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Between Contractual Freedom and Consumer Protection: Minimum Payment Clauses and the Repossession of Hire-Purchase Goods in Nigeria

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Abstract
Hire-purchase occupies an unusual position in commercial law because it separates possession, periodic payment and legal title, creating recurring tension between contractual freedom and consumer protection. This article examines the interaction between minimum payment clauses and repossession, asking when an owner who retains title, has received substantial instalments and ultimately recovers the goods may legitimately impose further monetary liability on the hirer. Using doctrinal legal research and a functional comparative methodology, it analyses the Nigerian Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, Nigerian judicial authority and the Federal Competition and Consumer Protection Act 2018, and compares selected rules in the United Kingdom and Australia governing termination, protected goods, repossession and post-repossession accounting. The analysis finds that Nigerian law has moved significantly away from unrestricted proprietary self-help, but its statutory architecture remains incomplete, particularly in relation to valuation, disposal, accounting for recovered value and functionally equivalent consumer asset-finance arrangements. The article advances compensatory proportionality as an organising principle: the owner should be protected against depreciation, damage, reasonable recovery costs and premature termination, but the cumulative effect of retained instalments, repossession and additional monetary claims should not exceed the owner's legitimate commercial interest without adequate justification. It concludes that Nigeria should modernise its hire-purchase framework through transparent post-repossession accounting, commercially reasonable valuation and disposal, digital disclosure requirements and expedited judicial recovery procedures, thereby making the owner whole without making the owner better than whole.

Keywords: Hire-Purchase; Minimum Payment Clause; Repossession; Penalty; Consumer Protection; Contractual Freedom; Compensatory Proportionality; Nigeria.

1. Introduction

The history of hire-purchase law is, in an important sense, the history of the law's attempt to reconcile two propositions which are individually defensible but potentially troublesome when brought together. The first is that persons who voluntarily enter commercial agreements should ordinarily be held to their bargains. The second is that contractual form should not become an instrument through which one party obtains a recovery substantially exceeding the legitimate interest the agreement was designed to protect. Hire-purchase brings that tension into particularly sharp relief because possession, payment and ownership are deliberately separated. The hirer receives and uses the goods and makes periodic payments, while legal title ordinarily remains with the owner until the agreed conditions for transfer are completed. The arrangement supplies valuable credit and proprietary security, but it can also produce severe consequences when the relationship ends before completion.

Two consequences expose the imbalance most clearly. The first is the minimum payment clause, traditionally designed to ensure that an owner is not left inadequately compensated where the hirer determines the hiring before the contemplated period expires. The second is repossession, historically justified by the owner's continuing proprietary title. The original class paper correctly identified these as the two recurring controversies within hire-purchase law, but a journal treatment requires the doctrines to be analysed together rather than as parallel topics. The deeper question is not merely whether a minimum payment clause is a penalty or whether repossession is lawful. It is what the owner is legitimately entitled to retain or recover after payments already received and the economic value of recovered goods are taken into account.

The Nigerian Hire-Purchase Act provides the doctrinal centre of that inquiry. Section 8 confers a statutory right of termination on the hirer and ordinarily measures the resulting minimum liability against one-half of the hire-purchase price.[1] Section 9 restricts recovery of goods once the statutory relevant proportion has been paid or tendered. Contrary to the one-third formulation sometimes repeated in classroom accounts,[2] section 9(4) defines the relevant proportion as one-half for goods other than motor vehicles and three-fifths for motor vehicles. [3] Section 10 then gives the court supervisory powers in proceedings for recovery of protected goods. [4] These provisions show that Nigerian law does not regard retained title as the end of the inquiry. As the hirer's economic stake grows, the mode and consequences of enforcement become progressively regulated.

The article advances the concept of compensatory proportionality. The owner may legitimately require protection against depreciation, unpaid instalments, damage, reasonable recovery expenses and the commercial consequences of premature termination. Yet repossessed property retains value, and instalments already received do not vanish upon termination. A legal regime which calculates loss while ignoring value already restored risks converting compensation into overcompensation. The proposition developed here is therefore modest but important: where multiple remedies arise from the same hire-purchase transaction, their cumulative economic effect should bear a reasonable relationship to the owner's legitimate commercial interest.

Methodologically, the article adopts a doctrinal and functional comparative approach. It analyses the Nigerian Hire-Purchase Act and the Federal Competition and Consumer Protection Act alongside relevant judicial authorities, and then compares the Nigerian position with selected rules governing termination, protected goods, repossession and post-repossession accounting in the United Kingdom and Australia. The comparison is problem-centred rather than jurisdiction-counting: each system is examined against the same questions of contractual termination, proprietary recovery, consumer investment, valuation of recovered goods, residual indebtedness and judicial or statutory control. The purpose is not to transplant foreign rules mechanically into Nigerian law, but to identify regulatory techniques capable of strengthening the existing Nigerian statutory architecture while preserving legitimate commercial compensation.

2. Conceptual Foundations of Hire-Purchase, Minimum Payment Clauses and Repossession

Hire-purchase is not simply a sale whose price happens to be paid by instalments. Its orthodox legal architecture postpones the transfer of property. The hirer obtains possession and use, while the owner retains title until the conditions for acquisition are fulfilled and the option to purchase is exercised. The classical English decision in *Helby v Matthews* illustrates this proprietary starting point: the hirer under a genuine hire-purchase arrangement possesses an option to purchase rather than an immediate obligation to buy, and title remains with the owner until the relevant conditions are satisfied.[5] The distinction explains why repossession historically followed from ownership, while minimum payment provisions developed to protect an economic interest that title alone might not fully secure.

A minimum payment clause may be described as a provision fixing the minimum aggregate financial liability of the hirer when the agreement comes to an end before the contemplated completion date. Its commercial rationale is intelligible. A new vehicle, machine or other depreciating asset may lose substantial value during early use. The owner may also incur financing, administrative, transport, storage, repair and resale costs. Repossession therefore does not automatically place the owner in the

[1] Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 8(1).
[2] Hire-Purchase Act, Cap H4 LFN 2004, s 9(1).
[3] Hire-Purchase Act, Cap H4 LFN 2004, s 9(4)(a)-(b).
[4] Hire-Purchase Act, Cap H4 LFN 2004, s 10.
5Helby v Matthews [1895] AC 471 (HL).

same economic position as complete performance. A carefully calibrated minimum payment may legitimately allocate part of that risk to the hirer. The problem is not the existence of such a clause but its amount, trigger and interaction with other remedies.

The historical cases demonstrate that the expression "minimum payment clause" does not identify a single juridical category. In *Associated Distributors Ltd v Hall*, the Court of Appeal dealt with a payment arising on the exercise of a contractual termination option, [6] a setting which raised the orthodox distinction between a payment consequent upon breach and the price of exercising a contractual right. In *Cooden Engineering Co Ltd v Stanford*, by contrast, the Court of Appeal examined a minimum payment obligation in the context of breach and the penalty jurisdiction. [7] The contrast is important because it prevents the law from assuming that every clause bearing the same commercial label is governed by the same doctrinal test.

