which the variation is made; and

(b) The amount of money then owing under the hire purchase agreement, whether or not it is increased or reduced by the variation; and

(c) If the date of payment of any instalment is changed or if the amount of any of the instalments is increased or reduced by the variation, the particulars concerning instalments mentioned in subparagraphs (i) to (iv) of paragraph (b) of subsection (1) of section 6 of this Act.

Terms and Representations

11. Implied terms as to title—In every hire purchase agreement there shall be implied—

(a) A term (a condition) that the vendor will have the right to sell the goods at the time when the property is to pass;

(b) A term (a condition) that the goods will be free from any charge or encumbrance in favour of any third party (other than a charge or encumbrance disclosed to the purchaser in writing by the vendor or

the dealer before or at the time the agreement is entered into or a charge or encumbrance created by or with the express consent of the purchaser) at the time when the property is to pass:

- (c) A term (a warranty) that the purchaser shall enjoy quiet possession of the goods except so far as it may be disturbed by the owner of any charge or encumbrance so disclosed or known or by the vendor where the purchaser is in default under the agreement.

Cf. Hire-Purchase Act, 1960–1965, s. 5 (1) (New South Wales)

12. Implied term as to quality—(1) There shall also be implied in every hire purchase agreement a term (a condition) that at the time when the goods are delivered to the purchaser they shall be, or where they were so delivered before the agreement was entered into they were at the time of delivery, of merchantable quality; but such a term shall not be implied—

- (a) As regards defects which are specified in the agreement if the vendor proves that the defects were specifically drawn to the purchaser's attention and accepted by him before the agreement was entered into; or
- (b) If the purchaser examined the goods or a sample of them before the agreement was entered into, as regards defects which the examination ought to have revealed; or
- (c) If the cash price of the goods exceeds \$5,000 or such larger sum as may from time to time be specified by the Governor-General by Order in Council and the agreement expressly negatives such a term; or
- (d) If the goods are secondhand goods and—
- (i) The agreement contains a conspicuous statement signed by the purchaser in the following terms: "I understand that the goods to which this agreement relates are secondhand goods and that [*Insert name of vendor*] does not promise that they are fit for use or for any particular purpose"; and
 - (ii) That statement is separately signed by the purchaser.

(2) For the purposes of this section goods of any kind are of merchantable quality if they are as fit for the purpose or

purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to their price, any description applied to them, and all the other circumstances.

Cf. Hire-Purchase Act of 1959, s. 5 (2) (Queensland); Hire-Purchase Act 1965, ss. 17 (2)-(3), 18 (1)-(3) (U.K.)

13. Implied term as to fitness—(1) Where the purchaser under any hire purchase agreement, expressly or by implication, makes known to the vendor or to the dealer or to any servant or agent of the vendor or the dealer the particular purpose for which the goods are required, there shall be implied in the hire purchase agreement a term (a condition) that at the time when the goods are delivered to the purchaser, or where they were so delivered before the agreement was entered into they were at the time of delivery, reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly bought, except where—

- (a) The goods are secondhand goods and paragraph (d) of subsection (1) of section 12 or this Act is complied with; or
- (b) The circumstances otherwise show that the purchaser does not rely, or that it is unreasonable for him to rely, on the vendor's skill or judgment.

(2) Without prejudice to any other rights and remedies to which a vendor may be entitled, where the purchaser has made known expressly or by implication to the dealer or to any agent or servant of the dealer the particular purpose for which the goods are required, the vendor is entitled to be indemnified by the dealer against any damage suffered by the vendor through the operation of the provisions of subsection (1) of this section unless the dealer was authorised by the vendor to state or imply that the goods were reasonably fit for the particular purpose.

Cf. Hire-Purchase Act of 1959, s. 5 (3)-(4) (Queensland); Hire-Purchase Act 1965, ss. 17 (4), 18 (4) (U.K.)

14. Disposal of goods by sample or description—(1) In every hire purchase agreement where the goods are disposed of by reference to a sample, there shall be implied in the agreement—

- (a) A term (a condition) that the bulk will correspond with the sample in quality; and
- (b) A term (a condition) that the purchaser will have a reasonable opportunity of comparing the bulk with the sample.

(2) In every hire purchase agreement where the goods are disposed of by description there shall be implied in the agreement a term (a condition) that the goods will correspond with the description; and if the goods are disposed of or agreed to be disposed of by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Cf. Hire-Purchase Act 1965, s. 19 (U.K.)

15. Assessment of damages—The damages that a purchaser may recover for breach of a term implied in a hire purchase agreement by this Act shall be assessed, in the absence of evidence to the contrary, on the basis that the purchaser will complete the purchase of the goods or would have completed that purchase if the goods had complied with the term.

16. Other implied terms—(1) Sections 14, 15, and 17 and paragraphs (a) and (b) of section 16 of the Sale of Goods Act 1908 shall not apply to hire purchase agreements and no terms corresponding or similar to the terms implied in contracts of sale by those sections and paragraphs shall be implied in hire purchase agreements by the rules of the common law.

(2) Except as provided in subsection (1) of this section, nothing in this Act shall limit or affect in any way any other enactment or rule of law whereby any term is to be implied in any hire purchase agreement.

17. Liability of vendor and dealer for representations—

(1) Every representation, warranty, or statement made to the purchaser or prospective purchaser, whether orally or in writing, by the dealer or any person acting on behalf of the vendor or dealer in connection with or in the course of negotiations leading to the entering into of a hire purchase agreement at any time after the commencement of this Act shall confer on the purchaser—

- (a) As against the vendor, subject to section 18 of this Act, the same rights as the purchaser would have had if the representation, warranty, or statement had been made by the vendor personally:
- (b) As against the person who made the representation, warranty, or statement and any person on whose behalf such person was acting in making it, the same rights against them or any of them personally as the purchaser would have had if the purchaser had entered into the hire purchase agreement with the person who made the representation, warranty, or statement or the person on whose behalf that person was acting (as the case may be) as a result of the negotiations.

(2) Without prejudice to any other rights or remedies to which a vendor may be entitled, a vendor shall be entitled, where the representation, warranty, or statement was made without his express or implied authority, to be indemnified by the person who made the representation, warranty, or statement, and by any person on whose behalf the representation, warranty, or statement was made, against any damage suffered by the vendor through the operation of the foregoing provisions of this section.

(3) Without limiting any other right conferred on the purchaser by this section, no action for damages for deceit shall lie under this section against the vendor in respect of any representation, warranty, or statement made by or on behalf of the dealer without the knowledge or the express or implied authority of the vendor or of a subsidiary or the holding company or a subsidiary of the holding company of the vendor; but the burden of proving that any such representation, warranty, or statement was so made without such knowledge or authority shall lie on the vendor.

Cf. Hire-purchase Act of 1959, s. 6 (Queensland)

Liability of Vendor's Assignees

18. Liability of vendor's assignees—(1) The damages that a purchaser may recover from a person to whom the rights of the vendor have been transferred by assignment (in this section referred to as "the assignee") for breach of a term implied in a hire purchase agreement by this Act or through the operation of subsection (1) of section 17

of this Act, shall be limited to an amount not exceeding the amount owing by the purchaser to the vendor under the agreement at the date of the assignment.

(2) No action to recover any such damages from the assignee shall be brought after the expiration of the period fixed by subsection (6) of section 37 of this Act unless proceedings under that section have been commenced within that period or any extension of that period made pursuant to section 45 of this Act.

