

SCHEDULES

SCHEDULE 2

EXAMPLES OF USE OF NEW TERMINOLOGY

PART II

EXAMPLES

EXAMPLE 1

Facts. Correspondence passes between an employee of a money-lending company (writing on behalf of the company) and an individual about the terms on which the company would grant him a loan under a regulated agreement.

Analysis. The correspondence constitutes antecedent negotiations falling within section 56(1)(a), the moneylending company being both creditor and negotiator.

EXAMPLE 2

Facts. Representations are made about goods in a poster displayed by a shopkeeper near the goods, the goods being selected by a customer who has read the poster and then sold by the shopkeeper to a finance company introduced by him (with whom he has a business relationship). The goods are disposed of by the finance company to the customer under a regulated hire-purchase agreement.

Analysis. The representations in the poster constitute antecedent negotiations falling within section 56(1)(b), the shopkeeper being the credit-broker and negotiator and the finance company being the creditor. The poster is an advertisement and the shopkeeper is the advertiser.

EXAMPLE 3

Facts. Discussions take place between a shopkeeper and a customer about goods the customer wishes to buy using a credit-card issued by the D Bank under a regulated agreement.

Analysis. The discussions constitute antecedent negotiations falling within section 56(1)(c), the shopkeeper being the supplier and negotiator and the D Bank the creditor. The credit-card is a credit-token as defined in section 14(1), and the regulated agreement under which it was issued is a credit-token agreement as defined in section 14(2).

EXAMPLE 4

Facts. Discussions take place and correspondence passes between a secondhand car dealer and a customer about a car. which is then sold by the dealer to the customer under a regulated conditional sale agreement. Subsequently, on a revocation of that agreement by consent, the car is resold by the dealer to a finance company introduced by him (with whom he has a business relationship), who in turn dispose of it to the same customer under a regulated hire-purchase agreement.

Status: This is the original version (as it was originally enacted).

Analysis. The discussions and correspondence constitute antecedent negotiations in relation both to the conditional sale agreement and the hire-purchase agreement. They fall under section 56(1)(a) in relation to the conditional sale agreement, the dealer being the creditor and the negotiator. In relation to the hire-purchase agreement they fall within section 56(1)(b), the dealer continuing to be treated as the negotiator but the finance company now being the creditor. Both agreements are cancellable if the discussions took place when the individual conducting the negotiations (whether the "negotiator" or his employee or agent) was in the presence of the debtor, unless the unexecuted agreement was signed by the debtor at trade premises (as defined in section 67(b)). If the discussions all took place by telephone however, or the unexecuted agreement was signed by the debtor on trade premises (as so defined) the agreements are not cancellable.

EXAMPLE 5

Facts. E agrees to sell to F (an individual) an item of furniture in return for 24 monthly instalments of £10 payable in arrear. The property in the goods passes to F immediately.

Analysis. This is a credit-sale agreement (see definition of "creditsale agreement" in section 189(1)). The credit provided amounts to £240 less the amount which, according to regulations made under section 20(1), constitutes the total charge for credit. (This amount is required to be deducted by section 9(4)). Accordingly the agreement falls within section 8(2) and is a consumer credit agreement.

EXAMPLE 6

Facts. The G Bank grants H (an individual) an unlimited overdraft, with an increased rate of interest on so much of any debit balance as exceeds £2,000.

Analysis. Although the overdraft purports to be unlimited, the stipulation for increased interest above £2,000 brings the agreement within section 10(3)(b)(ii) and it is a consumer credit agreement.

EXAMPLE 7

Facts. J is an individual who owns a small shop which usually carries a stock worth about £1,000. K makes a stocking agreement under which he undertakes to provide on short-term credit the stock needed from time to time by J without any specified limit.

Analysis. Although the agreement appears to provide unlimited credit, it is probable, having regard to the stock usually carried by J, that his indebtedness to K will not at any time rise above £5,000. Accordingly the agreement falls within section 10(3)(b)(iii) and is a consumer credit agreement.

