

**THE NATIONAL CREDIT ACT 34 OF 2005: THE PASSING OF  
OWNERSHIP OF THE THING SOLD IN TERMS OF AN  
INSTALMENT AGREEMENT**

## **1 Introduction**

The National Credit Act 34 of 2005 (“the Act”) which is now in full effect (the Act was put into operation on 2006-06-01, 2006-09-01 and 2007-06-01; s 172 which came into operation on 2006-06-01 repealed the Act’s immediate predecessors, the Credit Agreements Act 75 of 1980 and the Usury Act 73 of 1968) applies to credit agreements (credit facilities, credit transactions or credit guarantees or any combination thereof – s 8(1)) between parties dealing at arm’s length and made within or having an effect within the Republic, unless one of the exclusions from the ambit of the Act applies (s 4(1); see Otto *The National Credit Act explained* (2006) 15ff; Renke, Roestoff and Haupt “The National Credit Act: New parameters for the granting of credit in South Africa” 2007 *Obiter* 230–238; Boraine and Renke “Some practical and comparative aspects of the cancellation of instalment agreements in terms of the National Credit Act 34 of 2005 (Part 1)” 2007 *De Jure* 230–235 for a discussion of the field of application of the Act). One of the credit transactions to which the Act applies is the instalment agreement (s 8(4)).

An instalment agreement entails a contract of sale of movable property where payment of the price or part thereof is deferred and is to be paid by periodic payments. Interest, fees or other charges are payable to the credit provider in respect of the agreement or deferred amount. Possession and use of the property is transferred to the consumer (buyer; s 1 defines “consumer” *inter alia* as the party to whom goods are sold under an instalment agreement) immediately. However, the contract contains an ownership reservation clause in terms of which the consumer only becomes the owner of the property sold once the contract is fully complied with. Alternatively the contract allows for ownership to pass to the consumer immediately subject to a right of the credit provider (seller; see the definition of “credit provider” in s 1) to repossess the property should the consumer fail to satisfy all his or her financial obligations in terms of the agreement (s 1). It is apparent from the definition of instalment agreement that a contract of purchase and sale of movable property (goods) is at hand. It is also clear in terms of the definition that the following requirements have to be met in order for the agreement to qualify as an instalment agreement:

- (a) Payment of the purchase price or part thereof has to be deferred (deferral of a consumer’s obligation to *inter alia* pay the cost or part of the cost of the goods is one of the elements that has to be present in order for an agreement to qualify as a credit agreement; alternatively some form of prepayment has to be provided for; Renke, Roestoff and Haupt 2007 *Obiter* 235).
- (b) The purchase price has to be paid by means of periodic payments (or instalments; *contra* the Credit Agreements Act that allowed for payment of the purchase price etcetera by means of instalments or a lump sum payment in future; see Otto *The National Credit Act explained* 18; Renke, Roestoff and Haupt 2007 *Obiter* 234).
- (c) Interest, fees or other charges have to be payable by the consumer to the credit provider in respect of the agreement or deferred amount (or a discount is granted where prepayments are effected; the payment of interest etcetera or the granting of a discount is the second requirement which needs to be met for an agreement to constitute a credit agreement: Renke, Roestoff and Haupt 2007 *Obiter* 235).
- (d) Possession and use of the property has to be transferred to the consumer immediately.
- (e) The contract between the parties has to contain a clause addressing the passing of ownership of the thing sold to the buyer (*contra* contracts of sale of movable goods (supply of goods) as credit facilities; see the definition of “credit facility” in s 8(3); Renke, Roestoff and Haupt 2007 *Obiter* 231–232 and Boraine and Renke 2007 *De Jure* 231–232).

The definition of instalment agreement affords a choice to the credit provider regarding provisions in the agreement that regulate the transfer of ownership. The credit provider can either reserve the passing of ownership of the thing sold or agree to a contract whereby ownership passes to the buyer immediately (subject to a right of the credit provider to repossess the goods in the event of breach of contract). The latter option in particular appears to be strange and gives rise to interesting questions. For instance, why would the seller abandon his or her ownership of the goods sold in terms of the contract when it is possible to reserve ownership until payment of a certain amount or the whole of the purchase price? Linked to this question is the issue of the seller’s (who has lost possession of the object of the sale and has supplied credit

for payment of the purchase price (or part of it)) security to ensure payment of the purchase price. Is the buyer who immediately becomes the owner of the goods sold, allowed to alienate the goods to a third party in light of the credit provider's right to repossess the goods if a breach of contract occurs? If the answer is in the affirmative and the buyer does indeed alienate the goods to a third party, what possible remedies will be available to the seller?

