CHAPTER III

DEFINITIONS AND THE ROLE OF
PAWNBROKERS AND MONEYLENDERS

1. Definition: Pawnbroking

A general definition of pawnbroking means the business of making advances of money to person who pledge goods in security of payment.¹

Another general definition of the term "pawnbroking" can be referred to as the business of advancing loans on the security of goods or chattels.² The precise definition of the trade depends on the Pawnbrokers Act 1972 by which it is regulated. A pawnbroker includes every person who carries on the business of taking articles in pawn. A pawner means a person delivering articles for pawn to a pawnbroker. A pledge means any article pawned with a pawnbroker. A person is deemed to be a pawnbroker if he takes any article from any person by way of security for the repayment of any sum not exceeding 5,000 dollars or

¹The Oxford Companion To Law: David M. Walker
²Encyclopaedia Britannica Vol. 17 page 405
purchases or receives an article and pays any sum not exceeding $5,000 with an agreement that the article may afterwards be redeemed or repurchased by the borrower.

The following bodies are exempted from provision of the Act.

(a) Any bank licensed to carry on banking business.
(b) Bank Pertanian Malaysia.
(c) Any registered cooperative society.

In the early case of Pawnbroker v Ramaswamy Radieshee, the accused was charged with carrying on the trade of a pawnbroker without license, contravening section 5 of the Pawnbroker's Ordinance 1872. There was evidence that he had taken in pledge certain gold ornaments, carts and bullocks to secure $100.00 advanced by him to one Samy together with interest at 36 per cent. But there was no evidence of his having any time before or since taken any other thing on pledge. Side greaves C.J. of the Court of Appeal held that a single act of taking a pledge or pawn did not make a person punishable under the Ordinance for carrying on

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3(1882) 3 Kyshe 148
a "trade" of a pawnbroker. It must mean habitual taking of pawns. Dr. Iee Chin Yen in her book "The Law of Consumer Credit" commented on this case that a single act of pawnbroking would not constitute a business for the carrying on of a business of a pawnbroker. It imports some notion of system, frequency and regularity.4

B. **Role of Pawnbrokers: Function and Merits**

1. **As a Source of Credit for Petty Borrower**

   Generally, the term "credit" covers every form of financial accommodation.5 Another definition of "credit" can be found in Section 9 (1) of the Consumer Credit Act 1974 of England. Within meaning of the Act, it means a cash loan and any other form of financial accommodation. Cash includes money in any form.6 On the other hand, "consumer credit" is defined as the provision of personal finance for private purposes to individuals.7 "Consumer Credit" may also be defined as personal finance for consumption generally as opposed to the finance of business, corporation of investments.8

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4. *The Law of Consumer Credit: Dr. Iee Chin Yen* (page 336)  
6. *Commercial and Consumer Credit: Aubrey I. Diamond*  
8. *The Law of Consumer Credit: Dr. Iee Chin Yen* page 3
It cannot be denied that pawnbrokers in Penang and Kuala Lumpur as well as those from the rest of the country play an important role in providing consumer credit to the petty borrowers, the majority of the borrowers coming from the lower income group. The pawnbroking institution is the second largest credit institution after the bank in the country. It is second popular after the moneylending establishment. Research in the Federal Territory and Petaling Jaya show that monthly transactions for each pawnshop total between 80,000 to 110,000 dollars a month depending on its location. According to statistics, four million tickets were issued by pawnshops in 1979. Therefore pawnbrokers do perform an indispensable public service. For instance, five years ago it was reported that the Kemaman Post Office in Trengganu ran out of money because of a large number of withdrawals following the closure of the only pawnshop in the town.

According to Dr. Mokhtar Tamin of the Faculty of Economics, University of Malaya, 70 per cent of all credit extended to the rural sector still comes from the

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10. Interview with an official of Ministry of Housing and Local Government: 3rd March, 1983
11. New Straits Times. 14th February, 1984
informal credit segment and shopkeepers cum dealers and pawnshops were by far the largest purveyors of rural credit. Today, there are two hundred and twenty pawnshops throughout the country. In Penang, there are twenty-five and there are thirteen in the Federal Territory.