EXAMPLE 8

Facts. U, a moneylender, lends £500 to V (an individual) knowing he intends to use it to buy office equipment from W. W introduced V to U, it being his practice to introduce customers needing finance to him. Sometimes U gives W a commission for this and sometimes not. U pays the £500 direct to V.

Analysis. Although this appears to fall under section 11(1)(b), it is excluded by section 11(3) and is therefore (by section 11(2)) an unrestricted-use credit agreement. Whether it is a debtor-creditor agreement (by section 13(c)) or a debtor-creditor-supplier agreement (by section 12(c)) depends on whether the previous dealings between U and W amount to "pre-existing arrangements", that is whether the agreement can be taken to have been entered into "in accordance with, or in furtherance of" arrangements previously made between U and W, as laid down in section 187(1).

EXAMPLE 9

Facts. A agrees to lend B (an individual) £4,500 in nine monthly instalments of £500.

Analysis. This is a cash loan and is a form of credit (see section 9 and definition of "cash" in section 189(1)). Accordingly it falls within section 10(1)(b) and is fixed-sum credit amounting to £4,500.

EXAMPLE 10

Facts. C (in England) agrees to bail goods to D (an individual) in return for periodical payments. The agreement provides for the property in the goods to pass to D on payment of a total of £7,500 and the exercise by D of an option to purchase. The sum of £7,500 includes a down-payment of £1,000. It also includes an amount which, according to regulations made under section 20(1), constitutes a total charge for credit of £1,500.

Analysis. This is a hire-purchase agreement with a deposit of £1,000 and a total price of £7,500 (see definitions of "hire-purchase agreement", "deposit" and "total price" in section 189(1)). By section 9(3), it is taken to provide credit amounting to £7,500— (£1,500 + £1,000), which equals £5,000. Under section 8(2), the agreement is therefore a consumer credit agreement, and under sections 9(3) and 11(1) it is a restricted-use credit agreement for fixed-sum credit. A similar result would follow if the agreement by C had been a hiring agreement in Scotland.

EXAMPLE 11

Facts. X (an individual) borrows £500 from Y (Finance). As a condition of the granting of the loan X is required—

- (a) to execute a second mortgage on his house in favour of Y (Finance), and
- (b) to take out a policy of insurance on his life with Y (Insurances).

In accordance with the loan agreement, the policy is charged to Y (Finance) as collateral security for the loan. The two companies are associates within the meaning of section 184(3).

Analysis. The second mortgage is a transaction for the provision of security and accordingly does not fall within section 19(1), but the taking out of the insurance policy is a linked transaction falling within section 19(1)(a). The charging of the policy is a separate transaction (made between different parties) for the provision of security and again is excluded from section 19(1). The only linked transaction is therefore the taking out of the insurance policy. If X had not been required by the loan agreement to take out the policy, but it had been done at the suggestion of Y (Finance) to induce them to enter into the loan agreement, it would have been a linked transaction under section 19(1)(c)(i) by virtue of section 19(2)(a).

EXAMPLE 12

Facts. The N Bank agrees to lend O (an individual) £2,000 to buy a car from P. To make sure the loan is used as intended, the N Bank stipulates that the money must be paid by it direct to P.

Analysis. The agreement is a consumer credit agreement by virtue of section 8(2). Since it falls within section 11(1)(b), it is a restricted-use credit agreement, P being the supplier. If the N Bank had not stipulated for direct payment to the supplier, section 11(3) would have operated and made the agreement into one for unrestricted-use credit.

Status: This is the original version (as it was originally enacted).

EXAMPLE 13

Facts. Q, a debt-adjuster, agrees to pay off debts owed by R (an individual) to various moneylenders. For this purpose the agreement provides for the making of a loan by Q to R in return for R's agreeing to repay the loan by instalments with interest. The loan money is not paid over to R but retained by Q and used to pay off the moneylenders.