The tension became especially visible in *Bridge v Campbell Discount Co Ltd*. Lord Denning objected to a formalism under which the law could grant relief to a contract-breaker against a penalty yet leave a party who exercised a contractual right to terminate exposed to an equally oppressive consequence.8 His criticism can be reduced to a short but powerful proposition: the law should not make technical classification an instrument of substantive injustice. The significance of the case therefore exceeds the familiar proposition that an excessive minimum payment may be penal. It exposes the conflict between juridical form and economic substance.[9]

3. From Freedom of Contract to Consumer Protection

The early law of hire-purchase developed during an era in which freedom of contract exerted considerable influence over judicial thinking. Commercial parties were presumed capable of allocating their own risks, and courts were reluctant to relieve a contracting party merely because the bargain proved harsh. Yet standard-form hire-purchase agreements frequently placed the drafting power in the hands of owners and finance companies. The formal freedom of an individual hirer to reject a term therefore offered less protection than classical theory suggested. The law of penalties became one mechanism through which excessive stipulated liability could be controlled.

The traditional point of reference is *Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd*, where Lord Dunedin distinguished liquidated damages from a penalty and treated extravagance in relation to conceivable loss as an important indicator of penal character. The decision did not abolish contractual risk allocation. It recognised the legitimacy of advance assessment of loss while denying parties an unlimited power to punish breach under the language of agreed compensation. Hire-purchase complicated the doctrine because termination could follow breach, exercise of a contractual option or other stipulated events.[10]

Modern penalty law has shifted the language without eliminating the underlying concern. In *Cavendish Square Holding BV v Makdessi; ParkingEye Ltd v Beavis*, the United Kingdom Supreme Court reframed the inquiry around the innocent party's legitimate interest and whether the detriment imposed is out of all proportion to that interest. The case was not a hire-purchase dispute and should not be transplanted mechanically into Nigerian statutory law. Its usefulness lies in directing attention to the commercial interest actually protected by a stipulated consequence rather than treating every large payment as presumptively invalid.[11]

Statutory intervention into repossession reflects a parallel movement. The proprietary logic of retained title was progressively qualified once legislatures recognised the severe consequences of self-help recovery after substantial payment. Nigerian law embodies this philosophy in sections 8 to 10 of the Hire-Purchase Act. The transformation is better understood not as destruction of contractual freedom

6Associated Distributors Ltd v Hall [1938] 2 KB 83 (CA).
7Cooden Engineering Co Ltd v Stanford [1953] 1 QB 86 (CA).
8Bridge v Campbell Discount Co Ltd [1962] AC 600, 629 (HL) (Lord Denning).
9Bridge v Campbell Discount Co Ltd [1962] AC 600 (HL).
10Dunlop Pneumatic Tyre Co Ltd v New Garage & Motor Co Ltd [1915] AC 79, 86-88 (HL) (Lord Dunedin).
11Cavendish Square Holding BV v Makdessi; ParkingEye Ltd v Beavis [2015] UKSC 67, [32].

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but as regulation of enforcement. Title remains relevant; accumulated payment changes what the owner may lawfully do with that title.[12]

4. Minimum Payment Clauses, Penalties and the Problem of Double Recovery

The minimum payment problem is often reduced to a binary question: compensation or penalty. That is insufficient. A clause may survive the penalty doctrine and still produce an economically excessive result when combined with repossession and instalments already received. Conversely, repossession plus additional monetary liability is not inherently double recovery. Goods may have depreciated heavily, been damaged, required expensive recovery, or realised less than the outstanding exposure. The proper inquiry is cumulative rather than mechanical.

Consider a simplified transaction. A vehicle has a cash price of ₦20 million and a hire-purchase price of ₦26 million. The hirer pays ₦15 million before termination. The owner lawfully recovers the vehicle, which after reasonable recovery and refurbishment expenses has a net realisable value of ₦13 million. If the owner also claims the entire ₦11 million nominal balance, the aggregate economic outcome requires justification. The issue cannot be answered simply by saying that ₦11 million remained unpaid or that title never passed. It requires an account of the commercial interest actually left unsatisfied after payments and recovered value are considered.

This is the core of compensatory proportionality. The concept does not impose an arithmetical rule that every naira recovered must be subtracted from the cash price. Hire-purchase price contains financing and commercial return; repossessed goods may be damaged; recovery and disposal cost money. The concept requires something more basic: compensation should be connected to loss and legitimate commercial interest. Where the aggregate of retained instalments, recovered value and additional payment materially exceeds that interest without justification, the case for intervention becomes strong.

Section 8 of the Nigerian Act already reflects a statutory judgment about proportionality. It does not abolish minimum payment liability. Instead, it gives the hirer a right to determine the agreement before final payment falls due and ordinarily limits the additional termination liability by reference to one-half of the hire-purchase price, subject to any lesser amount specified in the agreement.[13] It also preserves accrued liabilities and permits damages where the hirer has failed to take reasonable care of the goods. The section therefore protects both sides: termination is available, but it is not costless; compensation is preserved, but it is not wholly left to contractual discretion.[14]

The broader statutory structure reinforces the same point. Section 3 renders void certain contractual provisions which attempt to exclude or restrict the statutory right of termination or impose liabilities exceeding those permitted by the Act. This is important because the validity of a minimum payment clause in Nigeria cannot be resolved solely through the English penalty cases. Mandatory statutory controls operate independently of the common-law doctrine.[15]

The modern consumer-law dimension deepens the analysis. Section 127 of the Federal Competition and Consumer Protection Act 2018 prohibits agreements or terms that are unfair, unreasonable or unjust and identifies excessively one-sided or inequitable terms as falling within the prohibition. [16] This potentially reaches arrangements which might escape the technical penalty doctrine because the payment is not triggered by breach. Section 128 further requires specified adverse terms, including risk-shifting and indemnity provisions, to be brought conspicuously to the consumer's attention before the transaction is concluded.[17] The older hire-purchase statute and the newer consumer statute should therefore be read as complementary rather than competing regimes.

The statutory sanction also suggests a useful reform principle. A future Nigerian regime should state expressly how the value of repossessed goods is to be credited whenever recovery is lawful and a residual monetary claim survives. Section 9(2) already demonstrates legislative willingness to reverse

12Hire-Purchase Act, Cap H4 LFN 2004, ss 8-10.
13Hire-Purchase Act, Cap H4 LFN 2004, s 8(2).
14Hire-Purchase Act, Cap H4 LFN 2004, s 8(1).
15Hire-Purchase Act, Cap H4 LFN 2004, s 3(b)-(c).
16Federal Competition and Consumer Protection Act 2018, s 127(1)-(2).
17Federal Competition and Consumer Protection Act 2018, s 128(1)-(2).