The pawnshop has often been referred to as the Poor Man's Bank. The pawnshops are much sought after by the poor and small traders as an immediate source of cash to those who need money desperately. In fact most of the credit given were for consumption rather than for working capital. An emergency occasion arising like illness and sudden unemployment all require quick cash for expenses. Many social obligations too such as marriage, childbirth and funeral often require a family to seek out extra money. In one case, an unemployed's need to pay for his child's school books was solved by the pawnbroker in less than twenty minutes. In the past, he had learnt a bitter lesson after being frustrated trying to borrow from his better well to do relatives.

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12 Seminar: Rural Credit by Dr. Mokhtar Tamin at Consumer Association of Penang November 1980
14 Interview with a Mr. Ali in Penang on 2nd April, 1983
For the sort of pledge that pawnbrokers accept customers do not need to prove their credit worthiness. Such petty borrowers also have no financial standing to resort to borrowing from banks or finance companies. The service is informal and quick unlike the "technical and in built dilatory procedure of commercial banks."15 Banks need to screen a borrower and the various procedures entailed are time-consuming. Paperwork is kept at minimum. All the borrower has to do is to produce the article for pledging and an identity card for recording purposes. No questions are asked because the purpose of the loan is no concern of the pawnshop unlike commercial banks and other financial institutions. There is little conversation because the lack of money is always an embarrassing situation, the faster the transaction, the more relief is the customer. In a way it can be said although it is arguable that pawnshops if patronised wisely can help to solve budgeting problems of poor households.

Hence as long as the forces that nurture pawnbroking, particularly among the poor like contingency credit needs, the habit and convenience of having

15To quote Dr. K.B. Kohatgi, Professor of Law University of Malaya: FOMCA SEMINAR "LAW AND MALAYSIAN CONSUMER" 11-13 May 1981 Universiti Malaya
pawnshops nearby as well as the conservative lending policies of the formal financial establishments, pawnshops will still be a necessary feature of Malaysian life.

2. **Role as Credit Mobilisers in the Economy**

Pawnbrokers play a significant role as credit mobilisers in the economy of the country. The two hundred and twenty pawnshops in the country had an annual turnover of $500 million. In 1979, pawnbrokers had given out loans totalling 10 million dollars of which six million dollars was paid out in the rural areas.

The sources of credit for traditional agriculture classified as informal and non-institutional apart from family, friends, local shopkeepers, middlemen, rice miller do include moneylenders and pawnbrokers.

3. **Pawnbroking as a Source of Revenue for State Governments**

The pawnbroking institution also serves as one

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16 *Star*. 29th August, 1981
17 *Sunday Mail*. 29th April, 1979
of the sources of revenue for each of the respective state government. Under the Federal Constitution,\textsuperscript{19} the issue of pawnshop licences and the revenue derived from them go to the State Governments. The license tendering system requires a pawnbroker to pay high tender or licence fees averaging about two thousand dollars a month although some shops pay almost four thousand dollars a month. In most cases, their bids for a three year licence should not be below the government reserved price. The fees set by the state governments and varying from area to area is renewed every three years under the tender system.

In 1980, the twenty five pawnshops in Penang yielded $305,400.00 revenue for the state government. In Kuala Lumpur, the Federal Territory, the thirteen pawnshops provided $265,812.00 for the Selangor state government.\textsuperscript{20} Therefore pawnshops do provide a substantial sum of revenue for each of the state government.

A retired pawnbroker when interviewed by the press on this topic voiced \textit{inter alia}. "Few people realise how much money the state governments obtain from pawnshops!"\textsuperscript{21}

\textsuperscript{19} Federal Constitution 10th Schedule I 111-3
\textsuperscript{20} Statistics received from interview with Ministry of Housing and Local Govt's official on 3rd March, 1983
\textsuperscript{21} The Star. 2nd February, 1984
C. Problems of Pawnbrokers

1. High Tender or Licence Fees

Pawnshops run on a tender system, placing their bids every three years if they want to stay in business. The state governments invite tenders after setting the minimum tender price which varies from State to state and from area to area within a state. The tender system requires a pawnbroker to pay out a substantial sum for a license fee averaging about $2,000 or even some pay over $4,000 a month. The Pawnbrokers Association said that the tender fees had increased by an average of 30 per cent in the last tender throughout the country.\(^{22}\)

According to the Malaysian Pawnbrokers' Association, if a pawnbroker's licence fee is $2,000 a month, he has to invest about $150,000 sum to obtain the interest to pay his licence fee.\(^{23}\) With the escalation of operation costs like overhead expenses which include workers' wages, electricity and rent costing around $6,000, there may be little left for profit. Whereas a moneylender pays only $120 a year for his licence fee. Because of this high licence fee, some