Analysis. This is an agreement to refinance existing indebtedness of the debtor's, and if the loan by Q does not exceed £5,000 is a restricted-use credit agreement falling within section 11(1)(c).

EXAMPLE 14

Facts. On payment of £1, S issues to T (an individual) a trading check under which T can spend up to £20 at any shop which has agreed, or in future agrees, to accept S's trading checks.

Analysis. The trading check is a credit-token falling within section 14(1)(b). The credit-token agreement is a restricted-use credit agreement within section 11(1)(b), any shop in which the credit-token is used being the "supplier". The fact that further shop may be added after the issue of the credit-token is irrelevant in view of section 11(4).

EXAMPLE 15

Facts. A retailer L agrees with M (an individual) to open an account in M's name and, in return for M's promise to pay a specified minimum sum into the account each month and to pay a monthly charge for credit, agrees to allow to be debited to the account, in respect of purchases made by M from L, such sums as will not increase the debit balance at any time beyond the credit limit, defined in the agreement as a given multiple of the specified minimum sum.

Analysis. This agreement provides credit falling within the definition of running-account credit in section 10(1)(a). Provided the credit limit is not over £5,000, the agreement falls within section 8(2) and is a consumer credit agreement for running-account credit.

EXAMPLE 16

Facts. Under an unsecured agreement, A (Credit), an associate of the A Bank, issues to B (an individual) a credit-card for use in obtaining cash on credit from A (Credit), to be paid by branches of the A Bank (acting as agent of A (Credit)), or goods or cash from suppliers or banks who have agreed to honour credit-cards issued by A (Credit). The credit limit is £30.

Analysis. This is a credit-token agreement falling within section 14(1)(a) and (b). It is a regulated consumer credit agreement for running-account credit. Since the credit limit does not exceed £30, the agreement is a small agreement. So far as the agreement relates to goods it is a debtor-creditor-supplier agreement within section 12(b), since it provides restricted-use credit under section 11(1)(b). So far as it relates to cash it is a debtor-creditor agreement within section 13(c) and the credit it provides is unrestricted-use credit. This is therefore a multiple agreement. In that the whole agreement falls within several of the categories of agreement mentioned in this Act, it is, by section 18(3), to be treated as an agreement in each of those categories. So far as it is a debtor-creditor-supplier agreement providing restricted-use credit it is, by section 18(2), to be treated as a separate agreement; and similarly so far as it is a debtor-creditor agreement providing unrestricted-use credit. (See also Example 22.)

Status: This is the original version (as it was originally enacted).

EXAMPLE 17

Facts. The manager of the C Bank agrees orally with D (an individual) to open a current account in D's name. Nothing is said about overdraft facilities. After maintaining the account in credit for some weeks, D draws a cheque in favour of E for an amount exceeding D's credit balance by £20. E presents the cheque and the Bank pay it.

Analysis. In drawing the cheque D, by implication, requests the Bank to grant him an overdraft of £20 on its usual terms as to interest and other charges. In deciding to honour the cheque, the Bank by implication accept the offer. This constitutes a regulated small consumer credit agreement for unrestricted-use, fixed-sum credit. It is a debtor-creditor agreement, and falls within section 74(1)(b) if covered by a determination under section 74(3). (Compare Example 18.)

EXAMPLE 18

Facts. F (an individual) has had a current account with the G Bank for many years. Although usually in credit, the account has been allowed by the Bank to become overdrawn from time to time. The maximum such overdraft has been is about £1,000. No explicit agreement has ever been made about overdraft facilities. Now, with a credit balance of £500, F draws a cheque for £1,300.

Analysis. It might well be held that the agreement with F (express or implied) under which the Bank operate his account includes an implied term giving him the right to overdraft facilities up to say £1,000. If so, the agreement is a regulated consumer credit agreement for unrestricted-use, running-account credit. It is a debtor-creditor agreement, and falls within section 74(1)(b) if covered by a direction under section 74(3). It is also a multiple agreement, part of which (i.e. the part not dealing with the overdraft), as referred to in section 18(1)(a), falls within a category of agreement not mentioned in this Act. (Compare Example 17.)

