

Moneylenders Law In Nigeria: Appraisal of Loan And Interest Recovery

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Certification

This is to certify that this project report titled, **Moneylenders Law In Nigeria: Appraisal of Loan And Interest Recovery** was carried out by Ibikunle Oladapo AKINDE (LCU/PG/003061), in the Department of Private and Business Law, Lead City University, Ibadan, Nigeria for the award of Master of Laws degree (LL.M) under my supervision

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Declaration

I hereby declare that I am the sole author of this research project and that it has not been presented by any previous application for a higher degree. I authorize the Department of Private and Business Law, Lead City University to lend to other institutions or individuals for the purpose of Scholarly research.

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Dedication

To God and Fatherland.

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Abstract

Moneylenders and Moneylending over several centuries ago had been dressed in the 'toga of evil'; described in the most despicable terms, all out of the age-long belief that moneylending (Usury) was immoral, unproductive and the interest or profit unearned.

This study seeks to bring to the fore the hardship worked on the modern day practitioners of moneylending and the practice via a robust search into the historical background, other literatures and plethora of court cases that depicts the struggle of moneylenders in court recounting litany of woes of their losses of not only their capital but also of the interests on their loans viz-a-viz the need for moneylending by the overwhelming public demand and its glaring economic importance.

The Moneylenders Law and its provisions is thoroughly appraised for all it is worth in the regulation of the business of Moneylending as to whether it enhances and facilitates or impedes and inhibits the business. The onerous sections of the Law are rigorously analyzed to expose their effects on moneylenders and the moneylending business.

Doctrinal Research Methodology was used in the study; historical background of moneylending, its evolution from the ancient times through the several eras of development and civilization up to the present age of regulation. Several sources were reviewed; sources such as material and books on moneylending; also legal materials such as the Moneylender's Law of various States of Nigeria and judicial sources such as caselaws and judicial precedents applying various provisions of Moneylenders Law.

The research further found that the Moneylenders Law though sufficiently protects the borrowers as per the intendment of the legislators in its promulgation, it puts fetters on the lenders so much so that it impedes the business as most lenders operate informally in the background. The stifling effect of the loss of their loans and interest resulting from the unenforceability of their contract was overwhelmingly fatal to their businesses. and to the lenders.

The research further found that the moneylenders also need protection as the Moneylenders Law structurally tilted against the lenders; morally biased against the lenders as they are believed to be unscrupulous

The study concluded that Moneylenders' Law rather than facilitating or enhancing the business, inhibits and impedes its growth as a result of the moral bias expressed in the purpose for the enactment of the first Moneylenders Act in 1900 and the subsequent review in 1927. It is a Law that seeks to protect the interest of the borrowers from unscrupulous lenders' so much that it ended up putting fetters on the lenders.

The Moneylenders also need protection, the study thus recommend the law for a review.

Keywords: ancient times, doctrinal research, era of development and civilization, evolution, facilitating and enhancing, fetters, inhibition, interest protection, impedes, moneylenders, moneylending, moral bias, overwhelmingly fatal, profit-seeking, self-interest, structurally tilted, stifling, supremely moral, toga of evil , unscrupulous lenders, usury

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Chapter One

1.0

Introduction

1.1 Background to the Study

In The legislative process, some statutes are specifically enacted for the defense of a group of individuals, the general public, or the advancement of a public policy goal. The Moneylenders Act and state-specific moneylender laws are two examples of such acts in Nigeria. Moneylenders Act, 1927 of England was domesticated and enacted in Nigeria as Moneylenders Ordinance in 1939 and later replaced by the Moneylenders Act, 1958 to curb the exploitative tendencies of moneylenders who were highly detested by the public and at the same time massively patronized by the same public; thus, their trade, moneylending, becoming very popular, its status moving from indispensable to inevitable.

Any contracts that violate a law that was passed expressly to safeguard a group of people or the public at large would be unlawful and null and void.¹ Therefore, in addition to protecting innocent borrowers, the laws also unnecessarily restrict lenders and hinder their businesses. Money is a necessity of life. Everybody seeks it; ‘it is said to facilitate all things.’² There is always a need to be met requiring large sums of money, by businesses and individuals. The art of lending emerged as a response to the need for capital, with financial institutions such as banks providing extensive credit facilities, often for investments, and imposing strict security requirements as collateral. The collaterals are usually burdensome and oppressive.

¹ Sagay IE, *Nigerian Law of Contract* (Spectrum Law Publishing, Ibadan, 2003) 379

² The Holy Bible (KJV), *Book of Ecclesiastes Chapter 10 verse 19-20*

Individual borrowers are required to possess a specific income level as assurance of their capacity to repay loans or credit facilities. Consequently, individuals with lower earning potential, those from rural areas, private low-income traders, and others lacking adequate collateral, despite their need for funds for small-scale investments, were excluded and consequently denied access to credit facilities

Resulting from the popularity and the indispensability of moneylending, moneylenders charge exorbitant interest rates and, in some cases, exhibit dishonest behavior. The trend toward more informal and unlawful economic practices was unabated, and not even the strict involvement of regulation could stop it. Despite several attempts by banks to streamline certain of their lending processes in an effort to become more similar to moneylending, the practice grew in importance, going from necessary to unavoidable. The efforts of the banks failed to dissuade borrowers from getting attracted to moneylending, and thereby approaching the Moneylenders.

Moneylending consumer credit facility business is regulated by the Moneylenders ordinance, 1939 in Nigeria as amended and replaced by the Moneylenders Act, 1958, and the Moneylenders Laws of various states. Moneylending is not the only consumer credit facility available in Nigeria. Others include Hire purchase regulated by Hire Purchase Act and Pawn brokerage which is regulated by the Pawn Brokerage Act.

Considering the hardship worked on lenders by the provisions of the Moneylenders Laws in the recovery of the money lent and the interest, evidenced by the plethora of actions brought to court by Moneylenders for the recovery of the money lent and the interest that were lost on the

platform of non-enforceability, illegality, et cetera and the resultant non-recoverability of the loans and the interest hence the questions: Moneylender's Law, an enhancer or an impediment; a facilitator or an inhibitor?