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economic consequences when repossession is unlawful.[18] The next logical step is not to treat lawful repossession as wrongdoing, but to require transparent accounting when repossession and further monetary liability coexist. That would transform compensatory proportionality from an interpretive principle into an administrable rule: the creditor would identify the debt lawfully outstanding, credit the net value of the recovered asset, add reasonable recovery and disposal costs, account for proven damage, and claim only the resulting deficiency. Such a model would preserve security while reducing the risk that retained title becomes a mechanism for recovery beyond legitimate loss.

Recent Nigerian judicial treatment continues to state the protected proportions in the terms prescribed by section 9(4): one-half for goods other than motor vehicles and three-fifths for motor vehicles.[19] That contemporary restatement is useful because classroom treatments of Nigerian hire-purchase law sometimes reproduce the English one-third threshold or describe the Nigerian position too generally. The distinction matters doctrinally and practically. It also reinforces the need for exact statutory citation in scholarship: section 8's one-half termination formula and section 9's protected-goods thresholds perform different functions and should not be collapsed into a single 'minimum payment' rule. A modern article must therefore keep separate the amount a hirer may have to pay when voluntarily terminating, the proportion that triggers protection against ordinary self-help repossession, and the exceptional preservation power relating to motor vehicles under section 9(5).[20]

The strength of the Nigerian protected-goods regime becomes clearer when section 9(2) is read with section 9(1). The statute does not merely tell the owner to use an action after the relevant proportion has been paid or tendered. It attaches serious consequences to repossession in contravention of that restriction. Where the owner unlawfully recovers possession, the agreement, if not previously determined, terminates; the hirer is released from liability and may recover sums paid under the agreement or related security, while corresponding protection is afforded to a guarantor. This remedial structure is important to the present argument because it shows that the legislature regarded unlawful self-help after substantial payment as more than a technical procedural defect. The sanction is directed at the economic consequences of the transaction. It strips the owner of benefits that would otherwise follow from the agreement and restores payments to the protected hirer. In other words, Nigerian legislation already recognises circumstances in which proprietary recovery and financial retention cannot simply be accumulated.[21]

The statutory consequences are deliberately disaggregated. Where recovery contravenes section 9(1), the hire-purchase agreement is terminated if it had not already been determined, the hirer is released from liability under the agreement and may recover sums already paid, and a guarantor is likewise released and may recover payments made under the contract of guarantee.[22] These consequences are not merely procedural sanctions. They demonstrate that the legislature was prepared, in a defined case of unlawful repossession, to reverse the ordinary financial consequences of the transaction in order to protect the hirer's accumulated stake.

4.4 Statutory Sanctions and the Logic of Proportionality

The distinction also strengthens the compensatory-proportionality thesis advanced here. A court should first identify whether the payment is demanded because the hirer voluntarily exercised a termination option, because the hirer committed a breach, or because the parties have agreed some other lawful financial consequence. It should then ask what loss or legitimate commercial interest remains after the owner's other recoveries are brought into account. This sequence avoids two opposite errors. The first is to condemn every minimum payment clause merely because the amount is

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18This proposed accounting rule is the author’s reform formulation derived from the compensatory-proportionality analysis developed in this article; it is not stated as the existing rule under Cap H4.

19Mr Akinniranye Babawale Akintomiwa v New Hope Agriculture and Technology Nigeria Ltd, National Industrial Court of Nigeria, 2026, applying Hire-Purchase Act, s 9(4) and citing Civil Design Construction Nig Ltd v SCOA Nigeria Ltd (2007) 2 SCNJ 252.

20Hire-Purchase Act, Cap H4 LFN 2004, ss 8(1), 9(1), 9(4) and 9(5). Each provision performs a distinct statutory function and should be analysed separately.

21Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 9(2)(a)–(b).

22Jacob S Ziegel, 'The Minimum Payment Clause Muddle' (1964) 22(1) Cambridge Law Journal 108, 108.

substantial. The second is to enforce the clause merely because sophisticated drafting describes the liability as an option price or agreed depreciation. Substance matters because a clause that secures the owner against depreciation may be commercially defensible, while a clause that secures the entire expected return after the owner has recovered a valuable asset may require much closer scrutiny. The inquiry is therefore not anti-contractual. It is an insistence that the remedy remain connected to the commercial interest said to justify it.

Ziegel's celebrated description of the law as the 'minimum payment clause muddle' remains particularly apt because the cases developed through overlapping ideas of option price, agreed depreciation, damages and penalty. His 1964 analysis did not treat the difficulty as one of terminology alone. It traced the instability produced when courts attempted to reconcile the hirer's contractual liberty to return the goods with the owner's effort to secure a minimum financial return, while simultaneously preserving the penalty doctrine. [23] The Nigerian statutory intervention in section 8 should be read against that history. By limiting the hirer's termination liability through a statutory formula, the Act reduces the room for a contractual minimum payment provision to recreate the very excess that statutory intervention was designed to restrain.[24] The section is thus not merely procedural machinery for termination. It is a legislative allocation of termination risk, and any contractual clause operating alongside it should be interpreted consistently with that allocation rather than as an independent route to an economically duplicative recovery.

Ziegel's intervention is valuable for another reason. Writing in 1964, he described the minimum-payment clause as one of the most confusing areas of hire-purchase law, and treated the difficulty as a structural problem extending across the cases rather than a defect curable by changing labels.[25] That historical diagnosis strengthens our insistence that Nigerian law should examine the economic interaction of termination liability and recovered asset value rather than assume that contractual nomenclature settles the matter.

4.5 Nigerian Minimum-Payment Doctrine and the Significance of Amusan

The Nigerian jurisprudence on minimum payment clauses deserves fuller treatment because it demonstrates that the English controversy was not merely received as abstract doctrine. In *Amusan and Thomas v Bentworth Finance (Nig) Ltd*, the Supreme Court confronted a hire-purchase relationship in which termination, repossession and stipulated financial liability had to be distinguished with care. The case is commonly cited in Nigerian commercial-law literature for the proposition that the legal character of a minimum payment clause depends materially upon the manner in which the agreement is brought to an end.[26] The crucial distinction is between a hirer who exercises a contractual option to terminate on agreed terms and an owner who terminates for breach and then seeks to use the clause as a substitute for damages. That distinction corresponds to the older English difficulty identified by Ziegel: the label attached to the payment does not eliminate the need to identify the juridical event which activates it and the loss or interest which the payment is intended to protect. For Nigerian law, *Amusan* is therefore more valuable as an analytical warning than as a licence for routine enforcement of every clause described as a minimum payment provision.[27]

5. Repossession under Nigerian Law: Title, Protected Goods and Judicial Control

Repossession is the point at which the conflict between formal title and accumulated economic interest becomes practical. At common law, retained ownership supplied the basic justification for recovery following lawful determination. Nigerian legislation, however, limits enforcement once the

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23Ziegel (n above) 108. Ziegel opened by describing the law governing minimum payment clauses as exceptionally confusing; the article remains a major contemporary analysis of the doctrinal problem.

24Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 8(1).

25Ziegel, 'Minimum Payment Clause Muddle' 108-128.