EXAMPLE 19

Facts. H (a finance house) agrees with J (a partnership of individuals) to open an unsecured loan account in J's name on which the debit balance is not to exceed £7,000 (having regard to payments into the account made from time to time by J). Interest is to be payable in advance on this sum, with provision for yearly adjustments. H is entitled to debit the account with interest, a "setting-up" charge, and other charges. Before J has an opportunity to draw on the account it is initially debited with £2,250 for advance interest and other charges.

Analysis. This is a personal running-account credit agreement (see sections 8(1) and 10(1)(a), and definition of "individual" in section 189(1)). By section 10(2) the credit limit is £7,000. By section 9(4) however the initial debit of £2,250, and any other charges later debited to the account by H, are not to be treated as credit even though time is allowed for their payment. Effect is given to this by section 10(3). Although the credit limit of £7,000 exceeds the amount (£5,000) specified in section 8(2) as the maximum for a consumer credit agreement, so that the agreement is not within section 10(3)(a). it is caught by section 10(3)(b)(i). At the beginning J can effectively draw (as credit) no more than £4,750, so the agreement is a consumer credit agreement.

EXAMPLE 20

Facts. K (in England) agrees with L (an individual) to bail goods to L for a period of three years certain at £2,000 a year, payable quarterly. The agreement contains no provision for the passing of the property in the goods to L.

Status: This is the original version (as it was originally enacted).

Analysis. This is not a hire-purchase agreement (see paragraph (b) of the definition of that term in section 189(1)), and is capable of subsisting for more than three months. Paragraphs (a) and (b) of section 15(1) are therefore satisfied, but paragraph (c) is not. The payments by L must exceed £5,000 if he conforms to the agreement. It is true that under section 101 L has a right to terminate the agreement on giving K three months' notice expiring not earlier than eighteen months after the making of the agreement, but that section applies only where the agreement is a regulated consumer hire agreement apart from the section (see subsection (1)). So the agreement is not a consumer hire agreement, though it would be if the hire charge were say £1,500 a year, or there were a "break" clause in it operable by either party before the hire charges exceeded £5,000. A similar result would follow if the agreement by K had been a hiring agreement in Scotland.

EXAMPLE 21

Facts. The P Bank decides to issue cheque cards to its customers under a scheme whereby the bank undertakes to honour cheques of up to £30 in every case where the payee has taken the cheque in reliance on the cheque card, whether the customer has funds in his account or not. The P Bank writes to the major retailers advising them of this scheme and also publicises it by advertising. The Bank issues a cheque card to Q (an individual), who uses it to pay by cheque for goods costing £20 bought by Q from R, a major retailer. At the time, Q has £500 in his account at the P Bank.

Analysis. The agreement under which the cheque card is issued to Q is a consumer credit agreement even though at all relevant times Q has more than £30 in his account. This is because Q is free to draw out his whole balance and then use the cheque card, in which case the Bank has bound itself to honour the cheque. In other words the cheque card agreement provides Q with credit, whether he avails himself of it or not. Since the amount of the credit is not subject to any express limit, the cheque card can be used any number of times. It may be presumed however that section 10(3)(b)(iii) will apply. The agreement is an unrestricted-use debtor-creditor agreement (by section 13(c)). Although the P Bank wrote to R informing R of the P Bank's willingness to honour any cheque taken by R in reliance on a cheque card, this does not constitute pre-existing arrangements as mentioned in section 13(c) because section 187(3) operates to prevent it. The agreement is not a credit-token agreement within section 14(1)(b) because payment by the P Bank to R, would be a payment of the cheque and not a payment for the goods.

EXAMPLE 22

Facts. The facts are as in Example 16. On one occasion B uses the credit-card in a way which increases his debit balance with A (Credit) to £40. A (Credit) writes to B agreeing to allow the excess on that occasion only, but stating that it must be paid off within one month.