Also arising from the intendment of the Moneylenders Law to protect the innocent borrowers from unscrupulous Moneylenders; could there not be some innocent lenders also needing protection? I thus came to the conclusion that more research effort is needed in the appraisal of Moneylenders Law and the obligations imposed on Moneylenders which impedes the recovery of their loans and interests, in a way, inhibiting or impeding the business rather than facilitating or enhancing it. These onerous provisions of the Moneylenders Law resulting in plethora of cases in courts for the recovery of loans lent to the borrowers as well as the interests which were lost and the concomitant pains suffered by the lenders, gingered the interest of the researcher in this work.

1.2 Statement of the Problem

Moneylending business which started as usury was highly generally detested and considered to be evil.³ Religionists, philosophers even artists of the past spoke of usury in the most inglorious and despicable terms while the economists described it as a **zero-sum transaction**. Most of the earlier perceptions got resolved over several centuries in history save the moral challenge which persists to date.

³ Goodie RM, The Legal Regulation of Lending in Diamond AL (ed), *Installment Credit* (Steven and Sons, London, 1970) 44

The principal regulation, The Moneylenders Laws, consists of onerous provisions which work so much hardship on the Lenders in the recovery of their loans and interests in its bid to protect innocent borrowers. It also employed some degree of moral bias against the lenders and their businesses. Thus the Moneylenders also require some protection against unscrupulous borrowers and the laws for their loans and interest, and cumulatively, their capital.

1.3 Aim and Objectives of the Study

The aim of this study is to highlight the difficulties faced by the Moneylenders through history resulting from the stringent provisions of the Moneylenders Laws in the recovery of their loans and interests through the application of the Laws in Nigeria.

The objectives of the study are to:

- a. highlight the evolution or development of moneylending in Nigeria
- b. evaluate the legal framework for moneylending and moneylenders in Nigeria
- c. discuss the challenges facing moneylending and moneylenders in Nigeria

1.4 Research Questions

1. Does Moneylenders Law fetters or impedes the Moneylender?
2. Is there a way to mitigate the stifling of Moneylending business and the lenders for survival?

1.5 Scope of The Study

This study covers only the Nigerian space save the historical background where the history of moneylending had to be recounted from the recorded European history. The reference statute in this work is the Moneylenders Law of Ogun⁴, Kwara⁵, Lagos⁶, Anambra⁷ and Cross River States⁸ which represent the South western, the Northern, the South eastern and the Southern regions of Nigeria respectively. However, the Moneylenders Laws of all the 36 states are similar in content except in pagination and the staggering of sections, as they are all offshoots of the Moneylenders Act.⁹

The search is limited to review of literatures in the form of books, research journals, cases and statutes. No research effort was expended in interviewing or obtaining information from Moneylenders as a result of their non-visibility mentality as their business thrives more in informality and illegality, and they thus operate mostly underground. Yet they and their business are indispensable and almost inevitable in all economies.

1.6 Significance of the Study

The economic importance of Credits in various forms to a nation cannot be overemphasized. Practically all areas of endeavours require capital which are made available through loans from the banks, of course with one form of security or the other. Credits or loans from Moneylenders, unlike banks, are mostly unsecured, no collaterals. The significance of this study lies in the fact

⁴ Moneylenders Law Cap M157, Laws of Ogun State 2006

⁵ Moneylenders Law Cap M74, Laws of Northern Nigeria 1963

⁶ Moneylenders Law Cap M7, Laws of Lagos State 2003

⁷ Moneylenders Law Cap M2, Laws of Anambra State 1991

⁸ Moneylenders Law Cap M7, Laws of Cross River State 2004

⁹ Moneylenders Act of England, 1927

that it brings to light the hardship faced by the moneylenders in the recovery of their loans and the interests and other difficulties imposed on them by some provisions of the Moneylenders' Law which are disincentives to the lenders, and inhibitors and impedance to their business. The thesis calls the attention of the general public to the fact that Moneylending is not abominable; not a zero-sum but a very productive transactions for both the lenders, the borrowers, other parties and the national economy; the interest or profit is not unearned. That Moneylenders are not evil but very noble men.

The study also calls the attention of the civil authorities especially the legislators to the fact that legislative efforts should be expended in the process of reviewing the Moneylenders' Law to mitigate the hardship imposed on the lenders by certain provisions of the Moneylenders Law to facilitate and enhance the business. Concerted efforts should be made to encourage the practice for the survival of both practitioners and the business thus enhancing the national economy.

Chapter Two

2.0

Literature Review

2.1 History of Moneylending

Lending money has been governed by laws for a very long time.¹⁰ Moneylending has a long and complex history with roots that can be traced back to ancient times¹¹. Moneylending which was originally called usury was greatly abhorred by the ancient people and thus disapproved by the authorities particularly by the Roman authorities and the church.

The church perceived it as a violation of canon law since the Bible forbids it in the following expressions: *'You are not to be regarded as a usurer or charged usury if you lend money to a needy member of my people via you.'*¹² *And if thy brother has waxen impoverished and gone into decay with you, then thou shall relieve him..., as was spoken before in the book of Leviticus. Never charge him usury or make him pay more... The law forbids you from engaging in usury with your money or using your food as collateral for loans.'*¹³

Personal loans made by individuals at interest rates A to person B for profit. High interest rates applied to loan amounts are the main means of profiteering.

Practically everyone has spoken out against moneylending, and that sentiment has not changed. Philosophers and religious leaders have both condemned moneylenders to damnation. The victims were compensated by seizing the moneylender's property. They were slandered, falsely accused, imprisoned, and killed. Many people, including philosophers, theologians, journalists, economists, playwrights, lawmakers, and the general public, hold moneylenders in high contempt; the fact that the major objective of the Jewish pogroms was to erase debt records is indicative of this. At least in some contexts, prominent historical philosophers including Plato,

¹⁰ Goodie RM, 'The Legal Regulation of Lending' in Diamond AL (ed), *Installment Credit* (Steven and Sons, London, 1970) 47; Joseph Bridges Matthews, *The Law of Money Lending, Past & Present* (Publisher: Legare street press, 2023) 67

¹¹ Yaron Brook, *Money: A brief History of Lending* (2001) <<https://brewmate.com>> accessed 27 July 2024; Moneylending: Its History and Philosophy (2nd Renaissance Conference, Anaheim, California, 2001)

¹² The Holy Bible, *Leviticus Chapter 25 verse 35 – 37*

¹³ Brian Garner (ed), *Black's Law Dictionary* (St. Paul, MINN: West Group, 9th Edition) 1685

Aristotle, Thomas Aquinas, Adam Smith, Karl Marx, etc. saw moneylending as a vice. Authors such as Dante, Shakespeare, Dickens, and contemporary popular fiction often portray moneylenders in a negative light. Charging interest on loans is seen by radical Muslims and Christians as morally wrong since it goes against God's rule.