(3) Without prejudice to any other rights or remedies to which the assignee may be entitled (whether by virtue of subsection (2) of section 17 of this Act or otherwise) the assignee shall, subject to any agreement between him and the vendor, be entitled to be indemnified by the vendor against any damage suffered by the assignee by reason of—

- (a) His liability to the purchaser either in respect of a breach of a term implied in the hire purchase agreement by this Act or through the operation of subsection (1) of section 17 of this Act; or
- (b) The exercise by the purchaser of any right to rescind the hire purchase agreement; or
- (c) Any relief granted by the Court under section 37 of this Act, unless the relief was granted in respect of an act or omission of the assignee.

(4) Where the assignee is entitled to be indemnified by the vendor in accordance with subsection (3) of this section then the assignee shall also be entitled to exercise, in the name of the vendor, any rights that the vendor has in respect of the goods comprised in the hire purchase agreement against the person who supplied those goods to the vendor.

(5) No assignment of the rights of the vendor under a hire purchase agreement shall affect any right of the purchaser to rescind that agreement or to recover damages from the person who disposed of the goods under the agreement or the dealer or any person who acted on behalf of either or both of them.

Statutory Rights of Purchasers

19. Purchaser and guarantor to be entitled to copy of agreement and statement of his present position—(1) At any time before the final payment has been made under a hire purchase agreement the vendor shall, within 14 days after he has received a request in writing from the purchaser or any guarantor, and the purchaser or guarantor has tendered to

him the sum of 50 cents, or such larger sum as may from time to time be prescribed by the Governor-General by Order in Council, for expenses, serve on the purchaser or guarantor, as the case may require, a copy of the agreement, together with a statement in writing signed by the vendor or his agent showing—

- (a) The amount paid to the vendor by or on behalf of the purchaser; and
- (b) The amount which has become due under the agreement but remains unpaid; and
- (c) The amount which is to become payable under the agreement;

but a vendor need not comply with such a request if he has served the person making the request with a copy of the agreement and a statement complying with this subsection within the period of 3 months immediately preceding the receipt of the request.

(2) If the vendor makes default in complying with subsection (1) of this section he may remedy his default by serving on the person who made the request a copy of the agreement and a statement complying with subsection (1) of this section, but until the default is remedied—

- (a) The vendor shall not be entitled to enforce the agreement or any contract of guarantee relating to that agreement:
- (b) The vendor shall not be entitled to enforce any right to recover the goods from the purchaser:
- (c) Except with the leave of the Court, no security given by the purchaser in respect of money payable under the agreement or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall be enforceable against the purchaser, or against the guarantor, as the case may be, by the holder of such a security.

(3) Every vendor who—

- (a) Makes default in complying with subsection (1) of this section; or
- (b) Acts in contravention of any of the provisions of paragraphs (a) to (c) of subsection (2) of this section—

commits an offence against this Act.

Cf. 1939, No. 14, s. 9; Hire-Purchase Act, 1960-1965, s. 7 (New South Wales); Hire-Purchase Act 1965, s. 21 (U.K.)

20. Absolute assignment of rights under hire purchase agreements—(1) The right, title, and interest of a purchaser under a hire purchase agreement may be assigned absolutely with the consent of the vendor or, if his consent is unreasonably withheld, with the leave of the Court.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by a vendor for his consent to such an assignment, and where a vendor requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) As a condition of granting his consent the vendor may stipulate that all defaults under the hire purchase agreement shall be made good.

(4) The vendor may require the purchaser and the assignee to pay a reasonable sum in respect of any legal or other expenses incurred by the vendor in connection with any such assignment.

(5) For the purposes of this section, consent shall be deemed to be unreasonably withheld if it is withheld by reason only of the colour, race, or ethnic or national origins of any person.

(6) No assignment or other action which is authorised by this section shall constitute a breach of the terms of the agreement or an event entitling the vendor to take possession of the goods.

(7) The right, title, and interest of a purchaser under a hire purchase agreement shall be capable of passing by operation of law to the personal representative of the purchaser and if the purchaser is a body corporate the liquidator may exercise the same rights under the agreement as the body corporate, but nothing in this subsection shall relieve any such personal representative or liquidator from compliance with the provisions of the agreement.

(8) Nothing in this section shall limit the rights of parties to a hire purchase agreement to make their own bargain with regard to assignments (other than assignments of the type described in subsection (1) of this section) and, except as provided in subsection (7) of this section, nothing in this section shall apply to the passing by operation of law of the right, title, or interest of any person under a hire purchase agreement.

Cf. Hire-Purchase Act, 1960–1965, s. 9 (New South Wales); 1952, No. 51, s. 110 (1), (1A); 1965, No. 16, s. 3

21. Method and effect of assignment—(1) Every assignment of the type described in subsection (1) of section 20 of this Act shall be in writing and shall specify the full name, address, and occupation of the assignee.

(2) A copy of the assignment shall be served on the vendor within 7 days after the date of its execution by the assignor.

(3) Upon the absolute assignment of the agreement the assignee shall, unless it is otherwise agreed with the vendor in writing, become personally liable to pay the instalments remaining unpaid and to perform and observe all other terms of the hire purchase agreement during the residue of the term thereof and to indemnify the purchaser in respect of such liabilities.

(4) Notwithstanding the provisions of subsection (3) of this section, the purchaser and any guarantor (including any person mentioned in paragraph (a) or paragraph (b) of the definition of the term "contract of guarantee" in subsection (1) of section 2 of this Act) shall, unless it is otherwise agreed in writing with the vendor, continue to be personally liable under the hire purchase agreement or other instrument of guarantee or indemnity, as the case may be.

22. Purchaser may pay unpaid balance at any time—

(1) The purchaser under a hire purchase agreement may complete the purchase of the goods by paying or tendering to the vendor the net balance due to the vendor under the agreement.

(2) The right conferred on the purchaser by this section may be exercised by him at any time during the continuance of the agreement.

(3) For the purposes of this section the net balance due is the amount for the time being payable in terms of the hire purchase agreement to enable the purchaser to acquire title to the goods after taking into account the rebates allowed by the agreement for early completion or the statutory rebates calculated in accordance with section 23 of this Act, whichever in the aggregate are the greater.

(4) This section shall not apply in respect of any hire purchase agreement under which the cash price of the goods exceeds \$5,000 or such larger sum as may from time to time be specified by the Governor-General, by Order in Council, for the purposes of this section.

(5) This section shall be read subject to the provisions of section 30 of this Act.

Cf. Hire-Purchase Act, 1960–1965, s. 11 (New South Wales)

23. Statutory rebates—(1) The statutory rebates are—

- (a) A rebate of the terms charges (the terms charges being the total cost of credit less any items included in that total for insurance or for maintenance or repairs):
 - (b) A rebate for insurance if the purchaser requires any contract for insurance in respect of which he has been debited with the premiums under the agreement to be terminated:
 - (c) A rebate for maintenance or repairs if the purchaser requires any contract for maintenance or repairs in respect of which he has been charged under the agreement to be terminated.
- (2) For the purposes of this section, a rebate of the terms charges,—
- (a) Means 90 percent of the amount derived by multiplying the terms charges by the sum of all the whole numbers from one to the number which is the number of complete months in the period of the agreement still to go (both inclusive) and by dividing the product so obtained by the sum of all the whole numbers from one to the number which is the total number of complete months in the period of the agreement (both inclusive); or
 - (b) Where it is agreed in a hire purchase agreement that the terms charges have been calculated on a simple interest basis at a rate specified in the agreement on the amount (not including the terms charges) outstanding from month to month, means 90 percent of the amount of interest attributable to the period of complete months still to go under the agreement.
- (3) For the purposes of this section, a rebate for insurance means the sum of—
- (a) The total amount of premium paid in respect of any annual period not yet commenced; and
 - (b) The amount of any rebate allowed by the insurer on any premium for insurance in respect of the current annual period.

