

PLEDGE TRANSACTIONS: AN INQUIRY INTO
THE WORKING OF PAWNBROKERS UNDER THE PAWNBROKERS
ACT, 1972 IN KUALA LUMPUR



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Bachelor of Laws (Honours)

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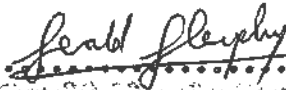
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ABSTRACT

This study seeks to evaluate the contribution of the pawnbroking system towards the creation of a dynamic and well-organised credit system. The growth of the institution is traced from its early beginnings in Malaysia to the present day.

The basic premise upon which the study is based is that the pawnbroking business is defective and the writer seeks to highlight the defects and abuses prevailing in the system.

The study showed that there were widespread abuses and malpractices indulged in by pawnbrokers and that these continued unchecked due largely to the ignorance of the pawners about their rights. The abuses remain unchecked since the Inspectorate of Pawnbrokers seems understaffed or overloaded with diverse functions. The paper also discusses the effectiveness of the controls imposed by the governing legislation and suggests some remedial measures which may be implemented.

There is a need for greater controls over pawnbroking and for more channels of credit to be made available to petty borrowers so that there is greater competition for customers and a resulting decrease of malpractices and abuses among pawnbrokers.

RINGKASAN

Kajian ini akan menilai sumbangan institusi pajakgadai kepada pembentukan satu sistem kredit yang dinamik dan teratur. Perkembangan institusi ini di Malaysia dari masa awal hingga hari ini juga dikesan.

Kajian ini berasaskan premis bahawa terdapat banyak kecacatan dalam perniagaan pajakgadai dan penulis akan mengkaji apakah kecacatan-kecacatan dan penyalahgunaan yang terdapat dalam institusi ini.

Kajian ini menunjukkan bahawa terdapat penyalahgunaan yang berkeleuasa di kalangan pemegang-pemegang pajakgadai tanpa sebarang sekatan kerana orang ramai tidak mengetahui apakah hak-hak mereka dalam satu satu transaksi penggadaian. Ini adalah disebabkan oleh kerana pihak yang berkuasa yang berkenaan tidak mempunyai kakitangan yang mencukupi untuk menjalankan fungsi-fungsinya yang berbagai rupa. Kajian ini juga membincangkan setakat manakah berkesannya kawalan-kawalan yang diwujudkan oleh undang-undang yang ada dan mengesyorkan beberapa langkah untuk membetulkan keadaan ini yang boleh dilaksanakan.

Kawalan-kawalan yang lebih ketat adalah perlu untuk institusi pajakgadai dan cara-cara lain untuk mendapatkan kredit juga perlu diadakan untuk peminjam-peminjam "kecil". Ini akan mengurangkan penyalahgunaan dan penyelewengan dalam institusi pajakgadai.

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CHAPTER I

INTRODUCTION

A. Objective of Study.

This study aims to examine the working of pawnbrokers in Kuala Lumpur under the Pawnbrokers Act, 1972, Laws of Malaysia; Act 81¹ (hereinafter referred to as the Act). The writer was prompted to undertake this research by the complaints of the injustice suffered by the pawnors under the pawnbroking system coupled with the criticisms voiced by the members of Parliament² on the introduction of the Pawnbrokers Bill, 1972, in the Dewan Rakyat and also statements in the press by officials³ that there was a need to tighten enforcement of the Pawnbrokers Act to prevent abuse by pawnshop owners.

The writer is reminded of a famous quotation of Dean Roscoe Pound that "law in books is different from law in action". It is intended to compare the system that is actually in operation with the system envisaged by the Act and see how far the law in practice has deviated or fallen short from that intended by Parliament. Judicial decisions pertaining to the various points of pawnbroking will also be discussed to see how far the Act has functioned in practice and which areas of the Act have been most litigious.

¹The Act is annexed to Appendix 1 of this paper.

²See Malaysia, Official Report, House of Representatives, Third Parliament, Second Session, Kuala Lumpur, Government Printer 1973, Jilid II, Bil. 10, Hari Selasa, 23 hb Mei 1972, Rang Undang-Undang Pemegang Pajakgadai, Ruangan 1291-1306.

³See Malay Mail, 22 March 1978, p. 1.

B. Scope of Study.

It is intended in this paper to study the pawnbroking institution from various aspects especially its role, functions and merits and the reasons for its ability to maintain its position in the present day economy in spite of the availability of more sophisticated sources of finance. Other matters to be investigated include the limitations and shortcomings of the institution and the relevant remedial measures which may be employed.

One might perhaps suggest that the simplest way would be the abolition of the pawnbroking system. Since, however, this is a measure in the extreme and is not practicable for the time being, the logical alternative to the problem of abuse in the pawnbroking system would be to plug loopholes in the law governing their operations and tighten its enforcement to ensure its smooth observance and also to develop other credit channels for the borrowers.