Oxford English Dictionary¹⁴ lends money at interest, which is known as usury. In this type of loan, one party (A) agrees to lend another party (B) money for a set amount of time (T) with the expectation that T will repay the principal plus interest (I). This method allows the wealthy to share their riches with those without it, and vice versa. In addition to the loan's principle, the borrower pays the lender an agreed-upon premium, which grants him access to money that he would not have otherwise. Not only do the parties participating in the trade gain something, but so do many others who aren't even directly involved in the transaction because of the commodities and services that are made available to them.

The contribution of Moneylending practice to the world trade and industry is immeasurably enormous from the ancient times through the middle ages to the modern times. Moneylenders and other financiers have enabled the growth of businesses by taking risks and investing funds in what they believed would provide the highest return and even brought development in the quality of life enjoyed by private low-income individuals and their business.

¹⁴ Oxford Dictionary of Law (6th Edition University Press, New York, U.S.A.) 2006

Without capital, through usury or lending, life-improving businesses would go out of business, and everyone but the ultra-wealthy would be unable to purchase a home. Moneylending is the life-blood of industries and of the societies, condemnation of the practice and the practitioners of lending or usury is the condemnation of enhancement of man's life on earth.

2.1.1 What is the reason for the hostility of Moneylending?

Hostility towards usury or lending with interest can be traced back to two connected origins. Some moral and financial perspectives. And this can be traced chronologically through the ancient period, the dark and middle ages to the enlightenment period, the 19th, 20th & 21st centuries. Economically, from the beginning of Western thought, usury was regarded as unproductive – as taking something for nothing. Ethically, the practice was condemned as immoral, as unjust, exploitative; against biblical laws and selfish.

In ancient days people believed and relied on the ideas of the ancient philosophers or thinkers in the mould of Aristotle,¹⁵ Plato, Cato the Elder, Cicero, Seneca and Plutarch.¹⁶ The practices of lending money at interest was met with hostility as far back as ancient Greece. Aristotle (384 – 322 BC) believed the practice to be unnatural and unjust. In his first book, *The politics*, he wrote:

'The most hated sort of (money making), and with greatest reason, is usury, which makes a gain out of money itself, and not from the natural use of it. For money was intended to be used in exchange, but not to increase at interest. And this term usury which means the birth of money

¹⁵ Aristotle, *the politics of Aristotle* (Oxford Clarendon press 1885) book 1 p 19 (translated by Benjamin Jowel)

¹⁶ Plutarch, *Plutarch morals*, (Boston, Little Brown and company 1874) p 412-424 translated by William Watson Goodwin

*from money, is applied to the breeding of money, because the offspring resembles the parents. Wherefore of all modes of making money this is the most unnatural.*¹⁷

Aristotle believed that charging interest was immoral because money is not productive. He demonstrated that if you allow someone to use your orchard, he argued the orchard bears fruit every year – it is productive – and from this product the person can pay you rent. But money, Aristotle thought, is merely a medium of exchange. On the view of Aristotle, an exchange of N100 today for N100 plus 10% interest a year from now is unjust, unnatural because money unlike an orchard, cannot product additional value.

While ancient society mirrored Aristotle's economic and moral stance on usury for a hundred years, the moral outcry against the practice grew louder and stronger over time. The Greek writer Plutarch for example in his essay, *Against running in Debt, or taking up money upon usury* described usurers as *wretched, vulture-like* and *barbarous*.¹⁸ Similar to Aristotle, Seneca criticized usury in Roman society; the elder Cato notably drew a comparison between usury and to murder¹⁹ and

Cicero wrote that: *'These profits are so vile that they make men hate them, like the ones from... Moneylenders who focus on usury'*.²⁰

Even though the Greeks and Romans were notoriously antagonistic to usury, their economic perspective on the practice—which gave birth to and was intertwined with their moral perspective on usury—was the principal source of their animosity. It was a different story with

¹⁷ Aristotle, *the Politics of Aristotle* (Oxford Clarendon press 1885) 19

¹⁸ Plutarch, *Plutarch morals*, (Boston, Little, Brown and company, 1874) 412-424

¹⁹ Lewis H. Haney, *History of economic thought* (The Macmillan Company New York 1920) 71; Joseph Bridges Matthews, *The Law of Money Lending, Past & Present* (Publisher: Legare street press, 2023) 67

²⁰ Anthony Trollope, *Life of Cicero* (Kissinger publishing, 2004) 70

the Christians, though. Right up until now, Western philosophy has been dominated by their stance on usury.

2.1.2 The Dark and Middle Ages

The Dark Ages and the Middle Ages were "stark in every dimension," according to historian William Manchester. Recurring pandemics and famines eventually culminated to the Black Death, which killed one in four people at its height.²¹ In comparison to their animals, peasants worked more, perspired more, and passed out more frequently due to fatigue.²²

In the Middle Ages and the Dark Ages, the word "economy" was meaningless. After the Western Roman Empire fell, human culture regressed to its pre-civilized form. During this time, bartering was the main method of exchange. For hundreds of years, European trade did not utilize money. Obviously, there was some lending and trading going on, but products were the primary collateral for loans and interest was also paid in things. People in an agricultural community were able to weather the expected lean times through these barter-based loans, which were basic but effective.²³

However, the church vehemently rejected even such loans for subsistence. Back then, everyone looked to the Bible as the last authority on all important issues and the foundation of all knowledge. Scholars turned to the Bible for answers to all their fundamental questions and issues, and the Bible makes it clear that it is opposed to usury.

²¹ William Manchester, *A World Lit Only by Fire*. (Boston Backbay Books 1993) 5-6

²² Dark Ages (Historiography) <en.m.wikipedia.org> Accessed 27 September 2024.