\(^{22}\)Interview with the Association on 15th June, 1985
\(^{23}\)Ibid: In note 22
unscrupulous pawnbrokers resorted to shady practices and charge rates of interest to make ends meet. 24 The Association if willing to consider abolishing the tender system for a uniform licence fee as practised in Singapore but they want to know the implications especially its effect on small pawnshops. 25 Some feel the tender system is archaic and being used by State Governments and pawnbrokers to get money from pawners. They said it was justified in the old days when the system was required to raise revenue as the country was just developing from an early stage. 26 Some pawnbrokers argued that a few banks like the United Asian Bank are now accepting gold and jewellery as pledges in return for giving out cash loans, yet, they pay no pawnbroking fees.

During an informal interview with a pawnbroker in Kuala Lumpur, he voiced his opinion that fees charged to pawnshops should be related to administrative costs and not to accrue to the treasury of the State government. But in the light of the present economic recession in the country, it is doubtful that his proposal will be accepted by the authorities concerned.

24 Star. 2nd February, 1981
25 Ibid as in note 22
26 Interview with two pawnbrokers in Penang on 20th June, 1983.
2. Reduction in Interest Rates

Before 1972, pawnbrokers were allowed to charge 3 per cent for a loan of above $15.00, 4 per cent for loans ranging from $11.00 to $15.00 and five per cent for any amount below $10.00. In 1972, the interest rates allowed by the law were reduced to 1½ per cent for a loan exceeding $50.00 2 per cent for a loan between $40.00 and $50.00 and 3 per cent for a loan not exceeding $40.00 respectively following amendments to the Act.

Chief among pawnshop owners’ woes is the low rate of interest which they are allowed to charge by the government. The high tender system and high interest rates charged by banks on loans to them are some of the factors which had forced about sixty to seventy pawnshops or twenty five per cent in the country to close.27 The Malaysian Pawnbrokers Association bemoaned that since 1972, interest rates have not been revised at all.

In fact the Penang pawnbrokers had written a memorandum to the University of Housing and Local Government asking for rates to be increased.28

27 Star. 20th January, 1981
28 Interview with a pawnbroker in Penang on 25th June, 1983
there are twenty five pawnshops here compared to twenty seven a few years back. Therefore with the low profit margin, high cost of living and the fact that the business is a high security risk, the trade is no more lucrative.

However, the writer wishes to remind the pawnbrokers that any plea to the government to increase interest rates may have wide implications since, in general the pawnshops are dealing with lower income groups.

On the other hand, in a paper on rural credit in November, 1980 to the Consumers Association of Penang, Dr. Mokhtar Tamin of the Economics Faculty, University of Malaya viewed that although the average interest rates for informal credit (which include the pawnshops) are higher than those charged by formal credit institutions, they appear to be much less than what are commonly believed, especially if costs of lending are taken into account.29

In short, pawnbrokers generally view that the reduction of interest rates under the Pawnbrokers Regulations 1972 is not fair on them. They feel that the profit allowed to make does not provide good retu-

29 Interview with CAP on 15th March, 1983
rns for the risk they undertake and the service render-
ed. The trade involves heavy capital investment and
the operating costs are high and at present many
pawnshops are not family enterprises but employ salar-
ied workers instead.

3. **Unsympathetic Attitude of the Courts**

The more enlightened of the pawnbrokers\(^{30}\) are of the opinion that should any case involving them
appear before the courts, the courts seem to be
unsympathetic towards them. Their grouse is justified
to a certain extent from a review of the decided cases.
Where a situation arises in which there is a conflict
between the right of an owner and that of the pawnbro-
der with regard to the legal ownership of a pawned
article, the judicial attitude appears to be in favour
of the former even though, the latter is innocent.
In such a situation, the courts tend to dismiss the
pawnbroker's claims by viewing that the pawnbroker must
suffer for having taken a risk which is inalienable
from their business. In **Sem Hin Pawnshop v **\(^{31}\) in
that case, the magistrate had ordered the pawnbroker
to return a watch which had been unlawfully pawned to

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\(^{30}\) Informal interview with three English educated
pawnbrokers (two in Penang, one in Kuala Lumpur)
during the month of June, 1983