The purpose of this note is to evaluate and compare the transfer of ownership options provided for in the definition of instalment agreement in the Act and in the process to answer the above questions. Regard will *inter alia* be had to the definitions of this type of contract under the Act's predecessors, the Hire-Purchase Act 36 of 1942 ("Hire-Purchase Act") and the Credit Agreements Act.

## 2 "Instalment agreements" in terms of repealed legislation

### 2.1 Background

The 1926 Usury Act was the first attempt to consolidate consumer credit laws in South Africa on a national basis. However, this Act only applied to money-lending transactions, which meant that instalment transactions relating to movable goods were not statutorily regulated (Flemming *Huurkoopreg* (1974) 17–18; *South African Law Commission working paper 46 project 67* "The Usury Act and related matters" (1993) 26). Thus the need for legislation to protect consumers who concluded hire-purchase or instalment sale agreements resulted in the promulgation of the Hire-Purchase Act (that came into operation on 1942-05-01) which then functioned in conjunction with the 1926 Usury Act (until the latter Act was repealed). In 1980 the first of a new generation of credit laws, the Credit Agreements Act, was promulgated. This Act came into operation on 2 March 1981 and repealed the Hire-Purchase Act.

### 2.2 The Hire-Purchase Act

The Hire-Purchase Act applied to certain instalment sale and hire-purchase agreements relating to movable goods (s 2 read with s 1; see Flemming 20–23; Otto *Die regte van 'n huurkoper tov beëindiging van die kontrak* (LLD thesis 1980 UP) 38–44 58ff ("Otto Thesis"); Diemont and Aronstam *The law of credit agreements and hire-purchase in South Africa* (1982) 33–37 for a discussion of these agreements). The Act defined a hire-purchase agreement (the traditional definition of hire-purchase agreement) as an agreement whereby goods were sold subject to the condition that ownership in such goods shall not pass merely by the transfer of possession of such goods. In terms of the contract the purchase price had to be paid in instalments, two or more of which had to be payable after the transfer of ownership of the goods. Any other agreement which had or other agreements which together had the same import, whatever the form thereof, were included. Certain agreements that provided for the letting and hiring of goods were deemed to be of the same import and therefore the Hire-Purchase Act applied to such agreements (s 1; Otto *Thesis* 38; Diemont and Aronstam 33–36). Section 1 of the principal Hire-Purchase Act defined an instalment sale agreement as an agreement of purchase and sale of movable goods in terms of which the ownership in the goods sold passed upon delivery. The purchase price had to be paid in instalments, two or more of which had to be payable after delivery of the goods. Failure by the buyer to comply with any provision of the contract entitled the seller to the return of the goods sold. Again, an agreement or agreements which together had the same import were included.

In 1965 the definition of "instalment sale agreement" was amended by the Hire-Purchase Amendment Act 30 of 1965 (the 1965 Amendment Act). The first part of the definition remained exactly the same. However, the amended definition also provided that the contract had to prohibit the buyer from alienating or encumbering the goods sold until the purchase price had been paid in full. Alternatively, the contract could have stated that the full purchase price would become payable should the buyer alienate or encumber the goods sold. Further in the alternative the contract had to provide that the seller would be entitled to the return of the goods if the buyer failed to comply with any provision thereof. The legislative addition of the option of implementing or referring to an acceleration clause, as well as the legislative prohibition aimed at preventing alienation or encumbrance of goods of which the buyer was the owner serve to highlight the right to enforcement of the contract afforded to the seller.

### 2.3 The Credit Agreements Act

The Credit Agreements Act *inter alia* served to regulate certain transactions in terms of which movable goods were purchased or leased on credit (preamble to the Credit Agreements Act). This Act applied to certain credit agreements (s 2(1); see Otto "Commentary" *Credit law service* (1991) paras 7–9; Grové and Otto *Basic principles of consumer credit law* (2002) 12–16 for a discussion of the Act's field of application). Credit transactions (including instalment sale transactions) or leasing transactions (of movable

goods; leasing transactions are not discussed any further) (or a transaction or transactions which together had the same import as a credit or leasing transaction irrespective of the form of first-mentioned transaction or transactions and irrespective of whether any such transaction or transactions were subject to a resolutive or suspensive condition; see Otto 1991 *Credit law service* para 7 for a discussion) constituted credit agreements (s 1).