²³ Glyn Davies, *A History of Money: From Ancient Times to the Present Day* (Cardiff; University of Wales Press, 1994)

God asks the Jewish people in the Old Testament of the Bible: "*Whoever has given into usury and taken increase shall he then live? He will not survive; death will definitely come to him, and his blood will be on him*"²⁴ And: "*You are forbidden from engaging in usury while lending money, food, or anything else to your brother.*"²⁵ *So that the Lord your God may reward you in everything that you do in the country you will soon occupy, you may lend to strangers on a usury basis, but you must not give to your brother*'.²⁶

In one instance God forbade usury outright and in another he forbade the practice of usury among Jews but permitted usury by Jews on strangers (non-Jews). The New Testament of the Bible did not forbid usury in explicit terms but the book of Luke states thus: *Lend, hoping for nothing.*²⁷ Thus, Christianity and Christians opposed usury on ethical and biblical foundations from the start. Furthermore, the church's steadfast adherence to legal constraints only served to bolster its resistance.

Constantine I, Roman Emperor, called a meeting of Christian bishops at the Bithynian city of Nicaea in 325 AD to represent all of Christendom, and the council of Nicaea passed a decree outlawing usury among clergy. The church broadened its ban to include laypeople during Charlemagne's reign (768–814), describing usury as a simple transaction in which more is demanded than given.²⁸ Usury was publicly declared a form of theft by the second lateral council in Rome in 1139AD. The council thus required restitution from those who practiced it.²⁹ So, Christianity has always been against usury, both from a biblical and moral one. According to Christian ethics, which is based on a theory of divinely ordained charity, one should lay down

²⁴ The Holy Bible: *Ezekiel chapter 18 verse 13*

²⁵ The Holy Bible, *Deuteronomy Chapter 23 verse 19*

²⁶ The Holy Bible, *Deuteronomy Chapter 23 verse 20*

²⁷ The Holy Bible, *Luke Chapter 6 verse 35*

²⁸ Jacques Le Golf, *Your Money or Your Life* (New York: Zone Books, 1988) 26

²⁹ *Ibid.*

one's life for the sake of the downtrodden and helpless. Usury and other forms of exploitation motivated by self-interest are denounced.

2.1.3 Loophole in the Belief in the Scripture

This arose a result of the Bible's double standard on usury. In one reading, the Bible allows Jews to charge interest on loans made to non-Jews, but in another, it expressly forbids usury. European Jews, who were previously forbidden from owning property or working in most occupations, discovered moneylending to be lucrative—though risky—during the Dark and Middle Ages, when both the church and state authorities permitted Jews to engage in usury.³⁰

This practice which legally permitted Jews to lend money to Christians, though beneficial to the Christians, was viciously resented by them as they loathed the idea that Jews were making fortunes out of the business, over same which the Bible prohibited the Christians facing the penalty of everlasting damnation. Anti-Semitism developed as a result of Christians' disdain for Jewish usurers and violent attacks on the Jews.

³⁰ Edward Henry Palmer, *A History of the Jewish Nation* (Society for Promoting Christian Knowledge London 1874) 253-254; <www.routledge-ny.com/ref/middleages/Jewish/England.pdf> Accessed on 20th September 2024

In 1190, a number of violent assaults were orchestrated by Christian nobility and elites who owed money to the Jews. The goal was to eliminate the debts via violence, which resulted in the destruction of accounting records and the murder of several Jews.³¹

Joseph Patrick Byrne, a European historian reports: *'If the Jews hadn't been impoverished and the landowners hadn't been indebted to them, their murder would not have been justified.35 Not only did the "lords" owe a lot, but so did the working class and the underclass; during these brutal pogroms, they were able to wipe all the creditor's records and any evidence of their debt'*.³²

These Pogroms led to the expulsion of the Jews from England in 1290 by King Edward I, returning en-masse not until the 17th Century, a period of 400 years.³³

2.1.4 Advent of Christian Lenders

The biblical pronouncement on usury worried the Christians. What this means is that Jews couldn't lend money to fellow Jews, but they could lend money to Christians and non-Jews. Christian philosophers, like St. Jerome, were troubled by the idea that God allowed Jews to profit from usury but forbade Christians to do the same (347 - 420). As he saw it, the biblical proclamation meant that it was improper to charge interest to one's brothers (since, after all, Christians consider all other Christians to be brothers), but it was OK to charge interest to one's

³¹ Edward Henry Palmer, *A History of the Jewish Nation* (Society for Promoting Christian Knowledge London 1874) 253-254; <[www.routledge-ny.com/ref/middleages/Jewish/ England.pdf](http://www.routledge-ny.com/ref/middleages/Jewish/England.pdf) > Accessed on 20th September 2024

³² Joseph Patrick Byrne, *The Black Death* (Westport: Greenwood Press, 2004) 84

³³ Ibid.

adversary. This interpretation allowed him to escape the dilemma. Usury was thought of as a zero-sum game where the lender gets stronger and the borrower gets weaker; a weapon that would make the borrower weaker and the lender stronger, so that if one were to lend money to their adversary at interest, their opponent would suffer. Christians foolishly loaned money to the Saracens, their crusade adversaries, because of this idea.³⁴

In the practice of usury the lenders is believed to grow richer without effort at the expense of the lender, who became poorer. Arising from the biblical pronouncement, Christians became extremely hostile to the practice and the practitioners of usury in their economic views or standpoint. This economic and biblical standpoints against usury, led more on the former, led the church to utterly abusively demonized the usurers who were made a symbol of evil. Sermons describing the money lenders' horrible death and horrific existence in hell were common. Bishop Jacques de Vitry in a sermon put it concisely:

God created three types of men: peasants and other labourers to assure the subsistence of the others; knights to defend them, and clerics to govern them. But the devil created a fourth group, the usurers. They do not participate in men's labour, and they will not be punished with men, but with demons. For the amount of money they received from usury corresponds to the amount of wood sent to hell to burn them.³⁵ This was the attitude towards usury in the Dark and Middle ages which was based on the biblical and moral grounds. Moneylenders were recognized as

³⁴ Sidney Homer, *History of Interest rates* (Rutgers Universality Press New Brunswick 1963) 71

³⁵ Ibid.

exploiters making huge unearned profits at the expense of the borrowers; a zero-sum transaction which was presumed to be evil.