\(^{31}\) (1952) M & J 164
the owner whose ownership was conclusively proved. Against this order, the pawnbroker appealed. The Appeal Court held that where ownership had been proved, by common law the owner would be entitled to the article unconditionally, however careless he had been. In a case where the conduct of both parties is free from criticism in no circumstances would the court order the owner to pay a part of the loan; and the innocent pawnbroker must suffer for having taken a risk which is inseparable from his trade. This view was also found in *P.P. v Yoong Shing Pawnshop and Org.* 32

An instance of judicial censure of pawnbrokers is illustrated by *P.P. v Lee Poay Kee* 33 where Ong J, in referring to section 27(2) of the Pawnbrokers Ordinance S.S. Cap. 216 which gives the Court a discretion to fine a pawnbroker up to one hundred dollars if it is of the opinion that the pawnbroker did not exercise due care in taking any stolen property, remarked:

"The penalty is negligible and I would commend the Government to consider to enhance the penalty. There have been too many cases of snatch thefts of jewellery and gold chains as well as robberies of goldsmith's and jeweller's shops. If a ready market is not available these offences would

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32 (1957) MLJ 131
33 Criminal Revision No. 8 of 1969
not be rife...I would therefore request Magistrates dealing with cases where articles pawned have been proved to be stolen to consider whether the pawnbrokers ought to be penalised either for their disregard of their responsibilities or for their readiness to yield to their greed for gain."

However, the view held above is only but a rebuttable presumption in the light of these two early cases. In Lam Fong Tze v R,\textsuperscript{34} the court there held that with regard to inquiry as to ownership, before a magistrate makes an order for the return of pawned property alleged to have been stolen, there must be evidence of ownership and of unlawful pawning. In Lam Lock v R,\textsuperscript{35} the court said that the then Pawnbroker Ordinance is complementary and does not oust the provisions of the Criminal Procedure Code. When a pawnbroker hands over property to the police which is suspected to be stolen, the property may be taken before a court. The court must satisfy itself by hearing evidence as to who is entitled to possession of the article, who is the owner and the circumstances under which the article was lost or found. To do this, the court should procure the attendance of the pawnbroker and satisfy itself that the article was unlawfully pawned.

\textsuperscript{34}(1933) MLJ 91
\textsuperscript{35}(1933) MLJ 92
The person claiming the article as against the pawnbroker should also be notified to attend court at the same time as the pawnbroker. Again in *Ho York Quin v K*, an appeal arose out of an order made under section 27 of the then Pawnbrokers Ordinance (Cap 216). The accused had been convicted under section 420 of the Penal Code for cheating in respect of a watch belonging to the complainant. The watch had been pawned by the accused with the appellant's pawnshop. After conviction of the accused, the learned magistrate held he had no discretion but to order the return of the watch to the complainant. The Appeal Court held that the court has the fullest discretion as to whether to make an order or not and in the order it makes if it should decide to make one. It is a safe rule that in cases of doubt or difficulty, an order should not be made.

However, in the final analysis, the change in attitude in the later case resulting in the unsympathetic attitude of the court towards pawnbrokers as reflected in *Lee's case* may be attributed to the disintegration of social order in our society these days by the rising incidence of crimes involving gold, jewellery and some black sheep of the pawnbroking trade being collaborators in such situations. Consequently,
to prevent such a situation rearing its ugly head in our society, the court must take a sterner view.

4. **Definition: Moneylending**

In general moneylending means lending of money at interest as a business.\(^{37}\)

But who is a moneylender? Under the Moneymenders Ordinance 1951,\(^{38}\) moneylender includes every person whose business is that of moneylending or who holds himself out in any way as carrying on that business but does not include.

(a) anybody corporate incorporated or empowered by a special Act of Parliament or by any Ordinance to lend money;

(b) any cooperative society

(c) any person bona fide carrying on the business of banking or insurance or bona fide carrying on any business not having for its primary object the lending of money in the course of which and for

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\(^{37}\) The Oxford Companion to Law: David M. Walker

\(^{38}\) Section 2: Moneymenders Ordinance 1951
the purpose whereof he lends money

(d) any licensed pawnbroker

(e) anybody corporate or society for the time being exempted by the minister by notification in the Official Gazette.

The definition section\textsuperscript{39} is discussed in the context of people who are unlicensed moneylenders but who lend money in such a manner as to float the question of whether they carry on the trade of money-lending within its meaning.

In \textit{Koh Sek Lim v Harriot},\textsuperscript{40} it was held by the court that a man who occasionally lends money is not a moneylender within the meaning of the Ordinance.

