

## **OFT COMMENTARY ON BILLS OF SALE\***

In researching the area of car finance two authorities gave us details of cars being sold under a Bill of Sale. We have looked at the Bills of Sale Acts (BSA) and their interaction with consumer credit legislation and the Office's view is set out below. We have also researched how to check if a Bill of Sale has been registered.

### **Royal Courts of Justice**

The Bill of Sale must be witnessed and registered at the Royal Courts of Justice, in the time and manner set out in the BSA, otherwise it will be void and cannot be treated as a licence to take possession. You can check if this has been carried out by making a written request to the Court and paying £5 or visiting there in person and searching the register for free. To search you need to know the name of the borrower, their address and the year of registration. The entries in the register are made alphabetically in the name of the borrower.

The address is:

Room E17, East Block Ground Floor, Royal Courts of Justice, Strand, London WC2A 2LL\*\*

### **Bills of Sale Acts**

As we understand the position –

- a. Buying a car under a bill of sale will be a regulated consumer credit agreement
- b. The goods will not become 'protected' in the same way as for hire-purchase agreements (for which section 90 of the Consumer Credit Act 1974 provides that if the consumer has paid one-third or more of the total price of the goods, the creditor cannot recover possession except by judicial proceedings or consent).
- c. However, the creditor will not be able to enforce the security unless he has first served a default notice under section 87 of the Consumer Credit Act 1974 and this has expired (after not less than 14 days) without remedy or the debtor applying to the court for relief.
- d. If the creditor repossesses without a valid default notice, the consumer may apply for an injunction or a time order, or seek damages for breach of contract.

On this basis, whilst the consumer will have less protection under a bill of sale than under a hire-purchase agreement, he will not be completely unprotected, and the creditor will be at risk of licensing action if he acts unfairly.

In addition –

- e. The bill of sale is given as security, and where this is provided in relation to a regulated consumer credit agreement it must comply with section 105 Consumer Credit Act 1974.
- f. The credit agreement must embody any security, by virtue of regulation 2(8) of the Consumer Credit (Agreements) Regulations 1983. A document embodies a provision if the provision is set out in it or in another document referred to in it (a bill of sale will usually be incorporated by reference).
- g. The debtor must be provided with a copy of the bill of sale, pursuant to sections 62 and 63 Consumer Credit Act 1974, since this is a document referred to in the credit agreement.
- h. If the bill of sale does not comply with section 105 of the Act it will be unenforceable by virtue of section 106. Furthermore, if the credit agreement does not comply with the Consumer Credit Act 1974 so that it is unenforceable, this will preclude the exercise of any remedies under the bill of sale (except pursuant to a court order where relevant).
- i. The bill of sale must also comply with the statutory provisions in the Bills of Sale Acts. In particular, it must be in the form given in the schedule to the Bills of Sale Act (1878) Amendment Act 1882, otherwise it will be void and cannot be treated as a licence to take possession.
- j. The bill of sale must also be witnessed and registered (at the relevant department of the Supreme Court) in the time and manner set out in the Bills of Sale Acts, otherwise it will be void in respect of the chattels comprised in it.

- k. In practice, the majority of such bills of sale may well be unenforceable because the provisions of the Bills of Sale Acts are unlikely to have been followed, and even if they have, the relevant requirements of the Consumer Credit Act 1974 must also be satisfied.
- l. The bill of sale and related credit agreement may also be susceptible to action under the Unfair Terms in Consumer Contracts Regulations 1999 or under the extortionate credit bargain provisions of the Consumer Credit Act 1974.
- m. Whether title can pass to a third party where there is a valid bill of sale will depend upon whether the bill transfers legal or equitable title to the grantee, and each case would need to be looked at on its facts.

The Bills of Sale Acts are unduly complex and outdated, and should be reviewed – as recommended by the Crowther Committee in 1971. We suspect however that BERR will be unwilling to include this in the current Consumer Credit Act 1974 Review unless there is clear evidence of consumer detriment. You may wish to bring your concerns to the BERR's attention by writing to –

Consumer Affairs Directorate, Department of Business, Enterprise and Regulatory Reform, 1  
Victoria Street, London SW1H 0ET

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\* I have updated this guidance to take account of legal and governmental changes

\*\* The office where the register is kept is not easy to locate, but, if you enter the main Court building on the Strand, and ask at the enquiry desk immediately beyond the security desks, they will give you a sheet of directions.