(4) For the purposes of this section a rebate for maintenance or repairs means the amount derived by multiplying the amount charged for maintenance or repairs by the number of complete months in the period of the agreement still to go and dividing the product so obtained by the number of complete months in the period of the agreement.

(5) The purchaser shall not be entitled to statutory rebates if—

- (a) The aggregate amount of those rebates would be less than \$1; or
- (b) The cash price of the goods comprised in the agreement exceeds \$5,000 or such larger sum as may from time to time be specified by the Governor-General, by Order in Council, for the purposes of this paragraph; or
- (c) The purchaser is not bound to pay anything for terms charges, insurance, maintenance, or repairs; or
- (d) Credit for the balance payable under the agreement is extended to the purchaser through a variable credit account and the purchaser is not bound to pay anything for insurance, maintenance, or repairs.

Cf. Hire-Purchase Act 1960–1965, s. 2 (1) (New South Wales)

24. Voluntary return of goods—(1) A hire purchase agreement shall be terminated by the return to the vendor of the goods comprised in the agreement if they are returned—

- (a) In accordance with any term of the agreement which permits the purchaser to return them and terminate the agreement; or
- (b) By the purchaser for the purpose of terminating the agreement and the vendor agrees to the termination of the agreement.

(2) Where a hire purchase agreement is so terminated the rights and liabilities of the purchaser and the vendor shall, subject to subsections (3) to (6) of this section, be determined as if the goods had been repossessed by the vendor on the date on which they were returned by the purchaser.

(3) Where any agreement fixes or makes provision for the fixing of the amount (if any) to be paid by the purchaser in the case of the voluntary termination of the

agreement by the purchaser, the amount (if any) that the vendor shall be entitled to recover from the purchaser shall not exceed that amount.

(4) The vendor shall, unless he elects to regard the goods as still having a value that is not less than 80 percent of the cash price, sell the goods in accordance with section 28 of this Act, and sections 31 to 34 of this Act shall apply accordingly with such modifications as are necessary. If the vendor elects to regard the goods as having a value that is not less than 80 percent of the cash price he shall, within 14 days after the termination of the agreement, serve on the purchaser a statement in accordance with section 32 of this Act which shall set out, instead of the items mentioned in paragraphs (a) and (b) of that section, the value which the vendor attributes to the goods.

(5) Except to the extent that the provisions of sections 26 to 35 of this Act are specifically applied by this section or need to be applied in order to determine whether, following the termination of a hire purchase agreement as provided in subsection (1) of this section, there is a balance owing by the vendor to the purchaser or by the purchaser to the vendor, nothing in those sections, other than subsection (2) of section 33, shall apply in respect of the voluntary return to the vendor by the purchaser of the goods comprised in a hire purchase agreement if that return results in the termination of the agreement as provided in subsection (1) of this section.

(6) The provisions of this section and of sections 26 to 35 of this Act shall not apply in respect of the goods comprised in any hire purchase agreement if the parties to that agreement subsequently enter into a written agreement for the voluntary return of those goods which excludes those provisions, and the purchaser has had, before making the agreement for the voluntary return of the goods, competent and independent advice as to the legal implications of that agreement.

(7) Nothing in this section shall limit or affect any right that the purchaser has apart from this section to terminate a hire purchase agreement.

Add-to Agreements

25. Successive agreements and agreements financed through variable credit accounts—(1) Where goods have been disposed of under a hire purchase agreement, and, at

any time before the total amount payable under that agreement has been paid the vendor makes a further hire purchase agreement with the purchaser which relates to the whole or part of the goods comprised in the earlier agreement, with or without additional goods, then the vendor shall not, without the leave of the Court, exercise any power of taking possession of goods comprised in either agreement.

(2) Where goods are disposed of under a hire purchase agreement and credit is extended through a variable credit account then, unless that account relates for the time being only to that agreement, the vendor shall not, without the leave of the Court, exercise any power of taking possession of the goods comprised in the agreement.

(3) On hearing any application for the leave of the Court under subsection (1) or subsection (2) of this section, the Court may make such order as it thinks fit, including an order for the specific delivery of some of the goods to the vendor and for the transfer to the purchaser of the vendor's title to the remainder of the goods, and any order under this subsection may be made subject to the fulfilment by the purchaser or a guarantor of such conditions as the Court thinks just.

(4) The Court may postpone the operation of any such order on condition that the purchaser or any guarantor pays the unpaid balance of the total amount payable at such times and in such amounts as the Court, having regard to the means of the purchaser and of any guarantor, thinks just.

(5) Every vendor who acts in contravention of subsection (1) or subsection (2) of this section commits an offence against this Act.

Cf. Hire-Purchase Act 1965, ss. 34, 35, 47 (U.K.)

26. Notice of default to be given to purchaser before goods are repossessed—(1) Subject to subsection (4) of this section, a vendor shall not exercise any power of taking possession of goods comprised in a hire purchase agreement, whether pursuant to the agreement or by virtue of his property in the goods, unless—

- (a) The purchaser is in default under the agreement; and
- (b) The vendor has served on the purchaser a notice in writing in the form set out in the Third Schedule to this Act specifying the default complained of and, if the default is capable of remedy, requiring the

purchaser to remedy the default within a period to be specified in the notice (being a period of not less than 10 days after the service of the notice on the purchaser); and

- (c) The purchaser has failed within the period specified in the notice to remedy the default in so far as it is capable of being remedied.

(2) Where a vendor has served a notice under this section or where a vendor has taken possession of the goods comprised in a hire purchase agreement in contravention of the provisions of this section, the purchaser may apply to a Magistrate's Court for relief; and the Court, having regard to—

- (a) The conduct of the parties; and
(b) The nature of the purchaser's default; and
(c) Such other matters as it thinks proper—

may grant such relief as is reasonable, whether or not the granting of relief involves a variation of the terms of the agreement.

(3) The Court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the Court in the circumstances of each case thinks fit:

Provided that where the Court determines that any application under subsection (2) of this section is vexatious, it shall order—

- (a) That the purchaser pay to the vendor his full costs (including reasonable costs incurred between solicitor and client), fees, and other reasonable expenses incurred in connection with the application; and
(b) That subsection (3) of section 28 and paragraph (b) of subsection (1) of section 29 of this Act shall not apply in respect of the goods.

(4) A vendor shall not be required to comply with subsection (1) of this section if he has reasonable grounds to believe that the goods comprised in the hire purchase agreement have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement; but the onus of proving the existence of those grounds shall lie upon the vendor.

(5) Every vendor who acts in contravention of the provisions of subsection (1) of this section commits an offence against this Act.

(6) Every person who wilfully and forcibly obstructs or resists a vendor or any agent of a vendor who is lawfully

exercising any power of taking possession of goods comprised in a hire purchase agreement commits an offence against this Act.

