CHAPTER I

INTRODUCTION

A. Objective of Paper

The overriding objective of this paper is to focus on the merits and demerits of both the Pawnbrokers Act of 1972 and the Moneylenders Ordinance of 1951 as a form of control over the pawnbroking and moneylending institutions respectively. The role of the court in enforcing the law and on the other hand at the same time in safeguarding the legitimate rights of law-abiding pawnbrokers and moneylenders is also looked into whenever possible through an illustration of decided cases.

Suggested remedial measures are also put forward in attempting to overcome the shortcomings being exposed in both these trades in the country.

The writer was given into embarking on this research as a result of the volume of frequent complaints about malpractices in both these trades through the news media especially the newspaper, and the activities of the Consumer movement in highlighting such abuses.
It is common knowledge that malpractices exist in both the pawnbroking and moneylending establishments. Nevertheless these two institutions are necessary evils in the sense that they do provide credit facilities, especially to the lower income groups of our society. It is a well-known fact that such malpractices are still rampant despite the adverse publicity given to them by the press, the consumer movement, the politicians as well as by the victims themselves. But the writer feels that he is not merely duplicating the finding of other surveys that had already been done on this topic by such bodies mentioned above as well as by two of his seniors. The writer is of the opinion that this subject is still a grave social problem as it is tied up with the question of poverty in the country in which the government is always giving it one of the top priorities in its New Economic Policy. In a seminar paper presented by Dr. Mokhtar Tamin of the Economics Faculty University of Malaya, it was established that seventy five per cent of the pawnshop patrons hailed from the rural areas.  

Royal Professor Ungku Abdul Aziz attributed poverty of

1See for example Straits Times. 27th July, 1979
2Rural Credit: Past Record Present and Future.
Dr. Mokhtar Tamin. Economics Faculty University of Malaya Seminar Paper presented at Consumer Association of Penang on November, 1980.
the Malay peasants, among other factors, to exploitation by the moneylenders in charging high rates of interests.³ On the other hand, urban poverty also does still exist if one observes the slum areas and the mushrooming of squatter houses, for example, in the Federal Territory. Therefore, the pawnbroking and the moneylending institutions are still a necessary feature of Malaysian life.

It is hoped that this study may stir up the conscience of the public so as to whip up public opinion against the black sheep in these two trades as well as to stress to the authorities concerned that this topic is actually a reflection of the poverty problem in the country. The writer also hopes that perhaps after reading this humble research, public-interest lawyers or potential public interest lawyers may contribute some kind of social service to the society by taking up cases of such victims being exploited even though the outcome of the remuneration may not be too attractive.

B. Scope of Study

This paper proposes to study both the pawnbroking

³Inequality and Economic Development in Malaysia (1980) page 125: Donald R. Snodgrass
and moneylending systems from various aspects; their historical development; their roles, functions and merits, their unshakeable position in the present day economy despite of accessibility to more venues of sophisticated sources of finance. Due to the fact that each of these trades is a major topic by itself, certain aspects will only be covered briefly. However, the primary aim of this research is to delve into the law relating to pawnbrokers and moneylenders, especially the controls over them and in this respect to what extent the law is effective and the alternative remedial measures which may be employed. Among such suggested alternative solutions, the question of the role of the Islamic pawnshop based upon the Islamic concept surfaces. This is also in line with the latest development in the policy of the government aiming to diffuse acceptable Islamic values in the economy and cultures of our society. The recent setting up of Bank Islam is a good example.

3. Limitations of Study

On the whole, this research is hampered by a lack of reference material, especially the local historical aspect in connection with this study. As a result, the writer had to depend mainly on primary sources for his information. Both pawnbrokers and moneylenders interviewed in Penang and Kuala Lumpur were rather
uncooperative, evasive and even suspicious regarding questions put to them about their day to day running of their businesses and their general mode of operations. (One pawnbroker in the Federal Territory put off the writer when he attempted to interview him by saying that he was only a worker when in actual fact, the writer later found out from a reliable source that he was the very owner of the shop!)

Therefore, the writer was compelled to search for information from officials concerned with the administration of the Pawnbrokers Act 1972 and the Moneylenders Ordinance 1951 and from members of the public, friends and relatives who have had dealings with pawnbrokers and moneylenders. Consequently, such an uncooperative attitude on their part had drastically limited the scope of this research.

This survey has been limited to Penang and Kuala Lumpur for two reasons. First, being two of the largest cities in the country, the writer is of the opinion that most of the major problems concerning the subject are located in them. Thus, the feedback will basically be reflective of the same major problems arising from these two trades in the rest of the country. Secondly, the practical difficulties of covering the study over a wide geographical area is hindered by the writer's limited
resources.

3. **Research Methodology**

Field work and library research formed the basis of this research. Parliamentary proceeding reports; law reports; law digests; law journals; articles, statute books newspapers and official documents provided the reference materials. Formal and informal interviews were carried out to supplement the information gathered from library research. The formal interviews were conducted with officials of the Ministry of Housing and Local Government; Legal Aid Bureau of Kuala Lumpur, Dewan Bandaraya of the Federal Territory; Jabatan Agama (Research Division) Prime Minister's Department; the Consumer Associations of Penang and Selangor, the International Consumer Organisation in Penang and the Malaysian Pawnshops Association. Informal interviews were also conducted with a number of pawnbrokers, moneylenders, their patrons and some press writers in both cities.

4. **Organisation of Chapters**

The chapters are arranged in logical sequence for convenience purpose. Chapter II introduces the historical background of pawnbroking and moneylending leading to the historical development of both these
trades in the country.

Chapter III touches on the general definitions of pawnbroking and moneylending and the definitions of these terms within the meaning of the Pawnbrokers Act 1972 and Moneylenders Ordinance 1951 respectively. The functions and merits and the problems encountered by both these institutions are also looked into. The writer's reflection of the seemingly problems faced by both these businesses within the social context is also brought in.

Chapter IV deals with the defects in these establishments and the forms of malpractices often being committed by the unscrupulous persons in such establishments. Whenever possible, case-law is brought in to illustrate such forms of malpractices. On the other hand, the court's role in upholding justice will also be looked into through the decided cases on the question of safeguarding the legitimate rights of the law-abiding pawnbrokers and moneylenders.

Chapter V covers the controls over pawnbrokers and moneylenders with reference to the Pawnbrokers Act 1972 and the Moneylenders Ordinance 1951 respectively. The Minor Offences Ordinance 1955, section 30 as a form of check on the wayward pawnbroker will also be dealt with. Again whenever possible, case-law will be cited to illustrate this part of the topic.
Chapter VI will propose alternative remedial measures to attempt to overcome the shortcomings within the pawnbroking and moneylending institutions. One such alternative solution currently being contemplated by the government is the idea of the Islamic pawnshop as an answer to solve the issue of the unscrupulous pawnbrokers. Nevertheless, the possible imperfections in such remedial measures being will also be discussed.

Chapter VII culminates in the conclusion on this topic. General remarks on the major problems of this topic will be presented.