26*Amusan and Thomas v Bentworth Finance (Nig) Ltd* (1966) NMLR 276 (SC). The report citation is consistently reproduced in Nigerian commercial-law teaching materials; the final submission audit should retain only propositions verified against the report itself.

27Jacob S Ziegel, “The Minimum Payment Clause Muddle” (1964) 22 Cambridge Law Journal 108, 108–128, especially the discussion of Cooden Engineering Co Ltd v Stanford [1953] 1 QB 86 and Bridge v Campbell Discount Co Ltd [1962] AC 600.

hirer has made substantial payment. Section 9(1) provides that after the relevant proportion of the hire-purchase price has been paid or tendered, the owner shall not enforce recovery of possession otherwise than by action, subject to the motor-vehicle exception in subsection (5). The law therefore distinguishes ownership from enforcement.[28]

Section 9(4) must be stated with precision. The relevant proportion is one-half for goods other than motor vehicles and three-fifths for motor vehicles.[29] Recent Nigerian judicial decisions continue to state the distinction expressly. This corrects the one-third formulation appearing in the class assignment and is not a minor technicality: motor vehicles are among the most commercially significant subjects of hire-purchase in Nigeria, and the three-fifths threshold directly determines when statutory protection against ordinary self-help recovery becomes engaged.[30]

The Supreme Court's decision in *Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd* gives the threshold concrete Nigerian authority. The Court held that the Act applied to the disputed rig and, because the hirer had paid three-fifths of the hire-purchase price, the respondent could not lawfully repossess it otherwise than in accordance with the statutory regime.[31] The case is especially useful because the Court's reasoning turned upon the statutory definition of a motor vehicle, rather than treating the parties' contractual description as decisive. The decision therefore supports a broader proposition central to this article: once the Act applies, private drafting cannot restore an unrestricted common-law power that the statute has qualified.

The qualification in section 9(5) must nevertheless remain visible. Where three or more instalments in respect of a motor vehicle are due and unpaid, the owner may remove the vehicle to premises under the owner's control for the limited statutory purpose of protecting it from damage or depreciation pending determination of the action. This is not a revival of unrestricted repossession. It is a preservation mechanism operating within the judicial structure, and it is accompanied by statutory responsibility for damage or loss caused by the removal. [32] For motor vehicles, the protected proportion itself is three-fifths of the hire-purchase price.[33]

The Supreme Court explained the policy of that exception in *Andrew Ebohimi Omoijuanfo v Nigerian Technical Company Ltd*. The Court treated the amendment as a response to the hardship that could arise where an owner was unable to protect a defaulting hirer's vehicle pending court proceedings. On the facts, the hirer had paid slightly more than three-fifths but was in arrears of more than three consecutive instalments; the owner was entitled to repossess under the statutory exception. [34] The decision therefore qualifies any broad statement that payment of three-fifths invariably prevents physical recovery without a prior court order.[35]

Section 10 completes the protective structure by empowering the court in proceedings for recovery of protected goods.[36] Judicial supervision is important because the court can consider the transaction as a whole rather than treating retained title as dispositive. The statutory scheme occupies a middle ground between unrestricted self-help and immunity from repossession. That balance should remain central to reform.

5.1 Wrongful Repossession as a Statutory Redistribution of Risk

The severity of section 9(2) deserves fuller attention because it reveals the policy choice underlying the Nigerian statute. Where protected goods are recovered in contravention of section 9(1), the consequences are not confined to damages for an irregular method of seizure. The agreement is determined if it has not already been determined; the hirer is released from liability under the

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28Hire-Purchase Act, Cap H4 LFN 2004, s 9(1).

29Hire-Purchase Act, Cap H4 LFN 2004, s 9(4).

30Ajenifuja Thompson Agboola v New Hope Agriculture and Technology Nigeria Ltd, National Industrial Court of Nigeria, judgment delivered 16 April 2026, discussing Hire-Purchase Act, s 9(4).

31Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 9(2)(a).

32Hire-Purchase Act, Cap H4 LFN 2004, s 9(2)(b).

33Hire-Purchase Act, Cap H4 LFN 2004, s 9(2)(c).

34Andrew Ebohimi Omoijuanfo v Nigerian Technical Company Ltd (1976) All NLR 294 (SC), explaining the mischief addressed by the amendment introducing s 9(5).

35Omoijuanfo v Nigerian Technical Company Ltd (1976) All NLR 294 (SC).

36Hire-Purchase Act, Cap H4 LFN 2004, s 10.

agreement and is entitled to recover sums paid; and a guarantor obtains corresponding statutory relief.[37] The legislature therefore treats unlawful recovery after the protected threshold as conduct serious enough to alter the parties' financial position, not merely their possessory position. That consequence is highly relevant to compensatory proportionality. It shows that Nigerian law already accepts, in an extreme setting, that proprietary recovery and monetary entitlement cannot be allowed to accumulate without limit. The owner's continuing title does not immunise the economic consequences of an unlawful enforcement choice from statutory reversal.

This statutory architecture also helps to distinguish the present thesis from a free-standing appeal to fairness. Compensatory proportionality is not proposed as a licence for courts to disregard bargains whenever the result appears severe. It draws instead upon choices already made by the legislature. Section 8 controls the financial consequence of the hirer's voluntary termination; section 9 controls recovery after substantial payment; section 10 subjects protected-goods litigation to judicial management. Contemporary Nigerian scholarship similarly treats sections 8 to 10 as the core statutory mechanisms through which termination and repossession are moderated. [38] The novelty of the present argument lies in connecting those mechanisms to the accounting question that follows repossession: once the asset has returned to the owner, what additional financial claim remains justified after the transaction is considered as a whole?

5.2 Repossession, Valuation and the Evidential Problem

A practical difficulty follows immediately. Proportionality cannot be assessed without credible evidence of value. The relevant figure is not necessarily the original cash price, the outstanding hire-purchase balance or the owner's unilateral estimate after recovery. The condition of the goods, the timing of repossession, reasonable refurbishment expenditure, market depreciation and the circumstances of resale may all affect the net value restored to the owner. In litigation, these matters should be proved rather than assumed. The burden of producing records should ordinarily fall upon the party who controlled recovery and disposal because that party possesses the invoices, inspection reports, valuation material and sale documentation. A statutory duty to account would therefore have an evidential as well as a substantive function: it would convert an opaque post-repossession process into one capable of judicial verification.

The need for such transparency is reinforced by the commercial importance of repossession itself. Nat Ofo's focused study of repossession under the Nigerian Hire-Purchase Act describes repossession as an important owner's remedy while emphasising the statutory constraints surrounding its activation.[39] More recent Nigerian scholarship likewise identifies judicial supervision of termination and repossession as central to balancing owner and hirer interests. These studies support the proposition that reform should not abolish recovery but should make its economic aftermath intelligible. A creditor who has acted lawfully should be able to demonstrate the remaining loss; a hirer who alleges over-recovery should likewise be required to identify the value or credit said to have been ignored. The account becomes the common evidential language through which both claims can be tested.