Cf. Hire-Purchase Act, 1960–1965, s. 13 (1)–(2) (New South Wales)

27. Exercise of right of entry—(1) Where the purchaser confers on the vendor or the agent or servant of the vendor the right to enter any premises, whether for the purpose of taking possession of the goods comprised in the agreement or for any other purpose in connection with those goods, the vendor commits an offence against this Act if the manner or time of the exercise of the right is unreasonable, irrespective of the words used to confer the right.

(2) No prosecution for an offence against subsection (1) of this section shall be commenced except with the leave of the Attorney-General.

Cf. Hire-Purchase Act, 1960–1965, s. 36 (1) (g) (New South Wales)

28. Duties of vendor following repossession—(1) Within 21 days of the vendor having taken possession of goods which were comprised in a hire purchase agreement he shall serve on the purchaser and every guarantor of the purchaser a notice in writing in the form set out in the Fourth Schedule to this Act.

(2) If the notice mentioned in subsection (1) of this section is not served as required by that subsection:

(a) The costs of taking possession of the goods shall be borne by the vendor and he shall not be entitled to recover those costs from the purchaser or the guarantor; and

(b) The purchaser may exercise the rights conferred on him by subsection (1) of section 29 of this Act at any time before the vendor disposes of the goods.

(3) Except as provided in any order made pursuant to the proviso to subsection (3) of section 26 of this Act, where a vendor has taken possession of any goods he shall not, without the consent in writing of the purchaser obtained after the taking of possession of the goods, sell or dispose of the goods or part with possession of the goods (except for the purposes of storage or repair) until after the expiration of 21 days

from the date of service on the purchaser of a notice in the form set out in the Fourth Schedule to this Act or, if notice under paragraph (a) of subsection (1) of section 29 of this Act has been given, until the time of payment or tender pursuant to that notice has expired, whichever is the later.

(4) If the vendor acts in contravention of subsection (3) of this section—

(a) The liability of the purchaser for anything other than the amount financed under the agreement shall be extinguished; and

(b) The vendor shall repay any money already paid to him by any person on account of or in satisfaction of any amount in respect of which liability is extinguished by paragraph (a) of this subsection.

(5) Subject to subsection (3) of this section and to section 30 of this Act, if the purchaser does not exercise the rights conferred on him by subsection (1) of section 29 of this Act or if any person introduced by the purchaser pursuant to paragraph (b) of that subsection does not complete the purchase of the goods, the vendor shall, after the expiration of the period of 21 days mentioned in that section, sell the goods.

(6) Subject to paragraph (b) of subsection (1) of section 29 and to section 31 of this Act, the sale may be by auction or public tender or a private sale but, in any case, the vendor shall ensure that every aspect of the sale, including the manner, time, place, and terms, is commercially reasonable and, in particular, shall use all reasonable efforts to obtain the best price.

(7) Unless the goods are perishable or threaten to decline speedily in value, the vendor shall give the purchaser reasonable notice of—

(a) The time and place of any proposed offering of the goods for sale by public auction, and of the existence and amount of any reserve price:

(b) Any proposed offering of the goods for sale by public tender.

(8) The vendor and the purchaser shall each be entitled to bid at any public auction or, where the goods are offered for sale by public tender, to submit tenders, as the case may require, and if the vendor is the successful bidder or tenderer, the goods shall, for the purposes of this Act, be deemed to have been sold for the amount of his bid or tender.

(9) The onus of proving that the goods have been sold in accordance with this section shall be on the vendor.

Cf. 1939, No. 14, ss. 5, 6 (1); Hire-Purchase Act, 1960–1965, ss. 13 (3), (5), 14 (New South Wales); Uniform Commercial Code, s. 9–504 (3) (U.S.A.)

29. Purchaser's right to reinstate the agreement or to introduce a buyer—(1) Subject to and except as provided in any order made pursuant to the proviso to subsection (3) of section 26 of this Act, the purchaser may, at any time after the vendor has taken possession of the goods but not later than 21 days after the service on the purchaser of the notice mentioned in subsection (1) of section 28 of this Act,—

- (a) Pay or tender to the vendor the amount required to reinstate the agreement, and upon the receipt or tender of that amount and upon the purchaser remedying his defaults in so far as they are capable of being remedied by him the vendor shall forthwith return the goods to the purchaser, and, subject to subsection (3) of this section, the goods shall be received and held by the purchaser pursuant to the terms of the hire purchase agreement as if the breach had not occurred and the vendor had not taken possession thereof; or
 - (b) By giving to the vendor a notice in writing signed by the purchaser or his agent, require the vendor to sell the goods to any person introduced by the purchaser who is prepared to purchase the goods for cash at a price not less than the estimated value of the goods set out in the notice in the form set out in the Fourth Schedule to this Act served upon the purchaser.
- (2) For the purposes of paragraph (a) of subsection (1) of this section the amount required to reinstate the agreement shall be the aggregate of:
- (a) The amount of the unpaid instalments, together with, where credit has been extended through a variable credit account, the amount of any unpaid interest, accrued due for payment according to the tenor of the agreement as at the date of payment or tender; and
 - (b) The reasonable costs and expenses of the vendor of and incidental to his taking possession of, holding,

- repairing, and maintaining the goods and of his returning them to the order of the purchaser; and
- (c) The costs reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy any breach of the agreement by the purchaser.

(3) Where the goods are returned to the purchaser pursuant to paragraph (a) of subsection (1) of this section and any breach of the agreement has not been remedied, the vendor shall not have any right arising out of that breach to take possession of the goods unless—

- (a) By notice in writing served on the purchaser at the time of the return of the goods he specifies the breach and requires it to be remedied; and
- (b) The purchaser fails to remedy the breach within a period to be specified in the notice (being a period of not less than 14 days after the service of the notice on the purchaser).

30. Purchaser's right to settle the agreement—(1) The purchaser shall be entitled, at any time after the vendor has taken possession of the goods but before the vendor sells or agrees to sell the goods pursuant to subsection (5) of section 28 of this Act, to settle his obligations under the agreement by paying to the vendor the amount required to settle the agreement, calculated in accordance with subsection (2) of this section, and upon receipt or tender of that amount the vendor shall forthwith deliver the goods to the purchaser whereupon the rights and obligations of the parties to the agreement shall be satisfied.

(2) For the purposes of this section the amount required to settle the agreement shall be the net balance due (as defined by subsection (3) of section 22 of this Act), including—

- (a) The reasonable costs and expenses of the vendor of and incidental to his taking possession of, holding, storing, repairing, maintaining, valuing, and preparing for the sale of, the goods and of his returning them to the order of the purchaser; and
- (b) The costs reasonably and actually incurred by the vendor in doing any act, matter, or thing necessary to remedy any breach of the agreement by the purchaser.

31. Purchaser's right to compel sale—(1) If the goods have not been sold before the expiration of the period of 3 months that commenced with the date when the vendor took possession of the goods the purchaser may—

- (a) Apply to the Court for an order directing the sale of the goods within such time and in such manner and upon and subject to such terms and conditions as the Court thinks fit; or
- (b) By giving to the vendor a notice in writing signed by the purchaser or his agent, require the vendor to put the goods up for sale by public auction without reserve, within 2 months after the date when the notice is given, in such manner as may be agreed between the vendor and the purchaser and failing agreement in such manner as may be approved by the Registrar of a Magistrate's Court. The vendor and the purchaser shall each be entitled to bid at the auction and the vendor shall give the purchaser reasonable notice of the time and place of sale.