Analysis. In exceeding his credit limit B, by implication, requests A (Credit) to allow him a temporary excess (compare Example 17). A (Credit) is thus faced by B's action with the choice of treating it as a breach of contract or granting his implied request. He does the latter. If he had done the former, B would be treated as taking credit to which he was not entitled (see section 14(3)) and, subject to the terms of his contract with A (Credit), would be liable to damages for breach of contract. As it is, the agreement to allow the excess varies the original credit-token agreement by adding a new term. Under section 10(2), the new term is to be disregarded in arriving at the credit limit, so that the credit-token agreement at no time ceases to be a small agreement. By section 82(2) the later agreement is deemed to revoke the original agreement and contain provisions reproducing the combined effect of the two agreements. By section 82(4), this later agreement is exempted from Part V (except section 56).

Status: This is the original version (as it was originally enacted).

EXAMPLE 23

Facts. Under an oral agreement made on 10th January, X (an individual) has an overdraft on his current account at the Y bank with a credit limit of £100. On 15th February, when his overdraft stands at £90, X draws a cheque for £25. It is the first time that X has exceeded his credit limit, and on 16th February the bank honours the cheque.

Analysis. The agreement of 10th January is a consumer credit agreement for running-account credit. The agreement of 15th-16th February varies the earlier agreement by adding a term allowing the credit limit to be exceeded merely temporarily. By section 82(2) the later agreement is deemed to revoke the earlier agreement and reproduce the combined effect of the two agreements. By section 82(4), Part V of this Act (except section 56) does not apply to the later agreement. By section 18(5), a term allowing a merely temporary excess over the credit limit is not to be treated as a separate agreement, or as providing fixed-sum credit. The whole of the £115 owed to the bank by X on 16th February is therefore running-account credit.

EXAMPLE 24

Facts. On 1st March 1975 Z (in England) enters into an agreement with A (an unincorporated body of persons) to bail to A equipment consisting of two components (component P and component Q). The agreement is not a hire-purchase agreement and is for a fixed term of 3 years, so paragraphs (a) and (b) of section 15(1) are both satisfied. The rental is payable monthly at a rate of £2,400 a year, but the agreement provides that this is to be reduced to £1,200 a year for the remainder of the agreement if at any time during its currency A returns component Q to the owner Z. On 5th May 1976 A is incorporated as A Ltd, taking over A's assets and liabilities. On 1st March 1977, A Ltd. returns component Q. On 1st January 1978, Z and A Ltd. agree to extend the earlier agreement by one year, increasing the rental for the final year by £250 to £1,450.

Analysis. When entered into on 1st March 1975, the agreement is a consumer hire agreement. A falls within the definition of " individual " in section 189(1) and if A returns component Q before 1st May 1976 the total rental will not exceed £5,000 (see section 15(1) (c)). When this date is passed without component Q having been returned it is obvious that the total rental must now exceed £5,000. Does this mean that the agreement then ceases to be a consumer hire agreement? The answer is no, because there has been no change in the terms of the agreement, and without such a change the agreement cannot move from one category to the other. Similarly, the fact that A's rights and duties under the agreement pass to a body corporate on 5th May 1976 does not cause the agreement to cease to be a consumer hire agreement (see the definition of " hirer " in section 189(1)).

The effect of the modifying agreement of 1st January 1978 is governed by section 82(2), which requires it to be treated as containing provisions reproducing the combined effect of the two actual agreements, that is to say as providing that—

- (a) obligations outstanding on 1st January 1978 are to be treated as outstanding under the modifying agreement;
- (b) the modifying agreement applies at the old rate of hire for the months of January and February 1978, and
- (c) for the year beginning 1st March 1978 A Ltd. will be the bailee of component P at a rental of £1,450.

The total rental under the modifying agreement is £1,850. Accordingly the modifying agreement is a regulated agreement. Even if the total rental under the modifying agreement exceeded £5,000 it would still be regulated because of the provisions of section 82(3).