2.1.5 Era of Economics, Logic and Reality

In the 11th century, through to the 13th century, economic reasoning, logic and realism took up the thinking space among the European thinkers culminating in conflict with the biblical and moral perspective with resurgence of respect for observation and logic. This made the reality for change increasingly difficult to ignore bringing to the fore the reality of the benefits adducible to usury. As a result of increased trade with Asia and the Middle East, as well as contact with the thriving cultures and economies of North Africa and the Arab world, Europe's economy flourished. Thus resulting in greater demand for capital and credit. Consequently moneylenders arose throughout Europe in response to the need. As moneylenders supplied the required funds (loans), the economy grew even faster.

2.1.6 The Renaissance Era or the Era of Reasoning

more importation of not only goods but also of knowledge. Some of their discoveries include Arabic numeral system, double-entry bookkeeping, compute, science, and, most significantly, the writings of Aristotle.³⁶ This era is popularly referred to as the era of reasoning as Aristotle's ideas of reason and asking questions testing or reasoning out all past postulations and beliefs especially the biblical and Christian views and rules earlier believed to be sacrosanct, being the rules of God.

³⁶ Aristotle, *The Politics of Aristotle* (Oxford Clarendon Press 1885) 65

This new era found knowledge had a significant impact on the intellectuals of that era. Having found reason, the new intellectuals were no longer content to rely just on biblical allusions; they now sought to establish their views in it. The Christian faith, alas, continued to bind them as reasoning was still generally held in a subordinate position to faith. But the acceptance of reasoning and the efforts of the intellectuals to justify their ideas in line with the new knowledge of reasoning ultimately changed the way intellectuals thought about or view everything, including usury.

Aristotle in his limited economic knowledge and experience held that usury is unproductive. The thinkers of this era who saw the extensive use, and products of money in lending all around them with the resulting economic expansion, a fact they could not honestly ignore, chose to reconcile the idea of usury rationally. And thus the idea that usury is unproductive and zero-sum transaction started losing credibility. Public opinion Once the advantages of usury and its correlation with economic progress became increasingly apparent, the arguments against it began to shift.

The church stepped up punishment for transgressors despite the new knowledge and economic development by making several futile efforts at banning the practice. This newly rational society would necessitate fresh, non-dogmatic arguments against the seemingly beneficial and enriching practice of usury if the Bible were to demand its prohibition.

2.1.7 The Turning Away From Faith and The Bible

The philosophers of the late middle age They began to shift their attention from religion and the Bible to reality after discovering Aristotle's approach of observation-based argument. In 16th century, the church and civil law partially started to accept usury in practice, but still forbidden in theory. It was common practice for church officials to selectively enforce usury regulations or manipulate them in order to strengthen the church's financial dominance. Monks were among the earliest lenders, offering carefully disguised interest bearing loans.³⁷ Money exchange was the most common way to disguise usury from the 12th century, and this led to the beginning of banking currency exchange became an important industry in Italy due to the country's large range of currencies.³⁸

Through such exchanges the banks took deposits, gave loans and made payment across borders, our contemporary financial system came to a halt. These early banks participated in usury since the loans they extended came with interest. The local authorities and the church both gave their blessing the practice because the so called exchange service proved enormously valuable to both. Not only was usury employed in financing trade it supported several monarchs' wars and the crusades for the church, among other things, for innumerable merchants.³⁹ Under the pretense that it wasn't usury, everyone sought what usury had to offer. Despite the church's repeated prohibitions and punishments of usury, it itself engaged in the activity, and everyone else regarded it as a way to earn a quick buck.

³⁷ Yaron Brook, *Money: A brief History of Lending* (2001) <<https://brewmate.com>> accessed 27 July 2024

³⁸ Davies Glyn, *History of Money* (Cardiff: university of Wales Press 1994) 154

³⁹ Ibid, p 146-174

The double-standard exhibited by the church in opposing usury in theory but violating its own moral law in several ways resulted between the two opposing views of usury, one holding that it is morally wrong and the other that it is useless and counterproductive. As more and more proof of its usefulness and productivity accumulated, this widened even more. The church's focus was on selected practice rather than on moral position usury despite anything to the contrary.⁴⁰

Usury by the friends of church officials were ignored while demonizing Jewish moneylenders and others in what could be described as monumental favoritism and evil dichotomy.⁴¹ Around 1220, the church and the civil authority devised a novel idea to supplant specific kinds of usury: the idea of interest⁴² where usury is legal, when done by the church licensed lender it was called 'collection of interest'; when done by the Jewish lenders it was called usury.

"When money is loaned on a contract to receive not only the principal sum again, but also an increase by way of compensation for the use," states Blackstone in his commentaries on the Laws of England. "Those who think it lawful call the increase interest, and those who do not call it usury."⁴³

The new word interest, a Latin word derived from Latin means 'to be lost'. It was presumed to be a compensation for loss the creditor incurred in parting with his money via lending. To the church, interest was seen as "damages," not revenues. Interest could be legally collected, but usury could not. Thus, moneylenders may legally tack on interest as a kind of compensation for loans that were overdue. In order to circumvent the rule on usury, loans were designed with

⁴⁰ Robert Burton, *Sacred Trust* (Oxford University Press 1996) 118

⁴¹ Ibid p. 118-120

⁴² Homer Sidney: *History of Interest Rates*. (New Brunswick Rutgers University Press 1963) 73

⁴³ William Blackstone, *Commentaries on the Laws of England* (Publisher; the Clarendon Press, Oxford, England. 1765) 66

delays in mind and priced accordingly. These penalties, which might reach 100% of the loan amount, were a source of profit for several prominent moneylenders and bankers, such the Belgian Lombards.⁴⁴

Over time, the basis for collecting interest grew to include the lender's time and effort in making the loan, as well as any expenditures or damages they may have incurred. Reasons for interest charges also included factors of alternatives that were foregone when the loan was made.

Economic risks was even viewed as worthy of compensation.⁴⁵ These were major breakthroughs; but despite these and the fact of the economic growth of the late We still see selective enforcement of the ban on usury throughout the Middle Ages. Usurers faced a variety of consequences, including repayment orders, economic hardship, excommunication, and even physical violence and death, particularly against Jewish lenders. This was still a very dangerous line of work.