(2) Upon any application under paragraph (a) of subsection (1) of this section the Court may, in its discretion, make such order as it thinks fit.

32. Vendor to give statement of account to purchaser—Where goods are sold pursuant to subsection (5) of section 28 or to section 31 of this Act the vendor shall, within 10 days after the sale of the goods, serve upon the purchaser a statement of account in writing showing—

- (a) The amount of the gross proceeds of the sale;
- (b) The amount of the costs and expenses of and incidental to the sale;
- (c) The amount required to settle the agreement under section 30 of this Act as at the date of the sale;
- (d) The balance owing by the vendor to the purchaser or by the purchaser to the vendor, as the case may be.

33. Purchaser's right to refund—(1) If the net proceeds of the sale of the goods exceeds the amount required to settle the agreement under section 30 of this Act as at the date of the sale, the purchaser shall be entitled to recover the amount of the excess from the vendor.

(2) No amount shall be recoverable by the purchaser under subsection (1) of this section unless proceedings for the recovery of the same are commenced not later than 6 months after the service on the purchaser of the statement of account mentioned in section 32 of this Act.

(3) Nothing in this section shall limit the provisions of section 37 of this Act.

34. Limit upon vendor's right to recover from purchaser— If the net proceeds of the sale do not exceed the amount required to settle the agreement under section 30 of this Act as at the date of the sale, then the vendor shall not be entitled to recover any sum (whether under a judgment or order or otherwise) in excess of the balance left after deducting those proceeds from that amount.

35. Court may vary existing judgments or orders when goods are repossessed— In any legal proceedings in relation to a hire purchase agreement, after the vendor has taken possession of the goods, the Court before which such proceedings are brought may vary or discharge any judgment or order of any Court (whether a Magistrate's Court or not) against the purchaser for recovery of money so far as is necessary to give effect to the provisions of sections 33 and 34 of this Act.

Cf. Hire-Purchase Act, 1960–1965, s. 17 (New South Wales)

Guarantors

36. Provisions as to guarantors—(1) Except as provided in this Act, a guarantor shall not by reason of the operation of this Act be discharged from liability under his guarantee.

(2) The liability of a guarantor shall continue, notwithstanding that the vendor, pursuant to the provisions of a hire purchase agreement, takes possession of the goods comprised therein (and whether or not the goods are redelivered to the purchaser pursuant to this Act), but nothing in this subsection shall operate to preserve the liability of a guarantor where the vendor and the purchaser enter into a new agreement in respect of the goods comprised in any hire purchase agreement.

(3) No guarantor shall be liable to any further or other extent than the purchaser the performance of whose obligations he guarantees, but nothing in this Act shall affect any agreement by the guarantor binding him to the performance

of any obligation which is not one of the obligations imposed on the purchaser under the hire purchase agreement in respect of which the guarantee is given.

(4) Where a vendor takes possession of any goods comprised in a hire purchase agreement any guarantor who has paid any money to the vendor in accordance with his guarantee shall have the like right in like manner to recover that money as he would have had if he were the purchaser of the goods, but for the purpose of calculating the amount received by the vendor all money paid and the value of any other consideration provided by the purchaser shall be deemed to have been paid by the guarantor:

Provided that no money shall be recovered by the guarantor in excess of the money actually paid by him:

Provided also that for the purpose of calculating the aggregate of the amounts which two or more guarantors are entitled to recover under the provisions of this subsection the money paid to the vendor by the guarantors shall be deemed to have been paid by one guarantor.

(5) In subsections (1) and (2) of this section the word "guarantor" includes any person mentioned in paragraph (a) or paragraph (b) of the definition of the term "contract of guarantee" in subsection (1) of section 2 of this Act.

Cf. 1939, No. 14, s. 7

Miscellaneous Provisions

37. Reopening of hire purchase transactions—(1) In any proceedings under this Act or arising out of a hire purchase agreement or instituted under subsection (4) of this section, where it appears to the Court—

- (a) That the interest directly or indirectly charged or included in the amounts payable under the provisions of the agreement is excessive; or
- (b) That the amounts charged for insurance, maintenance, repairs, expenses, inquiries, premiums, renewals, or any other charges are excessive; or
- (c) That the transaction or any term thereof is harsh and unconscionable; or
- (d) That the powers conferred by the agreement or this Act have been exercised in a harsh and unconscionable manner or otherwise than in accordance with the provisions of this Act—

the Court may reopen the transaction and take an account between the parties thereto.

(2) The Court reopening any transaction under this section may, notwithstanding any statement or settlement of accounts or any agreement purporting to close previous dealings and create a new obligation,—

- (a) Reopen any account already taken between the parties; and
- (b) Relieve the purchaser and any guarantor from payment of any sum in excess of such sum in respect of the cash price, the cost of credit, and other charges as the Court, having regard to the risk and all the other circumstances, adjudges to be fairly and reasonably payable; and
- (c) Grant to the purchaser or to any guarantor such relief by way of restitution, compensation, variation of the contract, or otherwise as the Court in its discretion thinks just; and
- (d) Set aside, either wholly or in part, or revise, or alter any agreement made or security given in connection with the transactions; and
- (e) Give judgment for any party for such amount as, having regard to the relief (if any) which the Court thinks fit to grant, is justly due to that party; and
- (f) If it thinks fit give judgment against any party for delivery of all or part of the goods, if they are in his possession; and
- (g) Make such other order as justice requires.

(3) Where it appears to the Court that any person other than the vendor has shared in the profits of or has any beneficial interest, prospectively or otherwise, in a transaction in respect of which the Court may exercise any of its powers under subsection (1) or subsection (2) of this section, the Court may add that person as a party to the case, and may give judgment against that person for such amount as it thinks fit or for the delivery of all or part of the goods if they are in his possession, and the Court may make such other order in respect of that person as it thinks fit.

(4) Proceedings may be instituted in the Court by the purchaser or any guarantor under a hire purchase agreement for the purpose of obtaining relief under this section.

(5) For the purposes of this section the Court—

- (a) Shall have and may exercise any of the powers conferred on it by this section notwithstanding that the time for payment of any of the amounts payable under the agreement may not have arrived:

(b) May receive evidence of commercial practice in hire purchase agreements relating to goods of the same kind or the same value.

(6) A purchaser or guarantor under a hire purchase agreement is not entitled to institute proceedings under this section—

(a) In any case where the vendor has taken possession of the goods comprised in the agreement, after the expiration of a period of 6 months from the time when the vendor serves the statement of account required by section 32 of this Act; or

(b) In any other case, after the expiration of a period of 6 months from the time when the transaction is closed.

Cf. 1939, No. 14, s. 8; Hire-Purchase Act, 1960–1965, s. 32 (New South Wales)

38. Agent of the purchaser—In any proceedings in any Court in relation to a hire purchase agreement it shall be a question of fact whether any person was the agent of the purchaser and the Court shall not be precluded from inquiring into and determining that question by any provision in the agreement or any other document.

Cf. Hire-Purchase Act, 1960–1965, s. 36 (e) (New South Wales)

39. Existence of representations to be a question of fact—In any proceedings it shall be a question of fact whether any representation, statement, or warranty was made or given to the purchaser or prospective purchaser, whether orally or in writing, by the vendor or dealer or any person acting on behalf of the vendor or dealer in connection with or in the course of negotiations leading to the entering into of a hire purchase agreement and whether, if it was made, it constituted a term of the agreement or was relied on by the purchaser. The Court shall not be precluded from inquiring into and determining those questions by any provision in the agreement or in any other document unless the Court considers that in all the circumstances of the case, including the subject-matter and value of the transaction and the respective bargaining strengths of the parties, it is fair and reasonable that the provision should be conclusive between the parties.