Credit transactions *inter alia* referred to contracts of sale of movable goods (s 1). The same held true for instalment sale transactions, which was a form of a credit transaction. However, instalment sale transactions had two characteristics that distinguished it from other credit transactions. The parties either agreed that the purchaser did not become the owner of the goods through mere delivery to him (this refers to an ownership reservation clause; Grové and Otto 14) (nor through the use, possession or enjoyment of the goods by the purchaser; see Otto 1991 *Credit law service* para 7) or that the seller would be entitled to the return of the goods should the purchaser be guilty of breach of contract (s 1).

The second distinguishing characteristic of an instalment sale transaction in terms of the Credit Agreements Act (the seller was entitled to the return of the goods if the purchaser was guilty of breach of contract) did not specifically determine that ownership passed to the buyer on delivery of the goods to the buyer (*contra* the definition of the instalment sale agreement in terms of the Hire-Purchase Act and of the instalment agreement in terms of the Act). However, we submit that transfer of ownership to the buyer upon delivery was implied as the instalment sale transaction was a species of the credit transaction. Normal credit transactions did not contain a clause addressing the passing of ownership of the goods to the buyer. In terms of the common law ownership of the property therefore passed to the buyer immediately upon delivery thereof to the buyer (see Diemont and Aronstam 36; Nagel *et al Commercial law* (2006) 186; Grové and Otto 14). In the event of an ordinary credit sale the ownership in the goods remains vested in the buyer even where he or she commits a breach of contract (Diemont and Aronstam 36).

#### 2.4 Summary

Upon comparison of the definitions in the Act and its predecessors, when defining the instalment agreement, it should be noted that the Act's predecessors provided for contracts of sale of movable goods with similar transfer of ownership options. It is therefore submitted that the definitions under the repealed legislation and the interpretation thereof by writers and the courts can be used to place the rules regarding the passing of ownership of the thing sold in terms of the new definition in perspective. For the sake of completeness we have to point out that the word "hire-purchase" was abandoned by the Credit Agreements Act.

### 3 Ownership reservation clauses

Long before the Hire-Purchase Act came into operation Van Winsen "Theories of hire-purchase" 1930 *SALJ* 385 declared that the hire-purchase agreement had been fully established in South African law. Although the author states (*ibid*) that the term "hire-purchase" has been applied indiscriminately to different agreements (of sale and lease) he continues to discuss the contract of sale subject to an ownership reservation clause. Ownership reservation clauses or *pacta reservati dominii* are now so entrenched in South African consumer credit legislation (paras 1 and 2 above; see in general Van Winsen 1930 *SALJ* 385ff; Spiro "The hire purchase agreement in South African law and its problems" 1940 *SALJ* 263ff; Hamman "Die huurkoopwetsontwerp" 1941 *THRHR* 255ff; Flemming 1-9 20-21; Otto *Thesis* 38 46-47 58-86 99-102; Diemont and Aronstam 1-20; Otto 1991 *Credit law service* para 7; Grové and Otto 14) that only the salient points of these clauses will be elaborated:

- (a) Except for true letting and hiring contracts (which were deemed to be of the same import as hire-purchase agreements in terms of the Hire-Purchase Act; see para 2.2) hire-purchase agreements in terms of the Hire-Purchase Act entailed contracts of sale of movable goods (Hamman 1941 *THRHR* 268; Otto *Thesis* 44). The same holds true for instalment sale transactions as defined in the Credit Agreements Act and instalment agreements in terms of the Act.
- (b) Although ownership reservation clauses may reserve the passing of ownership until certain payments are made, these clauses normally reserve the passing of ownership until the payment of the final instalment in terms of the agreement (Otto *Thesis* 58).
- (c) South African courts still seem to be reluctant to decide the effect of clauses reserving ownership. For instance, it was held by the High Court (*Info Plus v Scheelke* 1996 4 SA 1058 (W) 1061H-I) that it makes no difference whether a reservation of ownership clause suspends the whole agreement of sale or only the consequences of such agreement. However, we submit that a contract of sale with a clause that reserves the passing of ownership to the seller until certain payments are made is a completed sale

*ab initio*. The reservation of ownership does not suspend the whole sale. To hold otherwise would give rise to absurd consequences (Van Winsen 1930 *SALJ* 387; O'Donovan *Mackeurtan's Sale of goods in South Africa* (1972) 98; Diemont and Aronstam 19–20; Otto *Thesis* 44 99–102; Christie *The law of contract in South Africa* (2006) 137).