6. Hire-Purchase in the Contemporary Nigerian Consumer-Credit Economy

The Hire-Purchase Act was drafted around an identifiable commercial model: specified goods, a written agreement, periodic payments, retained ownership and an eventual option to purchase. That model remains relevant, but Nigeria's contemporary credit economy includes asset finance, lease-to-own arrangements, device financing, digitally concluded instalment plans and other transactions that may perform a similar economic function while adopting different contractual labels. This creates a danger of regulatory formalism. If protection depends predominantly upon nomenclature, commercially equivalent transactions may receive radically different legal treatment.

A modern regime should therefore proceed functionally. Where a consumer obtains possession and substantial use of goods through deferred payment while the financier retains ownership or a

37Hire-Purchase Act, Cap H4, Laws of the Federation of Nigeria 2004, s 9(2)(a)-(c).

38Chioma Bernadine Nwankwo and Emeka Charles Nwankwo, “The Hirer’s Right to Walk Away and the Owner’s Right to Repossess: Revisiting Termination under Nigerian Hire-Purchase Law” (2025) 2(2) Nnamdi Azikiwe University Journal of Private and Property Law 64, 66-68, 81-85.

39Nat Ofo, “Repossession of Hire-Purchase Goods in Nigeria under the Hire-Purchase Act” (2011) SSRN Electronic Journal, 1-2, doi:10.2139/ssrn.1751455.

functionally comparable recovery power until specified payments are completed, legislation should consider whether core protections concerning disclosure, repossession and post-recovery accounting ought to apply. This does not require every secured credit transaction to be reclassified as hire-purchase. It requires equivalent economic risks to attract equivalent minimum protections.

The FCCPA provides a useful general framework but cannot fully replace transaction-specific rules. Section 127 supplies the normative standard against unfair, unreasonable and unjust contractual terms.[40] Section 128 strengthens disclosure of certain adverse provisions.[41] Yet neither provision tells a court precisely when repossession should require judicial supervision or how a deficiency should be calculated after disposal of a recovered asset. The strongest reform model therefore combines general consumer standards with clear sector-specific rules.

The general consumer-law framework also sharpens the fairness inquiry. Section 127 expressly directs attention to terms that are excessively one-sided in favour of a person other than the consumer, while section 128 requires specified adverse provisions to be drawn to the consumer's attention in the manner prescribed by the Act. At institutional level, section 17 entrusts the Federal Competition and Consumer Protection Commission with administration and enforcement of the Act, investigation of consumer-protection matters and complaint-resolution functions. These provisions do not replace the Hire-Purchase Act, but they make it increasingly difficult to defend a modern analysis that treats hire-purchase as an isolated island of nineteenth- and twentieth-century contract doctrine. [42] More generally, section 127(1) prohibits entering into or administering consumer transactions on unfair, unreasonable or unjust terms.[43]

Digital contracting requires express attention. Electronic platforms can improve disclosure through staged presentation and acknowledgement, but they can equally encourage consumers to accept lengthy standard terms through a single click. A revised regime should therefore recognise electronic notices and durable electronic records while insisting that the material consequences of default, termination and repossession are presented in a form the consumer can retain and understand. Technological neutrality should not become informational opacity.

6.1 Obsolescence, Scope and Regulatory Avoidance

The case for reform is strengthened by a more basic problem of statutory scope. Recent scholarship has criticised the Act's monetary and structural limitations as increasingly detached from present commercial conditions, arguing that aspects of the legislation no longer reflect contemporary prices or financing practices. [44] That criticism should not be converted into the simplistic conclusion that an old statute is necessarily a useless statute. Sections 8 to 10 embody principles that remain valuable. The difficulty is that a protective regime loses practical significance when economically equivalent transactions can fall outside it because of monetary limits, drafting technique or contractual nomenclature. A reform exercise should therefore preserve the Act's protective logic while modernising the transactions to which that logic applies.

Regulatory avoidance is especially important in a market where the same economic arrangement may be described as hire-purchase, lease-to-own, asset finance or instalment acquisition. The legal classification of each transaction must still depend upon its terms, but consumer protection should not become a drafting contest. A financier should not be able to obtain the functional advantages of retained ownership and repossession while escaping every corresponding safeguard merely by selecting a different label. Recent Nigerian writing on the legal and institutional framework similarly argues that the Hire-Purchase Act now operates alongside the FCCPA rather than in isolation. A modern statute should make that relationship express, identifying which mandatory protections attach

40Federal Competition and Consumer Protection Act 2018, s 127.

41Federal Competition and Consumer Protection Act 2018, s 128.

42Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd (2007) 2 All NLR 243 (SC), SC 216/2001, judgment of 23 February 2007 (Onnoghen JSC).

43Hire-Purchase Act, Cap H4 LFN 2004, s 20(1) (definition of 'motor vehicle').

44Nathan Ibrahim, Aderemi Olubunmi Oyebanji, Ifesinachi Charles Okonji, Collins Ekpenisi and Khadijat Ibrahim Maifada, “Examining the Nigerian Hire Purchase Act: Addressing Monetary Limitations and Imbalances in Legal Protection to Enhance Commercial Development” (2025) 11(1) NIU Journal of Legal Studies 5, 5-15.

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because of the economic structure of the transaction and which remain peculiar to classical hire-purchase.[45]

6.2 The FCCPA as a Complement, Not a Substitute

The relationship with the FCCPA requires particular care. Section 127 is valuable because it permits scrutiny of manifestly unfair, unreasonable or unjust terms and practices, including terms that are excessively one-sided or inequitable.[46] That language can reach forms of substantive imbalance which the traditional penalty doctrine may not reach, especially where a burdensome payment is triggered by a contractual event other than breach. But the FCCPA's generality is also its limitation. It does not reproduce the detailed protected-goods machinery of sections 9 and 10, nor does it itself supply a complete formula for post-repossession accounting. The preferable approach is cumulative rather than substitutionary: the Hire-Purchase Act should provide transaction-specific rules, while the FCCPA supplies general standards of fairness, disclosure and institutional enforcement.

This cumulative model also answers a possible objection to compensatory proportionality. The doctrine need not depend upon judicial invention of a wholly new cause of action. Its elements can be distributed across existing and reformed rules: statutory termination limits, protected-goods thresholds, judicial control of repossession, unfair-terms scrutiny, disclosure duties and an express post-recovery account. The resulting framework would be more predictable than a broad appeal to unconscionability and more economically realistic than a system which examines each remedy in isolation. The Nigerian reform debate is already moving towards legislative modernisation, with recent scholarship calling for revision of the Act's scope, electronic contracting rules and coordination with contemporary consumer protection. Compensatory proportionality supplies an organising principle around which those reforms can be made coherent.[47]

7. Comparative Lessons and a Reform Model for Nigeria

Comparison is useful here only if it is disciplined by the same questions in each jurisdiction. The relevant inquiry is not whether another legal system can simply be transplanted into Nigeria, but how each system allocates the risks created by retained title, default, termination, repossession and the creditor's attempt to recover any remaining monetary deficiency. England and Wales is indispensable because Nigerian hire-purchase law developed against the background of English doctrine and legislation. Australia is useful for a different reason: its contemporary consumer-credit legislation treats taking possession, sale, valuation, accounting and residual liability as connected stages of a regulated enforcement process. The comparison therefore supplies both historical continuity and a modern functional counterpoint to the Nigerian regime.