40. Insurance—(1) Subject to paragraph (b) of subsection (4) of this section, a vendor may require any goods comprised in a hire purchase agreement to be insured, and at all times during the period of the agreement kept insured, in the names of the vendor and the purchaser against any risk that the vendor thinks fit at the expense of the purchaser.

(2) A vendor may require any risk, required to be insured against pursuant to subsection (1) of this section, to be insured with any independent insurer nominated or specified by the vendor.

(3) In the absence of any requirement under subsection (2) of this section any risk, required to be insured against pursuant to subsection (1) of this section, may be insured with any reputable insurer carrying on business in New Zealand (whether an independent insurer or not), and the purchaser may at any time and from time to time, after giving the vendor particulars in writing of his intention to change insurers, change the insurer with whom the risk is insured.

(4) Every vendor commits an offence against this Act who—

(a) Requires any goods comprised in a hire purchase agreement to be insured or kept insured otherwise than in accordance with subsections (1) and (2) of this section; or

(b) Requires a purchaser to insure, or keep insured, any goods comprised in a hire purchase agreement against risks or subject to terms, conditions, and exceptions that the vendor does not require if he arranges the insurance.

(5) Where in respect of the insurance of goods comprised in a hire purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the purchaser under the agreement is entitled to the benefit of the rebate, and any person who knowingly pays or allows any such rebate to the vendor under the agreement commits an offence against this Act.

(6) Nothing in this section shall limit or restrict the right of the vendor to provide insurance without charge to the purchaser.

(7) For the purposes of this section “independent insurer” means any reputable insurer carrying on business in New Zealand except an insurer which is owned or controlled by

the vendor or the dealer or which is a subsidiary or the holding company or a subsidiary of the holding company of the vendor or the dealer.

Cf. Hire-Purchase Act, 1960–1965, s. 20 (New South Wales)

41. Information to be included in advertisements of goods as available on hire purchase—(1) Where an advertisement of any goods as being available for disposal on hire purchase is published or displayed or issued or broadcast containing an amount, that is expressed to be the deposit payable in respect of those goods, the advertisement shall contain, in respect of those goods, a sum which shall be, and which shall be expressed to be, the cash price of those goods.

(2) Subject to the provisions of this section, any person who publishes or displays or issues an advertisement in contravention of subsection (1) of this section or causes an advertisement to be published or displayed or issued or broadcast in contravention of that subsection, commits an offence against this Act.

(3) It is a defence to a charge under this section if the person charged proves—

(a) That the matters contained in the advertisement did not relate to anything done in the course of a business carried on by him; and

(b) That the matters so contained were not (wholly or in part) devised or selected by him or by any other person under his direction or control.

(4) In this section the word “broadcast” has the same meaning as in the Broadcasting Act 1961.

Cf. Advertisements (Hire-Purchase) Act 1967, ss. 1 (2), 6 (1)–(2) U.K.

42. Repairs—(1) Where a hire purchase agreement includes a term which requires the goods comprised in the agreement to be repaired or maintained only by the vendor or any other person or by a person nominated or approved by the vendor or any other person or which otherwise restricts the right of the purchaser to have the goods repaired or maintained by himself or by the person of his choice, the repair or maintenance of the goods by a person other than a person specified or approved by or pursuant to the agreement shall not constitute a breach of any such term if—

- (a) It is not practicable in the circumstances to have the repairs or maintenance carried out by the person specified or approved by or pursuant to the agreement; or
 - (b) The repairs or maintenance are carried out in a proper and workmanlike manner.
- (2) The repair or maintenance of the goods by a person other than the person specified or approved by or pursuant to the agreement shall in every case, unless the agreement otherwise provides, absolve the vendor from any obligation to repair or maintain the goods at no cost or at a reduced cost to the purchaser.

43. Lien for work done on goods under hire purchase agreement—Where a worker does work upon any goods comprised in a hire purchase agreement in such circumstances that if the goods were the property of the purchaser the worker would be entitled to a lien thereon for the amount or value of the work, he shall be entitled to a lien accordingly notwithstanding that the goods are not the property of the purchaser:

Provided that the lien shall not be valid and enforceable against the vendor if the hire purchase agreement contains a provision prohibiting the creation of a lien by the purchaser and the worker before commencing the work has actual notice of that provision.

Cf. 1939, No. 14, s. 10

44. Fraudulent sale or disposal of goods by purchaser—Every person who, with intent to defraud the vendor, parts with possession of or purports to sell any goods comprised in a hire purchase agreement, or removes or attempts to remove those goods, or does any other act in relation to those goods commits an offence against this Act and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500 or to both.

Cf. 1939, No. 14, s. 11

45. Power of Court to extend times—Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of any proceedings may, on an application made to the Court (either before or after the expiration of that time but after notice to the

other party to the hire purchase agreement) be extended by that Court for such further period, and upon such conditions, as the Court thinks fit.

Cf. Hire-Purchase Act, 1960–1965, s. 46 (New South Wales)

46. Service of notices—(1) Any notice or other document required or authorised by this Act to be served on or given to any person shall be in writing and shall be sufficiently served or given if it is delivered to that person or if it is left at his usual or last known place of abode or business or at an address specified for that purpose in the hire purchase agreement, or if it is posted in a letter addressed to him by name at that place of abode or business or address.

(2) If the person is absent from New Zealand, the notice or other document may be served on or given to his agent in New Zealand. If the person is deceased, it may be served on or given to his personal representatives.

(3) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document shall be served or given in such manner as may be directed by an order of the Court.

(4) If any such notice or other document is sent to any person by registered letter it shall be deemed to have been delivered to him on the fourth day after the day on which it was posted, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

(5) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof.

(6) This section does not apply to notices or other documents served or given in any proceedings in any Court.

Cf. 1939, No. 14, s. 12; 1940, No. 18, s. 13

47. Jurisdiction of Magistrates' Courts—A Magistrate's Court shall have jurisdiction to exercise any of the powers conferred by any of the provisions of this Act in any case where—

(a) The occasion for the exercise of the power arises in the course of any civil proceedings properly before the Court; or

- (b) The cash price of the goods comprised in the hire purchase agreement is not more than \$3,000; or
- (c) The parties agree, in accordance with section 37 of the Magistrates' Courts Act 1947, that a Magistrate's Court shall have jurisdiction to hear and determine the application.

48. General penalty—Every person who commits an offence against this Act for which no penalty is provided elsewhere than by this section is liable to a fine not exceeding \$500.

49. Offences to be punishable on summary conviction—
(1) Every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulation made under this Act may be laid at any time within 2 years after the time when the matter of the information arose.

50. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Approving or prescribing for the purposes of section 8 of this Act tables or methods which may be used for the calculation of the percentage or the effective annual rate required by that section to be shown:
- (b) Prescribing forms for the purposes of this Act:
- (c) Prescribing or approving standard forms of hire purchase agreements, whether generally or in relation to a specified class or classes of chattels or in relation to chattels of a specified or defined value:
- (d) Securing that hire purchase agreements, forms, notices, and other documents and copies of hire purchase agreements supplied pursuant to this Act are easily legible:
- (e) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amount of the fines which may be imposed in respect of such offences, which fines shall be an amount not exceeding \$200:
- (f) Prescribing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

(2) Any regulations made under paragraph (d) of subsection (1) of this section—

- (a) May include requirements with regard to the type, size, colour or disposition of lettering, quality or colour of paper, which may be used for hire purchase agreements, forms, notices, and other documents; and
- (b) May specify which parts of the contents of hire purchase agreements, forms, notices, and other documents are permitted to consist of handwriting or a reproduction of handwriting, and may prescribe different requirements in relation to so much of the contents of a hire purchase agreement, form, notice, or other document as is permitted to consist, and consists, of handwriting and in relation to the remainder of the contents of a hire purchase agreement, form, notice, or other document; and
- (c) May except from any of the requirements of the regulation any marginal notes or other subsidiary parts of a hire purchase agreement, form, notice, or other document.

Cf. Hire-Purchase Act 1965, s. 32 (U.K.)

51. No contracting out—(1) The provisions of this Act shall have effect notwithstanding any provision to the contrary in any agreement.

(2) Section 56 of the Sale of Goods Act 1908 shall be read subject to the provisions of this section.

Cf. 1939, No. 14, s. 13

52. Application of law relating to illegal contracts—The fact that a contract has been entered into in contravention of any of the provisions of this Act or that an act which contravenes any of the provisions of this Act has been committed in the course of the performance of any contract shall not—

- (a) Make that contract illegal; or
- (b) Except as expressly provided in this Act, make that contract or any provision of that contract unenforceable or of no effect.

53. Savings—The making of an Order in Council pursuant to any of the following provisions of this Act, namely,—

- (a) Subsection (2) of section 7;

(b) Subsection (2) of section 8; or
(c) Paragraph (c) of subsection (1) of section 12; or
(d) Subsection (4) of section 22; or
(e) Paragraph (b) of subsection (5) of section 23,—
shall not affect any hire purchase agreement made before any such Order in Council comes into force.

54. Consequential amendments—(1) The Insolvency Act 1967 is hereby amended by repealing section 91, and substituting the following section:

“91. Goods on hire purchase—(1) In this section the terms “cash price”, “goods”, “hire purchase agreement”, “purchaser”, “total amount payable”, and “vendor” have the meanings specified in subsection (1) of section 2 of the Hire Purchase Act 1971.

“(2) Where the purchaser of any goods comprised in a hire purchase agreement is adjudged bankrupt, the vendor, if he has taken possession of the goods within 21 days before the adjudication and he has not before the adjudication sold or disposed of the goods or if he takes possession of the goods after the adjudication, shall not, without the consent in writing of the Assignee, sell or dispose of the goods or part with possession of the goods (except for the purposes of storage or repair) until after the expiration of 1 month from the date on which the vendor serves on the Assignee the notice required to be served on purchasers under subsection (1) of section 28 of the Hire Purchase Act 1971.

“(3) Notwithstanding anything in the Hire Purchase Act 1971, the Assignee may—

“(a) At any time within 1 month from the date of the service on him of the notice mentioned in subsection (2) of this section, exercise the right to introduce a buyer conferred by paragraph (b) of subsection (1) of section 29 of that Act; or

“(b) At any time before the vendor sells or agrees to sell the goods pursuant to subsection (5) of section 28 of that Act, settle the obligations of the purchaser in accordance with section 30 of that Act.

“(4) If a vendor has, either before or after the adjudication of the purchaser, taken possession of any goods comprised in a hire purchase agreement and the Assignee has not exercised, in relation to the goods, the powers conferred on him by subsection (3) of this section, the vendor may prove in the bankruptcy for the amount which (having regard to the

provisions of section 34 of the Hire Purchase Act 1971) he might have recovered from the purchaser, and in any such event he shall lodge with his proof of debt the notice mentioned in subsection (1) of section 28 and the statement of account mentioned in section 32 of the Hire Purchase Act 1971 and the Assignee shall have the rights conferred on purchasers by sections 28 to 35 and 37 of the Hire Purchase Act 1971.

“(5) If at the time of the adjudication of the purchaser of any goods comprised in a hire purchase agreement the vendor has not taken possession of the goods, or has taken possession thereof and not sold or disposed of or parted with possession of them, the vendor may assign the goods to the Assignee, and in that event the vendor shall be entitled to prove for the net balance due to him under the agreement.”

(2) The Chattels Transfer Amendment Act 1931 is hereby amended by repealing section 3.

55. Repeals and application—(1) The following enactments are hereby repealed, namely—

(a) The Hire Purchase Agreements Act 1939:

(b) Section 13 of the Statutes Amendment Act 1940.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1) of this section, those enactments continue to apply to and in relation to hire purchase agreements entered into before the commencement of this Act.

(3) This Act shall not apply to or in relation to hire purchase agreements entered into before the commencement of this Act.

SCHEDULES

Sections 6 (1) (c), 8

FIRST SCHEDULE

PART I

FINANCIAL DETAILS TO BE SHOWN ON THE FIRST PAGE OF EVERY HIRE PURCHASE AGREEMENT

Cash price	.....	.....	\$.....
Charges (common to cash or terms transactions)—				
(a) Freight	.....	.....	\$.....
(b) Installation	.....	.....	\$.....
(c) Statutory fees	.....	.....	\$.....
(d) Optional insurance	.....	.....	\$.....
(e) Other charges (specify)	.....	.....	\$.....
Total Gross Cost	.....	.....		\$..... (A)
Less deposit—				
(a) Cash	.....	.....	\$.....
(b) Trade-in allowance	.....	.....	\$.....
				\$..... (B)
Amount Financed, (A) — (B):				\$..... (C)
<i>[Where credit is not extended through a variable credit account, insert the following details:]</i>				
Charges (pertaining solely to terms transactions)—				
(a) Finance charge for	.....	.....
months	.....	.....	\$.....
(b) Booking fee	.....	.....	\$.....
(c) Insurance required by the vendor	.....	.....	\$.....
(d) Maintenance and repairs	.....	.....	\$.....
(e) Other charges (specify)	.....	.....	\$.....
				\$..... (D)
*Total Cost of Credit, (D), represents a charge on (C) calculated on the reducing balance and expressed as a percentage per annum as%				
Balance Payable: (C) + (D):	.....	.....		\$..... (E)
Total Cost of Transaction, (A) + (D):	.....	.....		\$..... (F)
Additional Cost Over Cash Transaction (D)	.....	.....		\$..... (D)
<i>[Where credit is extended through a variable credit account, insert the following details:]</i>				
Charges (pertaining solely to terms transactions)—				
(a) Booking fee	.....	.....	\$.....
(b) Insurance required by the vendor	.....	.....	\$.....
(c) Maintenance and repairs	.....	.....	\$.....
(d) Other charges (specify)	.....	.....	\$.....
				\$..... (D)

FIRST SCHEDULE—*continued*

Balance Payable: (C) + (D):	\$..... (E)
*The Balance Payable is being debited to a variable credit account and a further cost will be the interest periodically payable at the rate of% per in respect of the balances outstanding in that account.	
This rate of interest equals an effective rate of% per annum.	

*This item to be shown, where applicable, after section 8 of the Hire Purchase Act 1971 comes into force.