Usurers faced peril both on Earth and in the sky by eternal damnation that awaited them after death.⁴⁶ The usurers were depicted as heroic figures because they disobeyed the law and practiced moneylending. It is hard to believe that anyone did this, much less so many. Their material lives were improved, money was produced, and unprecedented economic progress was achieved as a result of their defiance of religion and financial and existential hazards.

⁴⁴ Homer Sidney: *History of Interest Rates*. (New Brunswick Rutgers University Press 1963) 94

⁴⁵ Le Golf *Your Money or Your Life* (Zone Books, 1988 New York) 74

⁴⁶ Ibid. p 47-64

Johannes Gutenberg, a German craftsman and inventor was able to establish and commercialize his printing press with loans from local moneylenders in 1439.⁴⁷ The early bankers made available loans in Europe's commercial and industrial sectors, funding both exploration and the technological innovations that would eventually spark the industrial revolution. Even though everyone was against usury by the end of the Middle Ages, its practical usefulness was hard to dispute.

2.1.8 Era of Reformation

This is an era of great leap in commerce in Europe. Banks sprang up and trade volume expanded to East and the new world bringing unprecedented trade and wealth. This increased financial and commercial activities was made possible as a result of the new tolerance of usury in many European cities. Moneylenders discovered it simpler to get around regulations in Genoa, Italy, because of the city's lenient stance towards usury. Due to the widespread assumption among Genoa's elite that the city's merchants' financial dealings were vital to the city's success, local courts often ignored such matters to usury involving its merchants and bankers.

Until the 19th century, A decent acceptance of usury came about during the reformation in Northern Europe, however the official attitude of the Catholic Church stayed intact. The founder of the Protestant Reformation, Martin Luther, held the view that certain forms of usury were unavoidable and should be tolerated by civil law. His opinion that humanity and the

⁴⁷ A Davies, *History of Money* (Cardiff; University of Wales press 1994) 177-178

world were too fallen to be governed by Christian principles led him to advocate for a divide between civil law and Christian ethics, as opposed to the concept of a separation of church and state. Christian morality and the laws of the Old Testament, he said, are utopian ideals that have nothing to do with practical economics and politics. He came to the conclusion that secular authorities should legalize and regulate usury as it is an inevitable activity⁴⁸ whereas **John Calvin** believes that Not all usurers are evil as usury does not contradict God's rule. Calvin reasoned that the impoverished should be safeguarded by establishing and never exceeding a minimum rate of interest.⁴⁹ While some religious leaders maintained that usury was morally wrong regardless of evidence, other scholars provided strong evidence in favor of an economic justification of the practice.

Molinaeus submitted that usury is economically productive though is unchristian; To limit the power of the money lender and safeguard the interests of their clients, the industry should be regulated and overseen by the state.

2.1.9 Regulation of interest

In 1545, under Henry VIII's reign, England became the first nation to set a legally binding rate of interest. A 10% rate was established. And the law was repealed seven years later.

Several arguments were made in favour of Moneylending by several intelligentsias among whom was **Francis Bacon**. He saw the value in moneylending as a source of financing for merchants

⁴⁸ Martin Luther The Freedom of the Christian (Published in 1520) <<https://www.crossway.org>> books

⁴⁹ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) 87

and traders. Therefore, Bacon suggested two usury rates: one that could be applied to everyone (maximum 5%), and another that could be applied to specific licensed individuals (and only known merchants) at a rate greater than 5%. The state-issued license that will cost citizens money.⁵⁰

As a result, the question of whether or not the government should establish the interest rate became central to the economic discussion, rather than whether or not usury should be permitted that continue up till today with the government setting certain rates.⁵¹

A dramatic shift in popular sentiment occurred with the advent of interest-toleration laws and clearly divorced ethics and morality from economics.⁵²

2.1.10 The Age of Enlightenment

This era brought about the industrial revolution. European economy continued to grow. Banking houses were established to providing credit to a several business endeavours which ultimately helped to fuel industrial Revolution by funding railroads, ports et cetera. yet the moral perception changed but little. Self-sacrifice rather than self-interest was seen to be a virtue thus hampering the full acceptability of usury. There arose a new generation of scholars in Northern Europe in the mid-17th century who recognised that usury was serving an vital economic function, and it ought to be permitted without. Among them were;

⁵⁰ Ibid

⁵¹ Francis Bacon, *'Of Usury' in Bacon's essays* (London: Macmillan & Co 1892) 109

⁵² Davies Glyn, *A History of Money* (Cardiff; University of Wales Press 1994) 109

Caludius Salmasius (1588 – 1653), a French Scholar based in Holland. He thoroughly He challenged the assertions that moneylending was fruitless, emphasized the numerous beneficial roles played by usury, and even advocated for an increase in the number of moneylenders, claiming that competition would drive down interest rates. As a consequence of his arguments, which were supported by several other Dutch professors, usury was eventually legalized in Holland. Because of its abundance of world-class banks, Holland quickly rose to the status of commercial and financial capital, the wealthiest European nation, and much to everyone's dismay.⁵³

Robert Jacques Turgot was a French economist who lived from 1727 until 1781. The link between usury and property rights was initially pointed out by him. He said that, as property, a creditor is free to do with his money what he wants with it, including selling it at whatever price the market would bear. Because he distinguished between the worth of money now and its worth in the future, he was the first economist to completely grasp the idea that money's value fluctuates with the passage of time. It is illogical to equate a sum of 1000 Francs with a guarantee of 1000 Francs, he argued. For if they are of equal worth, then there's no need in borrowing.⁵⁴ He refuted the idea believed God owned the passage of time. He contended that time may be sold as it is personal to the user.⁵⁵

⁵³ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) 89

⁵⁴ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) 90

⁵⁵ Ibid

Jeremy Bentham (1748 - 1832) a British philosopher. In his treatise titled: Restrictions on loan rates, according to "A Defense of Usury," hurt the economy because they make it harder for innovators to get funding. He argued that high interest rates were necessary to finance innovative transactions due to the significant risks involved. He contended that the engine room of growth—innovation—would be stifled by restrictions on permitted interest rates. Although the demand for credit stays the same or even increases, the credit market contracts due to lenders being forced out of business by severe usury regulations, as demonstrated by Bentham. Borrowers face the added danger of illicit trading and must seek loans in the black market.⁵⁶