7.1 United Kingdom: Protected Goods, Voluntary Termination and Judicial Control

The United Kingdom model demonstrates how retained ownership can coexist with increasingly strong controls on enforcement. Under section 90 of the Consumer Credit Act 1974, where a debtor is in breach of a regulated hire-purchase or conditional-sale agreement, has paid at least one-third of the total price and property remains in the creditor, the creditor may not recover possession except on an order of the court.[48] The significance of the provision is structural. Title remains with the creditor, but title no longer carries an unrestricted self-help remedy once the debtor's accumulated economic stake reaches the statutory threshold. This resembles the basic Nigerian policy of protected goods, although the thresholds and statutory details differ.

The British statute reinforces the rule by attaching consequences to a recovery made in breach of the protected-goods restriction.[49] The comparative lesson is therefore not that proprietary title disappears, but that the law separates ownership from the manner in which ownership may be enforced. That

45Saidu Alfa Saidu, "The Legal and Institutional Framework Governing Hire Purchase Agreements in Nigeria" (2026), manuscript available on ResearchGate, abstract and introductory discussion.
46Federal Competition and Consumer Protection Act 2018, s 127(1)-(2), especially s 127(2)(a)-(b).
47Saidu Alfa Saidu, "The Legal, Regulatory Challenges and Prospects of Hire Purchase in Nigeria" (2026), manuscript available on ResearchGate, abstract; see also Ibrahim et al (n 56) 5-15.
48Consumer Credit Act 1974 (UK), s 90(1).
49Consumer Credit Act 1974 (UK), s 91.

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separation supports the argument advanced in this article that Nigerian courts should resist contractual language which converts retained title into an apparently absolute power of seizure after the statutory protected proportion has been paid.

The United Kingdom also provides a useful comparator on voluntary termination. Section 99 gives the debtor a statutory right, subject to the legislation, to terminate a regulated hire-purchase or conditional-sale agreement before the final payment falls due. [50] Section 100 then regulates the debtor's liability following such termination by reference to one-half of the total price, taking account of sums already paid and sums due immediately before termination. [51] The broad architecture is familiar to Nigerian law because section 8 of the Hire-Purchase Act likewise uses a half-price formula. The point is not that the Nigerian provision should be replaced by its British counterpart. Rather, the comparison shows that a minimum-liability formula is most defensible when embedded in a statutory termination regime that defines the parties' financial position, instead of operating as a free-standing contractual device capable of magnifying the owner's recovery.

7.2 Australia: Repossession as a Regulated Accounting Process

Australian consumer-credit legislation supplies an even more direct comparator for the accounting dimension of this article. The National Credit Code requires a credit provider, before commencing enforcement in the ordinary case, to give a default notice allowing the debtor or mortgagor at least 30 days to remedy the default.[52] It also places an additional restriction on repossession where the amount currently owing is comparatively small: section 91 generally requires court consent before mortgaged goods are taken where the amount owing is less than 25 per cent of the amount of credit provided or $10,000, whichever is the lesser, subject to specified exceptions.[53] These provisions demonstrate a graduated conception of enforcement in which the seriousness of default and the debtor's remaining indebtedness affect the creditor's route to possession.

More important for present purposes is what happens after possession has been taken. Section 102 requires notice to the mortgagor after the credit provider takes possession and prevents immediate disposal during the statutory period, while permitting return of the goods where the arrears and reasonable enforcement expenses are paid in the circumstances specified by the Code.[54] The debtor is not treated as a passive spectator to the disposal process. Section 103 permits the mortgagor, within the prescribed period, to nominate a purchaser prepared to buy at the estimated value or at a higher written offer already obtained by the creditor. This procedural participation is significant because the sale price directly affects the size of any deficiency that may remain.[55]

Section 104 then requires the credit provider to sell the goods as soon as reasonably practicable for the best price reasonably obtainable where no nominated purchaser completes the purchase, and expressly requires the proceeds, less permitted deductions, to be credited to the mortgagor.[56] The creditor must also give a written post-sale account stating the gross amount realised, net proceeds, the amount required to pay out the credit contract and any further recovery action proposed. [57] Section 105 confines the deductions that may be made from the proceeds to specified secured amounts and reasonable enforcement expenses. This is precisely the kind of statutory accounting architecture that the Nigerian regime presently lacks in sufficiently explicit form.[58]

Australian law goes further by giving the court a corrective role where the disposal process fails to protect the value of the recovered asset. Under section 106, the court may require a greater credit than the net proceeds where it is not satisfied that the goods were sold as soon as reasonably practicable for the best price reasonably obtainable, and may award compensation for loss caused by an improper

50Consumer Credit Act 1974 (UK), s 99(1).

51Consumer Credit Act 1974 (UK), s 100(1).

52National Credit Code (Cth), s 88. The Code is Schedule 1 to the National Consumer Credit Protection Act 2009 (Cth).

53National Credit Code (Cth), s 91(1)-(4).

54National Credit Code (Cth), s 102(1)-(5).

55National Credit Code (Cth), s 103.

56National Credit Code (Cth), s 104(1)-(2).

57National Credit Code (Cth), s 104(3).

58National Credit Code (Cth), s 105.

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exercise of the power of sale.59 Where possession itself contravenes the Code, section 108 permits the court to order the credit provider, at its own expense, to return the goods to the mortgagor even though the underlying default has not been remedied.60 The combined effect is important for the compensatory-proportionality thesis: repossession does not conclude the financial inquiry. It triggers duties concerning preservation, notice, valuation, sale, crediting of proceeds and judicial correction.

7.3 Comparative Synthesis: Lessons for Nigerian Reform

The three systems reveal a common movement away from the proposition that retention of title alone answers every enforcement question. Nigeria and the United Kingdom protect the hirer's accumulated investment by restricting extra-judicial recovery after a statutory proportion has been paid, although Nigeria distinguishes between one-half for non-motor-vehicle goods and three-fifths for motor vehicles while the British protected-goods rule uses its own one-third threshold. Australia proceeds through the language of consumer credit and mortgages rather than reproducing the Nigerian hire-purchase structure, but it develops the post-possession stage much more fully. Its value for Nigeria lies not in doctrinal identity but in functional comparison: once an asset has been recovered, the law should regulate how value is established, how the asset is sold, what expenses are deductible and how the proceeds affect the remaining debt.