PART II

Section 6 (1) (d)

ADVICE TO PURCHASERS

UNDER the provisions of the Hire Purchase Act 1971—

- (a) The vendor must supply you with a copy of this agreement free of charge:
- (b) In addition to the free copy you are entitled to a copy of the agreement and a statement of the amount that you owe if you make a written request to the vendor for them and pay him the sum of 50 cents. You may not request a copy or a statement more than once every 3 months:
- (c) With the written consent of the vendor you can assign your rights under the hire purchase agreement and he may not unreasonably refuse his consent. For details of the procedure of assignment see Hire Purchase Act 1971, sections 20 and 21:
- (d) You have the right to complete the agreement at any time and if you do you will be entitled to a rebate of some of the charges payable under the agreement. For details see Hire Purchase Act 1971, section 22 (3).

NOTE

(1) You should make all payments promptly. If you get behind with your payments, or think you are likely to do so, you should ask the vendor if he will give you further time in which to pay.

(2) If you think that the vendor is being unreasonable or harsh in any way, you should see a solicitor immediately.

SECOND SCHEDULE

Section 7 (1) (c)

INFORMATION TO BE SHOWN ON A SALES DOCKET

- (1) The full name and address of the vendor.
- (2) The name and address of the purchaser.
- (3) A description of the goods.
- (4) The cash price of the goods.
- (5) The total amount payable by the purchaser.
- (6) The amount of any deposit paid by the purchaser, including the amount of any trade-in allowance.
- (7) The balance payable by the purchaser.

SECOND SCHEDULE—continued

(8) The manner in which that balance is to be paid including where applicable—

- (a) The term or the maximum term over which it is to be paid:
- (b) The number or the minimum number of instalments:
- (c) The amount or the minimum amount of each of those instalments:
- (d) The date, or the mode of determining the date, on which each such instalment is payable:
- (e) Full details of the method by which periodic balances are calculated on any variable credit account and of the method by which interest is calculated on those balances.

NOTE—This docket may set out the percentage or the effective annual rate in accordance with section 8 of the Act. The docket may contain also particulars relating to the delivery, installation, and insurance of the goods. These are the only additional matters, apart from matters such as signatures, dates, cheque numbers, accounting headings and subdivisions, and computer codes, to which the docket may relate.

The docket shall be a separate document and it shall not be annexed to or form part of any other document.

Section 26 (1) (b)

THIRD SCHEDULE

HIRE PURCHASE ACT 1971

Notice of default and intention to repossess

To [Insert name and address of purchaser].

TAKE NOTICE that you are in default under your hire purchase agreement with [Insert Full Name of Vendor] which is dated the day of 19..... and which relates to [Insert description of goods].

Your defaults consist of:

[Specify the defaults complained of]

YOU ARE REQUIRED, within * days after the service of this notice on you,—

- (a) To pay the arrears of instalments which now amount to \$....., made up as follows: [There shall be inserted a statement showing how the arrears are made up]; and
- (b) To remedy other breaches of the agreement by [There shall follow a statement of the actions which the purchaser must take to remedy breaches of the agreement in so far as they are capable of being remedied.]

AND IF YOU FAIL to comply with these requirements, within * days after the service of this notice on you, [Insert Full Name of Vendor] INTENDS TO REPOSSESS THE GOODS.

Dated this day of 19.....

[Vendor's signature]

This notice is given by [Insert full name and address of vendor], as vendor under the hire purchase agreement.

*Insert number of days not being less than 10.

FOURTH SCHEDULE

Sections 28 (1), (3), 29 (1)

HIRE PURCHASE ACT 1971

ADVICE to Purchasers

Now that the goods you hired have been repossessed you will be entitled to get them back—

*(a) If, within 21 days, you reinstate the agreement by paying the arrears and remedy the following breaches of the agreement (or pay the vendor's expenses in remedying them)—

[Insert particulars]

The vendor's estimate of the amount you must pay to reinstate the agreement is—

Arrears of instalments (and interest [<i>Where credit is extended through a variable credit account</i>])	.....	\$.....
Costs of storage, repairs, or maintenance	.....	\$.....
Costs of repossession	.....	\$.....
Costs of remedying breaches of agreement	.....	\$.....
Cost of re-delivery	.....	\$.....
Total	.....	\$.....

OR

(b) If you settle the agreement.

The vendor's estimate of the amount required to settle the agreement is—

Total amount payable under the agreement	.....	\$.....
Less deposit and instalments paid	.....	\$.....
Balance due under agreement	.....	\$.....
Less statutory rebates	.....	\$.....
(Add interest [<i>Where credit is extended through a variable credit account</i>])	.....	\$.....)
Add costs of repossession	.....	\$.....
Add costs of storage, repairs, or maintenance	.....	\$.....
Add costs of remedying breaches of agreement	.....	\$.....
Add costs of re-delivery	.....	\$.....
Total	.....	\$.....

IF YOU DON'T (*REINSTATE OR) SETTLE THE AGREEMENT the vendor is required to sell the goods and you will be liable for the vendor's loss unless the net proceeds of the sale of the goods is sufficient to cover your liability. If the net proceeds of the sale of the goods is more than sufficient to cover your liability you will be entitled to a refund.

The vendor's estimate of the value of the goods repossessed is



Summary of Your Rights

*1. You may, within 21 days, reinstate the agreement or introduce a cash buyer who will pay not less than the vendor's estimate of the value of the goods, i.e., † Within that period of 21 days the vendor may not dispose of the goods without your written consent.

2. You may, at any time before the vendor sells or agrees to sell the goods, settle the agreement.

3. The vendor is not obliged to sell the goods by public auction or public tender but if he proposes to do so you are, unless the goods are perishable or threaten to decline speedily in value, entitled to receive reasonable notice of—

(a) The time and place of any proposed offering of the goods for sale by public auction, and of the existence and amount of any reserve price:

(b) Any proposed offering of the goods for sale by public tender.

4. At any offering of the goods for sale by public auction or public tender you are entitled to bid or tender for them, as the case may require.

5. If the vendor does not sell the goods within 3 months after the date when he took possession of the goods you may—

(a) Apply to the Court for an order directing the sale of the goods; or

(b) By giving him a notice as required by paragraph (b) of subsection (1) of section 31 of the Hire Purchase Act 1971, compel him to put them up for sale by public auction without reserve.

6. Within 10 days after the sale of the goods, whether by auction or otherwise, the vendor is required to give you a statement of account which will show whether you are entitled to a refund or whether you are still indebted to the vendor in respect of the transaction.

7. If you are entitled to a refund and the vendor does not pay it to you you must, if you wish to recover it, sue the vendor within 6 months after you are given the statement of account.

8. Until the expiration of that same period of 6 months you have the right to apply to the Court, in accordance with section 37 of the Hire Purchase Act 1971, to have the whole transaction re-opened.

DO NOT DELAY

Action to enforce your rights should be taken at once. (*TWENTY-ONE DAYS after the service of this notice, you will, if you do not take action, lose the right to reinstate the agreement and the right to introduce a buyer willing to pay not less than the vendor's estimate of the value of the goods.)

If you are in doubt about what you should do, you should seek advice at once.

NOTE—Where this notice is sent to a guarantor it shall be endorsed as follows—

This notice is sent to you as guarantor of

As guarantor you have certain rights under the *Hire Purchase Act 1971*, and you should seek advice at once.

*Delete if the Court has ordered that these rights are not to apply.

†Insert vendor's estimate of value.

This Act is administered in the Department of Justice.