- (d) At Roman law the temporary reservation of ownership in a contract of sale was a *pactum adjectum* (the *pactum reservati dominii*) and not a condition. This is not inconsistent with the essence of sale (O'Donovan 98; Van Winsen 1930 *SALJ* 391). Diemont and Aronstam 15 are in agreement with O'Donovan and correctly so. A condition requires a contingency, postponing the duty to perform until the happening (or not) of an uncertain future event. The authors contend that no such condition is present in the case of an ownership reservation clause but only the unqualified obligation to pay the purchase price. (Reference is made (14 19) to passing of ownership that is conditional and to a failure of the suspensive term (if the buyer fails to make the necessary payments) which seems to be a contradiction to the authors' earlier argument; see also *Info Plus v Scheelke* 1998 3 SA 184 (SCA) 190I where it was held that a "hire-purchase" agreement is conditional because of the conditional term (a clause reserving ownership) in the agreement; the court also referred to the ownership reservation clause as a suspensive condition; see also Christie 137 139–140.)
- (e) The effect of such a clause is the suspension of the passing of ownership under a completed sale. This renders delivery (which would otherwise make the buyer owner due to the sale being a credit sale; see para 2 3) of the goods sold conditional (O'Donovan 98; Diemont and Aronstam 17). This argument cannot be faulted (see *Info Plus v Scheelke* 1998 3 SA 184 (SCA)).
- (f) The Supreme Court of Appeal in *Info Plus* decided on the question as to whether or not it is necessary for the buyer of a thing sold in terms of an instalment sale agreement to be in possession of the *merx* when the condition reserving ownership is fulfilled in order to become the owner of the *merx*. The court held (191G–H) that although pending fulfilment of the condition ownership of the thing sold remains vested in the seller, transfer of possession (which is one of the requirements of transfer of ownership) does take place. Such transfer of possession is effected in terms of a real agreement (the instalment sale agreement between the seller and purchaser) embodying the intention of both parties that upon fulfilment of the condition the purchaser shall without further ado become the owner of the thing sold. Upon fulfilment of the condition both requirements for transfer of ownership are satisfied because conditional delivery then *ipso jure* becomes unconditional. It is therefore not necessary for the purchaser to be in possession of the thing sold when the condition is fulfilled.
- (g) If a contract of sale of movable goods contains a clause reserving ownership, the *dominium* remains with the seller during the period between the conclusion of the contract and the payment of the agreed upon payments (the interim period) (Van Winsen 1930 *SALJ* 393; Diemont and Aronstam 19; *Info Plus v Scheelke* 1998 3 SA 184 (SCA) 191G).
- (h) The fact that ownership remains with the seller during the interim period provides important security to the seller who has lost possession of the object of the sale and has supplied credit for payment of the purchase price (or part of it). The goods sold provide the security in that the seller still has the real right of ownership over the goods (Diemont and Aronstam 2–3 140; Hamman 1941 *THRHR* 257). Should the buyer for instance alienate the object of the sale during the interim period to a third party, the object is a *res aliena*. The seller could therefore institute the common law *rei vindicatio* to claim the goods back from the third party (see O'Donovan 68; Christie 141; Nagel *et al* 173–174).
- (i) Diemont and Aronstam 19 are correct in saying that the question regarding the legal effect of failure by the buyer to make the necessary payments in terms of the agreement is academic. According to them, the reason is that the contracting parties almost without exception regulate breach of contract by inserting forfeiture and cancellation clauses in the agreement. Whether the contract contains such clauses or not, the normal principles of the law of contract, as amended by legislation, will apply to the seller's remedies to *inter alia* cancel the agreement (together with a claim for damages if any damages were suffered) and claim the goods back (see Otto *Thesis* 117–124 129–149 195–196 203–209 223–224 226–234 240–251 351–353; Diemont and Aronstam 178ff; Otto 1991 *Credit law service* paras 27–29 33 37–42 65–66; Grové and Otto 41–54; Boraine and Renke 2007 *De Jure* 224–230 regarding the position in terms of the Hire-Purchase Act and the Credit Agreements Act; for an exposition of the legal position under the Act, see Otto *The National Credit Act explained* 84–98; Boraine and Renke "Some practical and comparative aspects of the cancellation of instalment agreements in terms of the National Credit Act 34 of 2005 (Part 2)" 2008 *De Jure* 1).

