

THE HIRE-PURCHASE ORDER 1980

Until 11th April 1968, when the Hire-Purchase Act 1967 came into force, Malaysia did not have any local legislation which regulated this important branch of consumer credit.¹ In the cases dealing with agreements executed before that date the Malaysian courts readily applied the English common law, as they were entitled to do so, under section 3 of the Civil Law Ordinance 1956 (now the Civil Law Act 1956 (Revised 1972)). There were attempts in two cases² to argue that English legislation on hire-purchase applied in Malaysia by virtue of section 5 of the Civil Law Ordinance 1956. The facts of both cases did not require the court to make a ruling on this point and the arguments received no favourable response. In one of the cases, *Thambipillai v. Borneo Motors*,³ Gill F.J. (as he was then) said,

"The common law rules relating to hire-purchase agreements do apply here by virtue of the Civil Law Ordinance 1956 but I have grave doubts as to whether the English statutes modifying the common law automatically apply."

By 1966 hire-purchase trading in Malaysia had become a multi-million dollar business and in June of that year the Malaysian Minister of Commerce and Industry introduced a Hire-Purchase Bill in the Dewan Rakyat. At the same time the Minister invited the public and other interested parties to forward their views on the provisions of the Bill. Numerous representations were received and as a result the Bill was withdrawn for review by its drafting committee.⁴ A revised Bill was re-introduced in March

¹ It is pertinent to refer to the [Sarawak] Hire-Purchase Registration Ordinance (Cap 71) which came into existence before the Hire-Purchase Act 1967. This Ordinance provides that an instrument of hire-purchase shall not be valid unless it is registered in the manner prescribed by the Ordinance.

² See *Innaya v. Lombard Acceptance (Malaya) Ltd.* [1963] M.L.J. 30 and *Thambipillai v. Borneo Motors* [1970] 1 M.L.J. 70

³ [1970] 1 M.L.J. 70.

⁴ Proceedings of the Dewan Rakyat March 1, 1967, p. 5966.

1967 and this became the the Hire-Purchase Act 1967.

The bulk of the Act was borrowed from the Hire-Purchase Act 1960-65 of the Australian State of New South Wales but a number of significant innovations were incorporated into the Malaysian statute.

THE FIRST SCHEDULE OF THE MALAYSIAN ACT

Perhaps the most significant of the differences was found in section 1(2) which restricted the operation of the Malaysian Act to four categories of goods specified in the First Schedule, namely -

- (a) Motor vehicles within the meaning of the law in force relating to road traffic
- (b) Radio sets, television sets, gramophone sets, tape-recorders any combination thereof
- (c) Refrigerators and deepfreeze food preservers and any combination thereof
- (d) Sewing machines.

The New South Wales Act imposed no restriction whatsoever on its application. The hire-purchase of all categories of goods regardless of their value was governed by the Australian statute. The then current *English* statute, the Hire-Purchase Act, 1965 imposed a different kind of restriction, namely a monetary limit of £2000. In the Dewan Rakyat the Minister of Commerce and Industry explained the reason for limiting the application of the Malaysian Act as follows:

[W]hy is this Hire-Purchase Bill only limited to the articles mentioned in the First Schedule? Sir, the reason is that we have still not yet have sufficient experience in the running of this Bill, hence we have only included a limited number of articles and with greater experience and with the greater need for extension of this Bill, there is sufficient power bestowed in section 1, where I can add to that list without having to come to this Parliament.⁵

As a result of this restriction, the hire-purchase of a fairly large number of consumer items like furniture, musical instruments, washing machines, air-conditioners, cash-registers and encyclopaedia fell outside the Malaysian Act.

⁵*Ibid.*

Amendments and additions (none of which involved the Schedule) were made to the principal Act in 1968, 1969 and 1976. In 1978 the Act was revised and re-enacted as the Hire-Purchase Act 1967 (Revised — 1978) with all the amendments and additions incorporated into it. However the contents of the First Schedule remained unchanged until August 1980.

THE HIRE-PURCHASE ORDER 1980

The relevant parts of this order (made by virtue of the power given to the Minister of Trade and Industry under section 1(3) of the Hire Purchase Act 1967 (Revised 1978)) which came into force on 1st August 1980 reads as follows:

The First Schedule to the Hire-Purchase Act 1967, is amended by substituting the following for the list of goods appearing therein:

- “1. Motor vehicles, namely —
 - a) Invalid carriages;
 - b) Motor Cycles;
 - c) Motor Cars including taxi cabs and hire cars;
 - d) Goods vehicles (where the maximum permissible laden weight does not exceed 50 cwts);
 - e) Buses, other than stage buses.
2. Radio sets, television sets, tape-recorders, and any combination thereof;
3. Refrigerators and deepfreeze food preservers, and any combination thereof;
4. Sewing machines other than those used for industrial purposes;
5. Washing machines;
6. Vacuum cleaners;
7. Air-conditioning units other than those used for industrial purposes; and
8. Electric or gas, cookers and ovens.”