This comparison sharpens the proposed principle of compensatory proportionality. English law demonstrates that retained title can be subordinated to judicial control without destroying the creditor's proprietary security. Australian law demonstrates that creditor protection is compatible with a transparent post-repossession account and a commercially reasonable sale. Nigerian law already contains the normative foundation for both ideas in sections 8 to 10 and in the judicial insistence that protected goods be recovered through the statutory route. Reform should therefore develop the domestic scheme rather than replace it: preserve title, preserve legitimate recovery of actual loss, but require the creditor to account for the economic value regained through repossession before any additional monetary liability is finally determined.

The first reform principle should be preservation of the distinction between ownership and enforcement. Retained title must continue to protect legitimate proprietary security, but standard-form agreements should not present statutory qualified remedies as absolute powers. Where judicial process is mandatory, the contract should say so conspicuously. This would align the transaction-specific regime with the disclosure philosophy of the FCCPA.[61]

The second and most important reform is a mandatory post-repossession account. Where goods are recovered following premature termination, residual liability should not be determined without accounting for instalments already paid, accrued lawful charges, the condition of the goods, reasonable recovery and storage expenses, repair attributable to the hirer, depreciation, disposal costs and the net value realised or reasonably realisable from the recovered asset. The purpose is not to create a windfall for the hirer but to prevent the asset from being treated as valuable for repossession and valueless when the deficiency is calculated.

A corresponding commercially reasonable disposal rule is necessary. If the owner could repossess a vehicle worth ₦15 million, sell it to a related party for ₦7 million and pursue the hirer for an inflated deficiency, post-repossession accounting would become illusory. Conversely, forcing the creditor to credit an unrealistic retail value would unfairly transfer market risk. A revised Act should require reasonable disposal, preservation of valuation records, scrutiny of related-party sales and judicial power to substitute a reasonable value where the realised price is shown to be artificially depressed.

Third, minimum payment clauses should be subjected to an express proportionality standard coordinated with sections 3[62] and 8 of the Hire-Purchase Act and section 127 of the FCCPA.[63] A clause should not become enforceable merely because it is labelled compensation, nor invalid merely because it produces substantial liability. The owner should be able to identify the commercial interests

59National Credit Code (Cth), s 106(1)-(2).

60National Credit Code (Cth), s 108(1)-(2).

61Federal Competition and Consumer Protection Act 2018, s 128(1)-(2).

[62] Hire-Purchase Act, Cap H4 LFN 2004, s 3(b)-(c).

[63] Federal Competition and Consumer Protection Act 2018, s 127.

protected and the basis of calculation. Where breach triggers the clause, the penalty doctrine remains relevant; where no breach is involved, statutory fairness may still provide scrutiny.

Fourth, judicial protection must be commercially credible. A motor vehicle or piece of machinery may deteriorate substantially during prolonged litigation. The answer to statutory delay is not extra-judicial seizure contrary to law, but expedited procedures.[64] Courts should have clear powers to order inspection, preservation, temporary custody, restrictions on disposal and accelerated determination. The logic already visible in section 9(5) and *Omoijuanfo* supports a modern preservation mechanism that protects the creditor without sacrificing judicial supervision.[65]

Fifth, the reformed regime should require prominent pre-contractual disclosure of the statutory right to terminate, the applicable minimum liability, the threshold for protected goods, any special motor-vehicle preservation power, the method of residual-liability calculation and the consumer's right to an account after disposal. This is not simply consumer education in the abstract. It is legally operative disclosure tied to the precise consequences that most often generate disputes.

Sixth, institutional supervision should complement private litigation. The Federal Competition and Consumer Protection Commission can contribute through guidance on unfair asset-finance terms, disclosure practices and systemic recovery behaviour within the scope of its statutory mandate. Ordinary default should remain principally a private contractual matter, but standard practices affecting large groups of consumers justify regulatory attention.[66]

The reform package is united by one proposition: the creditor should recover what the transaction legitimately entitles the creditor to recover, but no more; the hirer should receive the protection justified by accumulated economic investment, but no immunity from genuine default. Compensatory proportionality translates this proposition into a framework capable of guiding statutory drafting, contractual interpretation and post-repossession accounting.

7.4 From a Repossession Dispute to an Accounting Dispute

A further implication of the Nigerian authorities is that litigation after repossession should not be confined to the binary question whether the owner was entitled to take the goods. That question is indispensable, but it is not always sufficient. In *Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd*, the Supreme Court held that the Hire-Purchase Act applied to the transaction and that, once three-fifths of the hire-purchase price of the rig had been paid, the respondent could not lawfully repossess it otherwise than in accordance with the statutory regime.[67] The judgment is particularly useful for the present argument because the dispute also exposed the financial consequences that follow when possession, accumulated instalments and an asserted outstanding balance are considered together. The case therefore illustrates why repossession disputes can mature into accounting disputes. Once an asset has been recovered, the court should be able to ask not only whether recovery was lawful, but what economic position the parties occupy after the asset, the instalments already received and any outstanding contractual liability are brought into a single account.

That inquiry becomes even more important because section 9 does not treat unlawful recovery of protected goods as a minor procedural defect. The statutory consequences are deliberately severe. Nigerian judicial treatment of section 9(2) recognises that non-compliance can disable the owner from enforcing monetary obligations under the agreement and related security. The severity of those consequences makes conceptual sense only if the prohibition on extra-judicial recovery protects something more substantial than courtroom etiquette. It protects the hirer's accumulated stake in a transaction against unilateral destruction. This statutory policy supplies a strong domestic foundation

64Hire-Purchase Act, Cap H4 LFN 2004, s 9(5).

65Andrew Ebohimi Omoijuanfo v Nigerian Technical Company Ltd (1976) All NLR 294 (SC).

66Federal Competition and Consumer Protection Act 2018, s 17(a), (b), (e), (h), (l) and (s), assigning the Commission responsibility for administration and enforcement of consumer-protection enactments, investigation, complaint resolution, consumer-interest protection and redress against unscrupulous exploitation.

67Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd (2007) 2 All NLR 243 (SC); [2007] NGSC 7, Supreme Court of Nigeria, SC 216/2001, 22 February 2007. The Court held that the Act applied and that payment of three-fifths prevented repossession otherwise than in accordance with law.

for compensatory proportionality. The proposed doctrine does not ask courts to import an alien equitable discretion into hire-purchase law. It asks them to develop, consistently with the structure of the Act, the proposition that proprietary recovery and monetary recovery cannot always be evaluated as though they were economically unrelated events.[68]

The same reasoning cautions against using the expression 'balance outstanding' as though it were necessarily synonymous with 'loss suffered'. A contractual ledger may show a numerical balance immediately before termination, but repossession changes the creditor's economic position because an asset returns to the creditor's control. Its value may be substantially lower than its original value, and the creditor may incur real expenses in recovery, storage, repair and resale. Those matters should be proved and credited rather than assumed. Equally, the recovered asset cannot sensibly be assigned a value of zero merely because title had always remained with the owner. The proper question is the net deficiency after commercially reasonable valuation and legitimate expenses. This approach is compatible with the concern expressed in Civil Design that the owner should not retain the recovered rig and substantial instalments while also enforcing an outstanding balance in circumstances where the statute had been violated. It also gives the court a disciplined method for distinguishing compensation from over-compensation without converting every repossession into an automatic refund claim.[69]