## 4 Ownership passes immediately subject to a commissory pact

### 4.1 General

As mentioned earlier (paras 1 and 2), South African consumer credit legislation has through the years provided for contracts of sale of movable goods whereby the ownership of the goods sold passes to the buyer forthwith subject to the right of the seller to claim back the goods should breach of contract occur (in terms of the Hire-Purchase Act (after its amendment in 1965) the contract in the alternative could have prohibited the buyer from alienating or encumbering the goods sold until the purchase price had been paid in full. Further in the alternative the contract could have stated that the full purchase price becomes payable should the buyer alienate or encumber the goods sold). Whatever the case may be it is clear that such contracts constitute contracts of sale *ab initio* (Flemming 4; Otto *Thesis* 58; Diemont and Aronstam 19). It is also clear that ownership of the goods passes to the buyer immediately upon delivery of the goods to the buyer (see Flemming 97; Diemont and Aronstam 272; Christie 142). The buyer may consequently (subject to certain restrictions discussed in para 4.2) exercise all the entitlements inherent in ownership (see Hamman 1941 *THRHR* 257; Flemming 97). However, the passing of ownership is subject to what Diemont and Aronstam 19 call a commissory pact. Such commissory pact distinguishes this type of contract from a normal credit sale (see para 2.3 above; see also Otto *Thesis* 43). Contracts of sale of movable goods subject to the resolutive condition that ownership of the thing sold passes to the buyer immediately but shall revert to the seller in the event of breach of contract by the buyer are not provided for in terms of South African consumer credit legislation (paras 1 and 2) and will not receive any further attention (see Diemont and Aronstam 20 in this regard).

### 4.2 The seller's security

Diemont and Aronstam 3 state that the *pactum reservati dominii* is the term that provides the seller with the all-important security to ensure payment of his or her debt by the buyer. The goods sold provide the security as the seller retains the real right of ownership in the goods (see para 3 h). Should the seller therefore elect to make use of a contract whereby ownership passes to the buyer upon delivery of the thing sold, the seller forfeits the protection afforded by the right of ownership (see para 4.4; Spiro 1940 *SALJ* 265; Otto *Thesis* 44; Diemont and Aronstam 11).

Christie 142 is of the opinion that contracts of sale subject to resolutive conditions are fully operative pending fulfilment of the resolutive condition and that the contracting parties are bound by the contract not to do anything inconsistent with the resolutive condition. A proposed sale by the purchaser to a third party could be interdicted by the original seller because the sale would deprive him or her of the *spes* of recovering the thing sold should the resolutive condition be fulfilled. Christie says that if it is too late to stop the sale the original seller would be entitled to institute a claim for damages against the purchaser, for breach of a necessarily implied term that the purchaser would do nothing inconsistent with the resolutive condition (also see *Cyster v Du Toit* 1932 CPD 345). We submit that Christie's contentions cannot be faulted. We further submit that the said contentions should also hold true with regard to contracts providing for the immediate passing of ownership of the thing sold to the buyer subject to a commissory pact, as these contracts are subject to a resolutive condition (Spiro 1940 *SALJ* 266; 276; Hamman 1941 *THRHR* 269; O'Donovan 66; Flemming 97; Diemont and Aronstam 19). Instead of relying on an implied term that the purchaser would do nothing inconsistent with the resolutive condition, the seller may bind the buyer contractually not to exercise all the entitlements normally associated with ownership (eg a prohibition to alienate the thing sold until the purchase price has been paid in full).

Related issues to the seller's security are the seller's course of action in the event of default by the buyer and the action available to the seller should the buyer alienate the property to a third party and thereafter commit breach of contract by not complying fully with his or her financial obligations in terms of the contract.

### 4.3 Breach of contract by the buyer: The seller's remedies

Once the buyer defaults by failing to pay an instalment on the due date, in other words once the resolutive condition is fulfilled, the contract is voidable at the option of the seller (Spiro 1940 *SALJ* 267; O'Donovan 67; Diemont and Aronstam 20 272). The seller may therefore exercise the remedies agreed upon in the contract (or otherwise rely on the common law) as influenced by the Act to enforce the agreement (by claiming specific performance) or to cancel it. Until the seller chooses to enforce or cancel the agreement, it remains in force and the buyer retains ownership of the goods (Diemont and Aronstam 272 fn 237).