The first point to note is that the Order does not merely add new goods to the old list. The contents of the First Schedule as it stood before 1st August 1980 have been substituted with a new list of goods. The new list not only adds new goods to the old but also makes substantial changes to the description of some of the categories of goods mentioned in the old list.

The category “motor vehicle” has undergone a significant

change. The old list spoke of "motor vehicles within the meaning of the law in force relating to road traffic." Thus it was possible to argue that even a tractor was within the list. The 1977 case of *Khoo Thau Sai v. United Engineers (M) Sdn. Bhd.*⁶ in fact proceeded both in the High Court and the Federal Court on the assumption that the Act applied to the hire-purchase of a tractor. The new list restricts the types of motor vehicles and sewing machines that come under the umbrella of protection offered by the Act. Tractors, heavy goods vehicles, and stage buses and industrial sewing machines now fall outside the Schedule. One can only guess at the reason for these changes. The reason, probably, is the view that the items excluded are not consumer goods and are not purchased by the ordinary man in the street, the person whom the Act is anxious to protect. However it must be pointed out that there may well be some sole entrepreneurs and many small partnerships who need heavy lorries, tractors and industrial sewing machines for their business purposes. Large business concerns are certainly not the only persons who enter into agreements for the hire-purchase of these items. It is interesting to note that the Consumer Credit Act 1974 of England affords its protection to partnerships and unincorporated associations if the amount of credit provided does not exceed £5,000.

The consumer advocate would be pleased to note that four new items have been added to the list, namely (a) washing machines (b) vacuum cleaners (c) air-conditioning units other than those used for industrial purposes and (d) electric or gas, cookers and ovens. These additions are welcome and are a boon to the consumer. However, many other consumer items like encyclopaedia, furniture, typewriters and musical instruments equally deserve a place in the Schedule. Furniture for instance is a common item acquired by hire-purchase in Malaysia. It is probable that more furniture sets and typewriters are acquired by hire-purchase than air-conditioners.

All this begs the question, "Do we need the First Schedule?" It is submitted that the time has come for the removal of the Schedule. As was pointed out earlier the New South Wales

⁶[1977] 2 M.L.J. 204

legislation which Malaysia adopted did not restrict itself to any particular category of goods. If the intention is to restrict the application of the statute to hire-purchase agreements relating to consumer transactions and leave large business concerns to look after their own interests, by themselves or by their legal advisers, then we should perhaps follow the scheme adopted in England. The Consumer Credit Act 1974 of England with its protective armour for the consumer regulates consumer credit agreements and consumer hire agreements. The definition of a consumer credit agreement is to be found in section 8(2) which is meaningful only if read together with section 8(1). Section 8 reads as follows:

"8(1) A personal credit agreement is an agreement between an individual ('the debtor') and any other person ('the creditor') by which the creditor provides the debtor with credit of any amount.

(2) A consumer credit agreement is a personal credit agreement by which the creditor provides the debtor with credit not exceeding £5,000.

The Act treats partnerships and other unincorporated associations as "individuals" but corporate bodies are outside the definition. It is suggested that consumer protection would be better served if Malaysia follows a similar scheme, that is a scheme covering all goods but subject to a monetary limit.

The presence of the Schedule in the Act raises another issue. What law applies to the hire-purchase of goods outside the list? Is the law applicable the English common law or English legislation imported by virtue of section 5 of the Civil Law Act 1956?⁷ One cannot argue that because we have a local statute on hire-purchase section 5 has no application. This, needless to say, is because the Act does not apply to goods that fall outside the First Schedule.⁸

Section 5(1) of the Civil Law Act 1956 applies to all Malaysian states except Penang, Malacca, Sabah and Sarawak. Briefly

⁷The subject of reception of English Commercial Law in Malaysia under the Civil Law Ordinance 1956 has been set out by Professor G.W. Bartholomew in his admirable book *The Commercial Law of Malaysia* (1965) (*Malayan Law Journal*).

⁸When the [Singapore] Hire-Purchase Act 1969 (which like its Malaysian counterpart has a schedule restricting its operation to a list of goods) was enacted it was

it provides that in all commercial matters, "the law to be administered shall be the same as would be administered in England in the like case *at the date of coming into force of this Act*⁹ [7th April 1956]¹⁰ if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law". The statute on hire-purchase in force in England on 7th April 1956 was the Hire-Purchase Act 1938 which regulated agreements where the hire-purchase price did not exceed £300 (£1000 in the case of live-stock). Even if a Malaysian court were to hold sometime in the future that the 1938 Act could be imported under section 5(1) the scope for its application is limited because of the monetary limit of £300 (about \$1500). Thus the common law will govern most of the hire-purchase agreements of goods falling outside the Schedule in the states to which section 5(1) applies.