Adam Smith (1723 – 1790), the father of economics wrote: "*Since money may be used to make anything, it is only fair that someone be compensated for using it.*"⁵⁷

He believed still that The interest rate ought to be maged by the government. He argued that the economy will suffer as a result of unrestrained interest leading to abnormally high interest rates. He argued that the government should step in to fix the mistakes made by the "invisible hand" as the sole reason for usury should be the benefit of society.⁵⁸

2.1.11 The 19th, 20th and 21st Centuries

In the immediate past era A strong feeling of individuality and the pragmatic nature of the profit motive have become apparent, and facts and reason have prevailed over religion in the political and economic spheres. On the other hand, nowadays moral and philosophical challenge was

⁵⁶ Jeremy Bentham, *A Defense of Usury* (Philadelphia: Matthew Carey, 1787) 10

⁵⁷ Adam Smith, *The Wealth of Nations* (New York: Penguin Classics, 1986) 456

⁵⁸ Ibid.

rearing its head. New sense of altruism, self-sacrifice, as led by philosophers in the mould of Kant, Hegel and their followers like Karl Marx took over the whole Europe.

Karl Marx, a political economist professed that production is as a result of manual labour; that labourers keep all of their hard-earned money. He posited that Capitalists "loot" the labor of workers since they own the means of production. He argued that financial activities like moneylending are exploitative rather than constructive. He said that moneylenders use usury to profit from manufacturing even if they don't labor or put any effort into it.⁵⁹

Gabriel Le Bras, a late-modern Marxist stated that the main point made in opposition to usury is that work is what really creates riches.⁶⁰ Marx described Jews as devious evil, conniving money-grabbers because they pursued self-interest rather than self-sacrifice as they sought to make money. Artists of this era were not left out in their protestations and resentment of capitalism in general and moneylending in particular by way of their writings and drama which dominated the whole Europe.

In **Charles Dickens** 'Christmas carol'⁶¹, Ebenezer, the glutton, is revealed to us. Scrooge. In Dosloyevsky's 'Crime and Punishment', there was a plot of a disgusting old lady, a usurer, whom Raskalnikov murdered. The most popular drama was displayed in the Shakespeare's

⁵⁹ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) 112

⁶⁰ Le Golf J, *Your Money or Your Life* (Zone Books, New York, 1988) 26

⁶¹ Chales Dickens *Christmas Carol*, (Elegant Books Chapman and Hall 1843) 66

'Merchant of Venice'⁶² which plotted the shylock a Jewish moneylender against the altruistic Antonio who was a Christian lender without interest.

Despite all these challenges, Even with the stigma of being 'immoral,' the necessity for finance remained. Since people still considered usury as a viable way to buy homes and establish new businesses, it was widely used. People are condemning the practice and indulging in it at the same time, much like the medieval church. As a result, the term "interest" and the practice of "usury" came to imply distinct aspects of moneylending. A smaller premium, lower risk, and less greedy lending is indicated by lending at interest, whereas usury denotes the opposite designate high premium, higher risk and more greedy lending.

Despite some practical positives of moneylending, moneylenders are still blamed for any economic crisis; being accused of engaging in avaricious behavior and exploiting those in need. Why do people continue to hate, mistrust, and even force themselves to repay others who have given them money and opportunities? How did the current anti-moneylending attitude come to be? What gives moneylenders the same bad reputation they had in the Middle Ages? All these concerns have their answers in the fact that, at their core, moral perception in the modern day is essentially the same as it was in the Middle Ages. The fact is that the anti-usury movement has a common moral foundation: a desire to help others. This is the view that seeing one's own interests as immoral and the concept of self-sacrifice as morally superior. The issue stems from this. We will continue to view usury and profit in general as wicked so long as we

⁶² Shakespeare W. *The Merchant of Venice* Cedric Watts, editor (Wordsworth edition 2000) 122

condemn self-interest. The fact that moneylending is economically viable is insufficient to justify it. In order for it to be accepted as a completely legal activity, the main character must find and accept a new moral code that defends selfishness and individual gain as morally commendable.⁶³

From the economic point of view, moneylending (usury) seems to have curried up some acceptability worldwide. Its major challenge is the moral question. Modern day economics acknowledge that there are financial advantages to collecting interest or usury on loans, but they don't bother to provide a philosophical or moral justification for this stance, leading to either a total rejection of the morality of interest-taking or, in a moral-practical split, an acceptance of the premise that is practical and amoral. But idea of usury being immoral is real and universal; the whole world has to be deeply convinced from the philosophical point of view to the extent that ethics have been divorced from faith.

Economics of interest on loans can be fully understood by analyzing the question: 'why lenders charge interest on money, doing so even in a risk-free, non-inflationary environment?' The reason why lenders charge interest is that when they lend money to borrowers, they temporarily renounce other uses for that money. If he hadn't loaned out the money, he might have used it for things he wanted or put it toward other ways to make money. Lenders are required to delay their alternative use of funds for a longer period of time during loans with lengthier terms. Therefore, interest is paid because the lender considers the loan to be a more advantageous and lucrative use

⁶³ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) I14

of his funds during the loan's duration compared to any of his other options. Considering the interest rate, he thinks that lending the money would be the best use of his money.⁶⁴

A lender in anticipation of the likelihood or the unlikelihood of his being able to recover the loan plus the interest tries to calculate in advance his rate of interest. The less convinced he is that the loan will be repaid, the higher the interest rate he will charge, vice versa. Higher rates enable lenders to profit for their willingness to take greater risk. The practice of charging interest, therefore, is an expression of the human ability to project into the future, to plan, to analyze, to calculate risk and to act in the face of uncertainty; the man's ability to reason.