Should the seller elect to cancel the agreement he or she will have to institute a claim to repossess the thing sold from the buyer (unless of course the buyer returns the goods voluntarily). In the event of

enforcement or cancellation of the contract damages may be claimed if any damages were suffered (see the authorities cited in para 3(i) for an exposition of the legal position in terms of the Act and its predecessors).

#### 4.4 *The seller's position in relation to third parties*

Christie 142 formulates the seller's underlying difficulty with regard to his or her position in relation to third parties. Pending the fulfilment of the resolutive condition both parties have to perform in terms of the agreement that is fully operative. Delivery of the *merx* by the (original) seller passes ownership to the buyer. Consequently a sale by the buyer to a third party (in spite of the buyer's contractual undertaking not to do anything inconsistent with the resolutive condition; see para 4.2) will pass ownership to the third party and the original seller will have no right of vindication should the buyer default after the sale to the third party has occurred (see also Spiro 1940 *SALJ* 267; Diemont and Aronstam 272). It is trite law that in order for a person to be able to make use of the *rei vindicatio* he or she has to be the owner of the goods concerned (Diemont and Aronstam 241; Nagel *et al* 173).

It is obvious that the original seller's loss of the real right of ownership results in him or her not having an action *in rem*. The only action that lies for the seller is an action *in personam*, namely the *actio ex empto vendito* (*Keyter v Barry's Executor* 1879 Buch 175 at 177; O'Donovan 68–69; Diemont and Aronstam 272). The *actio ex empto vendito* is also known as the *actio empti*, the general action on sale in Roman law (see Kerr *The law of sale and lease* (2004) 108). As a result of the fact that the seller's action lies against the buyer only (and not against the entire world; see Christie 4 regarding the difference between an action *in rem* and *in personam*) the seller has no claim against a *bona fide* third party who is in possession of the goods. However, the seller may obtain a cession of action from the buyer (*Mahemo v Mpefu* 1912 TPD 724 728; Diemont and Aronstam 272; see in general with regard to the cession of personal rights Van der Merwe *et al Contract general principles* (2003) 437; Christie 465). The seller may subsequently claim the return of the *merx* and damages from the third party by means of the *actio empti* (Diemont and Aronstam 272; Nagel *et al* 195). Where the third party is a *mala fide* possessor the seller may probably recover the *merx* without a cession of action (O'Donovan 69; Diemont and Aronstam 272).

## 5 Conclusion

If regard is had to the definitions of the transactions that were covered by the Act's predecessors (para 2), the part of the definition of the instalment agreement in terms of the Act whereby the buyer becomes the owner of the goods immediately subject to the right of the seller to repossess the goods should the buyer commit breach of contract appears to be nothing new after all. Compared with the legal position of a seller in terms of a contract of sale containing an ownership reservation clause, the legal position of a seller in terms of an agreement allowing for the immediate passing of ownership subject to a commissory pact seems to be inferior and more complex, especially in relation to third parties (paras 3–4). When electing to make use of the latter form of the contract of sale to dispose of movable goods, the seller abandons his or her real right of ownership, his or her strongest security to ensure payment of the purchase price.

In light of the above it may be asked why consumer credit legislation has been providing over the years for contracts of sale of movable goods allowing for the immediate passing of ownership subject to the right to repossess the goods in the event of breach of contract. Apparently the reason for the inclusion of the instalment sale agreement in the Hire-Purchase Act was to prevent sellers from avoiding the strict provisions of the Act in relation to hire-purchase agreements by merely forfeiting the clause reserving ownership (Hamman 1941 *THRHR* 269). We contend that the same argument holds true with regards to the Hire-Purchase Act's successors. Be it as it may, although the above type of contract is seldom used in practice (Spiro 1940 *SALJ* 266) and discussed in legal literature, it remains an option available to the contracting parties. In spite of the shortcomings of this contract, sellers may therefore still want to make use of same where, for example, the former relies on the good reputation of the buyer to make good on the debt or where the object of sale is of minimal value. In the latter instance the goods might not serve as adequate security rendering the use of an ownership reservation clause useless. We submit that such sellers should acquaint themselves with the possible dangers involved when using this form of sale and should protect themselves accordingly.

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