Section 5(2) deals with the application of English Law in commercial matters in Penang, Malacca, Sabah dan Sarawak. The law applicable is "the law to be administered in England in the like case *at the corresponding period*,⁹ if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law." There appears to be an implied requirement both under section 5(1) and section 5(2) that the law to be imported must be suitable for local circumstances.^{10a} The statutes which regulate hire-purchase in England today are the Consumer Credit Act 1974 and the unrepealed provisions (Part III) of the Hire-Purchase Act 1964. The Consumer Credit Act (which contains the bulk of the statutory law on hire-purchase) creates a new

found necessary to add in section 1(5) the following provision:

"It is hereby declared that for the removal of doubts that nothing in sub-section (1) of section 5 of the Civil Law Ordinance shall be taken to introduce into Singapore any part of the statutory law of England relating to hire-purchase whether or not the goods in question are goods specified in the First Schedule to this Act."

⁹ My italics.

¹⁰ It is to be noted that the revised Act (Act 67) states the date for its coming into force as 1st April 1972. It is submitted that this does affect the date for reception of English Law under section 5(1) for West Malaysia because of the insertion of the date, 7th April 1956, next to the long title.

^{10a} See Bartholomew *op. cit.* n. 7 pp 22-26.

system of licensing and enforcement by the Director General of Fair Trading. Its very domestic nature makes it an unlikely statute for importation under section 5(2).¹¹ Again the right of the common law to regulate the hire-purchase of goods falling outside the Schedule in Penang, Malacca, Sabah dan Sarawak seems unchallengeable.

In the past thirty years the popularity of hire-purchase as a means of obtaining credit has increased by leaps and bounds. Its present importance in the economic and social life of this country can scarcely be overestimated. This note will end with the hope that we shall see the repeal of the First Schedule in the near future. The common law is ill-equipped to provide effective protection for the hirer. Malaysia has in the past shown ample evidence of its concern for providing effective means of hirer-protection. Its legislative record, in particular the Hire-Purchase (Amendment) Act 1976¹² and the Hire-Purchase (Recovery of Possession and Maintenance of Records) Regulations 1977¹³ bears testimony for its concern. The 1976 Amendment Act created the Office of Controller of Hire-Purchase with extensive powers¹⁴ to check abuses in the hire-purchase trade. The Controller and his staff must by now have acquired sufficient experience and expertise to handle the problems that may arise if the protection of the statute were to be extended to the hire-purchase of all types of goods.

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¹¹ See Bartholomew *op. cit.* n. 7, pp. 22–26 and Lee Chin Yen *The Law of Consumer Credit* (1980) (Singapore University Press), pp. 20–21.

¹² The amendments and additions of this Act are now incorporated in the Hire-Purchase Act 1967 (Revised 1978). Noted in [1975] J.M.C.L. 350.

¹³ Noted in [1977] J.M.C.L. 158

¹⁴ See section 49–56 of the Hire-Purchase Act 1967 (Revised 1978).

LEGISLATION

The following list of Acts passed in Malaysia is a continuation of the list of Federal Acts contained in Vol. 7, Part 1 (1980) J.M.C.L.

FEDERAL ACTS PASSED

<i>Bil. Akta Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
228	Akta Penghitungan Semula Pencen, 1980. Pensions Re-computation Act, 1980.
229	Akta Dagangan Komoditi, 1980. Commodities Trading Act, 1980.
230	Akta Kumpulanwang Bekalan Air Negeri (Tata- cara Kewangan dan Perakaunan), 1980. State Water Supply Fund (Financial and Accounting Procedure) Act, 1981.
231	Akta Lembaga Lebuhraya Malaysia (Perbadan- an), 1980. Highway Authority Malaysia (Incorporation) Act, 1980.
237	Akta Ahli Parlimen Pencen, 1980. Members of Parliament (Remuneration) Act, 1980.
238	Akta Penyelarasan Pencen, 1980. Pensions Adjustment Act, 1980.
239	Akta Pencen Pihak-Pihak Berkuasa Berkanun dan Tempatan, 1980. Statutory and Local Authorities Pensions Act, 1980.
240	Akta Badan Berkanun (Akaun dan Laporan Tahunan), 1980. Statutory Bodies (Accounts and Annual Re- ports) Act, 1980.