Incidentally, the paper will examine the credit facility on pledges available in commercial banks and other agencies and assess their capacity to meet the credit needs of small borrowers. The criteria used in the assessment is that of the merits and demerits of these particular institutions in meeting this need. The law applicable to these institutions is not the Pawnbrokers Act, 1972 but the general law on pledges as contained in the Contracts Act, 1950 (Revised - 1974), sections 125 to 132. Therefore the paper also compares and contrast_s the

differences between the Pawnbrokers Act and the Contracts Act with regard to pledge transactions.

The bulk of this paper will be concerned with the law relating to pawnbrokers especially the controls over it and the adequacy and effectiveness thereof. The basic premise upon which the writer proceeds is that the pawnbroking system is defective and this paper seeks to evaluate the effectiveness of the pawnbroking legislation both through case law and the actual practices of pawnbroking in comparison with the legislation.

C. Limitations of Study.

There is a scarcity of reference material on this subject and the writer therefore had to resort largely to primary sources for his information. The pawnbrokers on the whole have been uncooperative and "tight-lipped" as regards information about their mode of operations and business statistics. As a result the writer had to rely mainly upon the information received from the officials concerned with the administration of the Act and from members of the public who have had dealings with pawnbrokers.

The study has been limited to Kuala Lumpur for two main reasons, the first being the practical difficulties of carrying out the study over a wide geographical area in view of the writer's limited resources and the second reason being that the daily administration of the Act has been left to the individual state governments and in the Federal Territory of Kuala Lumpur to the Dewan Bandaraya by the Minister concerned. Therefore a study which covered a wider area involving two or more states would be a duplication of work.

D. Research Methodology.

This study encompasses both library research and field work with emphasis on the latter. The reference materials were extracted from the reports of Parliamentary proceedings, law reports, law digests, articles, statute books, journals, newspapers and official documents. Interviews were needed to supplement the information gathered from library research, such interviews being conducted both formally and informally. The interviews were held with officials of the Ministry of Local Government and Federal Territory, Dewan Bandaraya, Kuala Lumpur, the Selangor State Government and with pawnbrokers and their customers.

E. Organisation of Chapters.

The Chapters have been arranged in a meaningful and convenient order.

The main body of the exercise begins with Chapter II which introduces the historical background of pawnbroking in Malaysia and gives a brief survey of the legislation on pawnbroking prior to the passage of the Pawnbrokers Act, 1972.

Chapter III deals with the different sources of credit on pledges while Chapter IV is concerned with the rights and liabilities of pawnbrokers under the Pawnbrokers Act, 1972 and pawnees under the general law. This is followed by a discussion of the rights and liabilities of pawners under the Act and under the general law in Chapter V.

Chapter VI sets out the controls over pawnbroking while Chapter VII highlights some problems in the pawnbroking system and suggests possible solutions. Chapter VIII expands the discussion in Chapter VII by considering whether the banking system can be a cure to the ills of the pawnbroking system.

Finally Chapter IX ends the exercise and presents the concluding remarks.

F. Definitions.

The following terms have been used in this paper in the sense of the Contracts Act, 1950 (Revised-1974) and the Pawnbrokers Act, 1972 which define them as follows:

Bailment - Contracts Act, 1950, S.101:

"A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'."

Pledge/Pawn - Contracts Act, 1950, S.125:
(Pawner and pawnee)

"The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawner'." The bailor is called the 'pawnee'."

- Pawnbrokers Act, 1972, S.2:

" 'Pledge' means any article pawned with a pawnbroker."

" 'Pawner' means a person delivering an article for pawn to a pawnbroker."

Pawnbroker⁵ - Pawnbrokers Act, 1972, S.2.

" 'Pawnbroker' includes every person who carries on the business of taking articles in pawn."

⁴for a more exhaustive treatment of the term "pawner" see infra Chapter V, p.95.

⁵The definition of a pawnbroker is dealt with in greater detail in infra Chapter IV, p.67.

CHAPTER II

HISTORY OF PAWNBROKING IN MALAYSIA

A. Reasons for growth of Pawnbroking.

The growth of the pawnbroking institution can be traced to the need for money. With the advent of a monetised society people needed money for the purpose of buying goods and services. Pawnbrokers came forward to meet this need by supplying cash on the security of articles of value pledged with them. Security relates to the obligations to pay money—usually to repay a loan or to pay a sum due under a contract. A creditor seeks security when, for some reason, he is not satisfied that the mere obligation of the debtor to pay him will give him a good enough chance of receiving all the money due to him. The giving of security is the making of an arrangement under which the creditor is to have some rights over and above the right to sue the debtor for the money if it is not fully paid. One very common type of security is to set aside some specific property of the debtor's as an asset which the creditor can sell, if the debt is not otherwise paid, satisfying himself out of the proceeds.