The question of what amounts to carrying on a moneylending business can be illustrated by the English case of \textit{Litchfield v Dreyfuss}\textsuperscript{41} where per Farwell J said that:

"...not every man who lends money at

\textsuperscript{39}{\textit{Ibid} s. 38}
\textsuperscript{40}{(1941) N.I.J 214}
\textsuperscript{41}{(1906) 1 KE 584}
interest carries on the business of moneylending. Generally a man who carries on a moneylending business is one who is ready and willing to lend to all and sundry, provided they are, from his point of view, eligible. A moneylender cannot avoid the Act by limiting his clientele to that designated as "friends" or otherwise. It is a question of fact in each case... The Legislative has cast its net wide and if a man is carrying on the regular business of a moneylender in the ordinary sense of the terms, he comes within the provision of the statute; although his conduct may be free from all blame morally. The single question for determination is this: Does he, in the ordinary sense of the term, carry on the regular business of a moneylender? That, of course, depends on the facts of each particular case."

In Esmail Sahib v Nordin, 42 Spencer Wilkinson J agreed with above definition since our Ordinance is pari materia with the English Act of 1900. In that case, the plaintiff claimed repayment of money with interest lent by him to the defendant. The defence alleged non-compliance with section 4 of the Moneylenders Ordinance. The only issue was whether the plaintiff was a moneylender within meaning of the Ordinance.

The court held that section 3 of the Ordinance put the burden on the plaintiff to show that he was not

42(1951) MLJ 98
a moneylender. It was also not sufficient to prove that the lender had occasionally lent money at a remunerative rate of interest; some degree of system and continuity in moneylending transactions must be proved.

In *Jayal Singh v Leong Yung Kuok*, the plaintiff received a cheque for $5,000 from the defendant in consideration for loans made to the defendant. The cheque was dishonoured on presentation for payment. The plaintiff then sued for the amount of the cheque. The defendant pleaded that the plaintiff was a moneylender within meaning of the Ordinance at the relevant times. The court held that as there was sufficient evidence to prove some degree of system and continuity in moneylending transactions, the plaintiff was prima facie a moneylender within meaning of the Ordinance and as he had failed to prove to the contrary, the claim failed.

In *Sadhu Singh v Sellathurai*, the appellant sued the respondent for $2,000 on a cheque given by the latter to him as security for a loan which was subsequently dishonoured. The respondent pleaded that at the time of the transaction, the appellant was an unlicensed...
moneylender; therefore he was barred by reason of section 15 of the Ordinance from enforcing the contract for repayment. The court held that the presumption in section 3 of the Ordinance arose against the appellant and as he had failed to rebut it, judgement was given for the respondent. It was contended for the appellant that in order to establish that a person was carrying on the business of moneylending it was necessary to prove some degree of system and continuity in his money-lending transactions. As there was no evidence that the appellant had lent money to anybody else except the respondent in 1952 and 1953 it was argued that the court should not have held him carrying on the business of moneylending. But the court held that once a single moneylending transaction was proved against a person, then the onus of disapproving the presumption passed to him. The appellant had failed to discharge the onus. Thompson J said:

"To establish that a person is carrying on the business of moneylending it is not sufficient to show that he has occasionally lent money at a remunerative rate of interest but that it is necessary to prove some degree of system and continuity in his moneylending transactions."

In *Shamsudin v Vijeyacone*, the plaintiff

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sought a declaration that a mortgage of property by him to the defendant was null and void on the ground that the defendant was at the material time carrying on an unlicensed moneylending business. The court held that in the circumstances of this case, the evidence showed that there was some degree of system and continuity in the defendant's moneylending lending transactions and thus it was more probable than not that the defendant was carrying on the business of moneylending. As he did not have a licence to do so, the transaction between him and the plaintiff was therefore unlawful and void and could confer no rights.

Thus, not every lender of money is a moneylender within provisions of the Ordinance, it is a question of fact as illustrated by the above cases.

Any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender. 46

In Chellappah Rasadurai v Selvadurai, 47 the respondent claimed repayment of money lent together

46 Section 3: Moneylenders Ordinance 1951
47 (1971) 2 MIJ 170
with interest to the appellant. As security, the respondent had obtained a charge over an interest in the land held by the appellant. The appellant relied on sections 15 and 16 of the Moneylenders Ordinance 1951 alleging that the contract for repayment of the loan and charge were void and unenforceable. There was evidence that the respondent had lent money to the appellant and other persons in consideration of a larger sum being repaid. The primary issue was whether the respondent was a moneylender within meaning of the Ordinance. If it was his claim would fail, it being conceded that he had no licence.