7.5 Contemporary Judicial Relevance of the Protected-Goods Regime

The protected-goods provisions are not merely historical curiosities. Nigerian courts continue to encounter disputes in which section 9 determines the permissible route to recovery. In *Akinirranye Babawale Akintomiwa v New Hope Agriculture and Technology Nigeria Ltd*, the National Industrial Court reproduced the statutory distinction between one-half of the hire-purchase price for goods other than motor vehicles and three-fifths for motor vehicles, and referred to Civil Design on the effect of payment of the protected proportion.[70] A closely related 2026 decision, *Ajenifuja Thompson Agboola v New Hope Agriculture and Technology Nigeria Ltd*, likewise applied the one-half and three-fifths distinction and addressed the special motor-vehicle rule in section 9(5).[71] These decisions matter not because an industrial court should become the principal architect of hire-purchase doctrine, but because they demonstrate that the statutory machinery continues to generate live disputes in contemporary Nigerian credit relationships. Reform must therefore improve an operating body of law rather than replace a dead one.

Contemporary litigation also exposes the importance of stating the motor-vehicle exception with precision. Section 9(5) does not simply restore the old common-law freedom of seizure whenever a hirer defaults. It creates a limited preservation mechanism where three or more instalments are due and unpaid: the owner may remove the motor vehicle to premises under his control for the purpose of protecting it from damage or depreciation and retain it pending determination of the action, while remaining liable for damage or loss caused by the removal. [72] The distinction between protective custody and final repossession is central. A modern reform should preserve that distinction and make it operational through expedited applications, inventory requirements, photographic condition reports and restrictions on disposal pending judicial determination. Such measures would reduce the creditor's exposure to deterioration while making it harder for temporary protective possession to be transformed informally into irreversible enforcement.

68Hire-Purchase Act, Cap H4 LFN 2004, s 9(2); Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd (2007) 2 All NLR 243 (SC).

69Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd (2007) 2 All NLR 243 (SC). The judgment records the argument against allowing the owner to retain the rig, substantial instalments and also recover the outstanding balance, and ultimately held that unlawful seizure prevented recovery of the outstanding instalment.

70Akinirranye Babawale Akintomiwa v New Hope Agriculture and Technology Nigeria Ltd, National Industrial Court of Nigeria, judgment published 2026, applying Hire-Purchase Act, s 9(1), (4) and referring to Civil Design Construction Nigeria Ltd v SCOA Nigeria Ltd (2007) 2 SCNJ 252.

71Ajenifuja Thompson Agboola v New Hope Agriculture and Technology Nigeria Ltd, National Industrial Court of Nigeria, judgment published 2026, discussing Hire-Purchase Act, s 9(4)-(5).

72Hire-Purchase Act, Cap H4 LFN 2004, s 9(5).

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7.6 Evidential Architecture for Compensatory Proportionality

Compensatory proportionality will remain rhetorical unless the law identifies the evidence necessary to apply it. A revised statute should therefore allocate evidential responsibilities expressly. The creditor should prove the contractual balance claimed, reasonable recovery expenses, storage and repair costs, material damage beyond ordinary wear, and the price obtained upon disposal. Where the asset is retained or sold to a connected person, the creditor should additionally produce an independent or otherwise objectively supportable valuation. The hirer should remain entitled to challenge that evidence and to prove payments not reflected in the creditor's account, improvements made to the asset, or circumstances suggesting that the disposal was commercially unreasonable. This structure does not presume wrongdoing by financiers. It recognises that the party controlling the recovered asset and the disposal process ordinarily possesses superior access to the relevant records. The statutory purpose would be accuracy rather than punishment.

The court should then determine the residual liability, if any, from evidence rather than from contractual labels. The starting figure may be the amount lawfully due under the agreement, but credits must be given for sums already paid and for the net value properly attributable to the recovered asset, while legitimate costs and losses are correspondingly recognised. The resulting account may show a deficiency payable by the hirer, a balance in the hirer's favour, or no further liability. The model therefore avoids the two opposite errors that have repeatedly complicated the subject: treating repossession as complete compensation in every case, and treating repossession as economically irrelevant in every case. It is this middle position that gives compensatory proportionality its practical content and distinguishes it from a general appeal to fairness.

8. Conclusion

Minimum payment clauses and repossession arise from different legal foundations. The first seeks to protect financial expectations when a hire-purchase transaction ends prematurely; the second follows from retained title. Their economic effects nevertheless converge at termination. The owner may have received substantial instalments, recover the asset and assert additional monetary liability. None of those consequences is automatically objectionable. Their cumulative operation, however, may amount either to legitimate compensation or excessive recovery. The law must be capable of distinguishing between the two.

The common-law cases reveal the limitations of analysing minimum payments through formal classification alone. *Dunlop*, *Associated Distributors*, *Cooden Engineering*, *Bridge* and *Cavendish* show the movement from a rigid focus on stipulated damages towards a more substantive concern with legitimate interest and proportionality. [73] Nigerian law adds a statutory dimension. Section 8 regulates termination liability; section 9 restricts recovery after the relevant proportion has been paid or tendered; section 9(5) protects the owner of a motor vehicle in the defined case of substantial instalment default; and section 10 subjects protected-goods recovery to judicial control.[74]

The FCCPA makes reconsideration even more timely by introducing broad statutory standards against unfair, unreasonable, unjust and excessively one-sided contractual terms.[75] These standards should not erase the detailed Hire-Purchase Act. They should provide a modern consumer-law environment within which the older statute is interpreted and, ultimately, reformed.

The principle advanced in this article is compensatory proportionality. It begins neither from hostility to creditors nor indulgence towards defaulting hirers. Creditors bear real risks; goods depreciate; recovery is costly; assets may be damaged; premature termination can defeat expected commercial return. Those interests deserve legal protection. But recovered assets also possess economic value, and payments already received remain part of the transaction. A legal system which counts the creditor's losses but disregards restored value risks making the creditor better than whole.

The future Nigerian regime should therefore preserve effective security while requiring transparent enforcement, commercially reasonable valuation and disposal, a post-repossession account, meaningful digital disclosure and expedited judicial protection of depreciating assets. Repossession should answer the proprietary question of who may possess the goods, but it should not automatically

73Cavendish Square Holding BV v Makdessi; ParkingEye Ltd v Beavis [2015] UKSC 67, [32].
74Hire-Purchase Act, Cap H4 LFN 2004, ss 8-10.
75Federal Competition and Consumer Protection Act 2018, s 127(1)-(2).

answer the financial question of how much the owner may ultimately retain or recover. The appropriate objective is neither maximum creditor recovery nor minimum consumer liability. It is a law that makes the owner whole without making the owner better than whole, while ensuring that the hirer bears the genuine economic consequences of the bargain.

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