The Federal Court (Suffian F.J.) allowed the appeal. It was clear that on two occasions, the respondent had lent money to the appellant in consideration of a larger sum being repaid. Therefore, the statutory presumption under Section 3 arose against him. There was no rebutting evidence in this case except a denial by the respondent. A denial was not enough. Thus, the respondent had not rebutted the presumption that he was a moneylender.

On the other hand, in Baju Ria v Liau Kim Lian,48

48(1965) 1 M J 128
the plaintiff brought an action against the defendant for money lent. The substantial defence was that the plaintiff was an unlicensed moneylender. Section 15 of the Ordinance provided that no contract for repayment of money lent by her was enforceable. The plaintiff carried on the business of a rubber and rice dealer for a number of years but admitted lent money on three occasions, otherwise than in the course of her business.

Thomson C. J. held that although under section 3 of the Ordinance, a presumption arose that plaintiff was a moneylender; nevertheless she had satisfied the court that she was in fact carrying on a genuine business as a rubber and rice dealer. It was in the course of and for the purpose of the business that she advanced the money. Although occasionally she obliged friends and neighbours with loans, she was not a moneylender within the definition of moneylender in the Ordinance. She thus had rebutted the presumption under section 3. It was for the trial court to decide whether the party giving loans had sufficiently rebutted the presumption. His Lordship then cited the dictum of Farwell J in *Litchfield v Dreyfuss*.49

49(1906) 1 K.B. 584
5. **Function and Merits: Moneylenders as a Source of Credit**

Moneylenders have clientele from a broad spectrum of society. They form the informal or unorganised credit structure in contrast to formal or organised institutions like pawnbrokers, commercial banks, moneylending companies and government agencies like MARA, UDA and FEIDA. Until the month of March, 1980, Ministry's Statistics show that there are 2,050 moneylenders in the country, including moneylending companies. Apart from the licensed moneylenders, there is even a greater number of unlicensed moneylenders operating behind the facade of shopkeepers, rice millers, middlemen, watchmen and others.

Informal moneylending still dominates the credit market of the rural sector although the government has established more rural credit institutions and cooperatives in trying to offset the peasants' dependence on the moneylenders.\(^5\)

It is still true that the lower income group, mainly the small businessmen, the hawkers, and even some middle income earners are frequent customers of

\(^5\)R. J. G. Wells "The Informal Credit Market in Peninsular Malaysia" F.S.A. mimeograph September, 1980
the lender.

Thus it is common knowledge that this institution is a necessary evil, it does provide credit facilities to small and petty borrowers. There are but a few formalities to be observed. Poor, needy, ignorant and illiterate people flock to them rather than to commercial banks which are out of bound to them because of their technical and inbuilt dilatory procedure. The relationship between a moneylender and his client tend to be more personal and intimate, the same cannot be said about commercial banks and financial institutions who are a victim of red tape and officialdom. 51

Licensed moneylenders also play an important role as credit mobilisers. 52 As their lending activities are subject to the Moneylender's Ordinance 1951, loans obtained from them are less costly and hazardous compared to unlicensed suppliers. They appear to be able to maintain their position in the economy despite availability of alternative avenues of credit may be because

51Consumer Credit: Moneylenders and Pawnbrokers Dr. K.B. Rohatgi Professor of Law University Malaya at FOMCA seminar "Law and the Malaysian Consumer" 11-13th May University Malaya Kuala Lumpur
52Mokhzani Ab. Rahim "Credit In a Malay Peasant Economy" Thesis submitted for the Doctorate degree in University of London 1973 pg. 5
of borrowers’ preference to their lending methods to those of commercial banks, financial institutions and government agencies. ⁵³

Basically, the moneylending establishment provides loans for the same emergency and social purposes as those provided by the pawnshops to the borrowers. Likewise their counterpart, the service rendered is prompt, informal and applicants are not screened unlike required by other financial institutions and commercial banks. The latter to most of the borrowers who come from the lower income group, are remote and formidable. Purpose of the loans are of no concern to the moneylenders. They are only concerned with the client ability to repay. The overall picture is that moneylenders have special appeal by providing consumption loans for urgent needs. It cannot be denied they do provide consumer credit especially to the needy.

⁵³Project Paper 1978/79: Mahani Hamid page 5
6. As a Source of Revenue

The moneylending institution also like their counterpart, the pawnbroking establishment, does provide a source of revenue to the respective State government. In Penang alone, there were one hundred and sixty-six individual moneylenders and finance companies comprising of three hundred and twenty-one operators which yielded a total sum of $43,240.00 to the state government as licence fees during the end of March in 1980.\(^{54}\)

In the Federal Territory, the two hundred and ten moneylenders (including finance companies) yielded a yearly sum of $34,200.00 for the state government in licence fees.

Thus it can be said that as one of the sources of revenue for the state governments, there is merit in their existence. Such revenue if utilised wisely can be channelled by the State Government towards social projects, like children's playground or putting up bus-shelters.

\(^{54}\)Table of statistics from Ministry of Housing and Local Government received during interview with an official on 13th June, 1983.
7. **High Risk of Non-Payment**

The moneylenders have to bear a high risk of non-payment and the incidence of bad debts is relatively high. There have been instances of debtors absconding themselves to the extent that they cannot be traced at all. Although the moneylenders are legally entitled to recover the sums lent through civil suits, yet civil procedure these days has become so complex and technical that justice has become a very expensive commodity, beyond the reach of most people. Litigation is time-consuming and often takes a long time. The legal fees and costs involved ultimately may exceed the disputed amount being contended and even if a creditor does get a judgment is another issue which may entail a long time. Therefore, in the final analysis, the affected moneylenders prefer not to litigate and write off such sums as bad debts. The current borrowers in Penang and the Federal Territory are mainly small-time businessmen, hawkers, wage-earners from the lower and middle-income groups who cannot

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55 Interview with moneylenders in Penang and Kuala Lumpur during month of June.
56 Ibid in note 1
make ends meet with the present high cost of living. As a result, even if judgement can be executed, how much can a moneylender recover from this category. To file a bankruptcy suit against a debtor again involves the question of time and money. Thus, moneylenders have learnt to come to term to accept such losses as part of their business risks.

8. **Increasing Competition from Other Financial Institutions**

Growing competition from commercial banks, finance companies and credit cooperative societies provide keen competition for the moneylenders. The rising activities of the commercial banks to reach out to the needs of the small borrowers have weaned down the earnings of the moneylending establishment. Borrowers, especially those from the middle-income group and the small time businessmen are getting more enlightened now about the shady practices of unscrupulous moneylenders through better education, news media on the topic and the consumers' associations exposure on their unethical practices, so as to turn more to commercial banks to borrow besides avoiding the social stigma.

57 Straits Echo. 11th January, 1977
9. **An Overall View On These Two Institutions**

The basic goal of the writer in touching on the role of both the pawnbroking and moneylending institutions is to show that despite the shortcomings in them, nevertheless the writer is still aware of the useful role they play in our society as a source of consumer credit to the needy. But on deeper probe, it appears that the defects in these two systems overshadow whatever merits that there are in them.

The argument put forward by a retired pawnbroker to the press that some pawnbrokers resort to questionable practices to meet their high overhead costs because of the low interest rate imposed by the law and the tender system which requires a pawnbroker to pay out a substantial sum as licence fee monthly, seems to be a point of naked principle unadorned by merit. Research has borne out that this trade is still lucrative. The fact that no pawnbroker has gone bankrupt is proof that pawnbroking is also still profitable. Besides, many pawnshops have spent a few thousand dollars on security system, especially those in cities like

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59. Journal of Malaysian and Comparative Law (1978) December: "Credit Law in Malaysia" Professor Hik Abdul Rashid
60. *New Straits Times*. 1st March, 1983
Kuala Lumpur and Penang. Why bother to spend such a sum if profits are only marginal? How come the number of pawnshops in the country have not dwindled drastically if the costs of operating a pawnshop are that high?

The same can be said for the moneylending trade as statistics show that there are still 2,050\textsuperscript{61} licensed moneylenders (bearing in mind, excluding the number of unlicensed ones) in the country unlike the situation in Singapore. There the Singapore Moneylenders Association had suffered a drastic drop in membership from 130 to 30\textsuperscript{62} and is so not actually because the trade is not lucrative anymore but due to new stringent regulations which have made moneylending very cumbersome.

\textsuperscript{61} Ministry of Housing and Local Government Table as at end of March 1980
\textsuperscript{62} Straits Times. 23rd September, 1978