Another economic principle that is essential to proper defense of usury is the recognition of the fact that moneylending is productive. This was made clear over the centuries; and today, it is incontrovertible. Moneylenders have the right to choose whom he will lend money; the projects he will help bring into existence and which individuals he provide with the opportunities to improve the quality of their lives and his. Thus lenders make money for themselves by making money available for innovations, productiveness, entrepreneurial talent, et cetera. and refuse to give loans to people in whom he notices stagnation, laziness, irresponsibility and inefficiency to minimize losses. In seeking profit the lender does not consider the well-being of the society or of the borrower but self-interest only. Rather he assesses his alternatives, evaluate the risk, and seeks the greatest return on his investment.

⁶⁴ Eugen Von Bohm-Bawek *Capital and Interest. A critical History of Economic Theory* (Macmillian and Co London 1890) 120

It was argued in the centuries past that lent money is barren, today it is an incontrovertible fact that lent money is fruitful. It enables borrowers to improve their lives or to produce new goods or services. Moneylending is also not a zero-sum transaction as both the borrower and the lender benefit from the transaction as ultimately does everyone in the larger economy. The lender makes profit, and the borrower gets to use the loan for investment purposes, or any other purposes that he otherwise would not have been able to attain.⁶⁵

Defense of usury from the economic principles had been elucidated in a clear and impressive manner but this will not be enough as the moral or philosophical challenge is huge and deep. Thus in order to defend moneylenders and moneylending as a practice, and the kind of the world they made possible, one must be armed with a moral rules or principle that recognises rational self-interest and the pursuit of profit as moral. Such a philosophy that sees productivity, that is doing business as a virtue and upholds man's right to his property and to his time. Such moral principle is found in the philosophy expressed in Ayn Rand's Objectivist ethics, or Rational egoism. Ayn Rand was a Russian-American author and philosopher known for her work, Philosophy of Objectivism which emphasizes individualism, self-interest and the belief that doing business is a moral activity, and also pursuit of happiness is a moral endeavour.

According to her Rational egoism, A man's thinking mind is his fundamental means of subsistence, and his life is the benchmark of moral worth. If you want to live a moral life, you have to think about and create the ideals that will bring you satisfaction, all the while letting

⁶⁵ Yaron Brook, *Money: A brief History of Lending* (2001) <<https://brewmate.com>> accessed 27 July 2024.

other people believe and do what they think is right for them. She held in her Objectivist ethics holds that people should make rational, self-interested decisions; that everyone should reap the rewards of their own actions; and that everyone has the capacity to think independently, create values, and determine whether, with whom, and under what conditions they will engage in trade. A philosophy based on individualism, autonomy, and duty to one's own interests. The capacity to think, she said, is the very essence of man and his ability to subsist. The idea that she discovered is that the human intellect, not physical strength, is the most powerful tool for saving lives. Consequently, she considered profit-seeking—the mental process of identifying, producing, and trading values that contribute to one's quality of life—to be fundamental to morality.⁶⁶ The moral groundwork of economic arguments in favor of usury cannot be constructed without Ayn Rand's objectivist ethics, which is why it is vital to the justification of moneylending succeed. It demonstrates and made clear the reason why moneylending is supremely moral. With this historical account from ages to the present day, the age-long philosophical, economic and religious beliefs that money lending is evil, unproductive culminating in unearned profit; zero-sum transaction and therefore evil has been clearly debunked. Despite the principles enunciated by Ayn Rand in the 20th century in her works: *Objectivist Ethics* and *Rational Egoism* the moral question still persist till today.

⁶⁶ Leonard Peikoff, *Objectivism: the Philosophy of Ayn Rand* (New York: Dutton, 1991); Ayn Rand, *Atlas Shrugged* (New York: Random House, 1957).

Moneylending was highly detested. Moneylenders were perceived to be very unscrupulous and exploitative, charging high interests, and generally evil. With this perception, the natural reaction by the civil authorities was to seek to regulate the business of moneylending by various legislations and interventions. The first legislation which emanated from England provided for outright prohibition of charged interest on all consumer loans, outlawing the practice of usury.⁶⁷ This resulted in hardship on borrowers as moneylenders went 'underground' to avoid sanctions with increase in the lending rate which shot up as high as 50%.⁶⁸ Rather than solve the problem the prohibition made it worse. This legislation was repealed seven years later.

However, in 1545 The Usury Law Act, which established a maximum interest rate of 10% on loans, allowed for several exceptions to the general ban of usury and provided some necessary adjustments. That changed with the passage of the Usury Laws Repeal Act in 1854. The coming into force of this Law in 1854 resulted in an upsurge of moneylending business generally at exorbitant rates. This chaotic atmosphere was put under control by the promulgation of the first Moneylenders law of 1900 by the English parliament.

The principle behind the promulgation was put thus: '*The Moneylenders Act 1900 was passed as a result of the work of the House of Commons Select Committee on Moneylending... Because of this, it became clear that there was widespread abuse among those working in the money lending sector*'.⁶⁹

The Act provided for registration of moneylenders and allowed the court to declare null and void any unfair moneylending agreements. In addition to replacing the Moneylenders Act of 1900, the

⁶⁷ Moneylending', www.1911encyclopedia.org; accessed > accessed 27 July 2024

⁶⁸ Ibid.

⁶⁹ Goodie RM, 'The Legal Regulation of Lending' in Diamond AL (ed), *Installment Credit* (Steven and Sons, London, 1970) 66

Moneylenders Act of 1927 revoked the previous law. The requirements of this new statute were more severe. It was necessary to register and get a license. Unsolicited commercials, canvassing, and the employment of agents were all frowned upon inter alia. This brought a lot of hardship on lenders and threw most of them out of business as the process of registering and licensing was rigorous and burdensome, and as most lenders had been adjudged unscrupulous and evil it became easier for an elephant to pass through the hole of a needle than for most established lenders to get through the licensing process.

In Nigeria, the first attempt at regulating the business of moneylending was the enactment of Moneylenders Ordinance of 1939 which was replaced by the Moneylenders Act of 1958⁷⁰ which was also replaced in 1990. Under the Moneylenders Act, which was in place prior to 1990, the federal government of Nigeria and the individual states of the country controlled moneylending simultaneously.⁷¹ By the moneylenders laws of the individual states; however, the Moneylenders Act was abolished in 1990, so the regulation of moneylending has become the responsibility of each state's moneylenders legislation in Nigeria. The provisions are identical, with the exception of minor adjustments and section relocations. The Moneylenders Act of 1927 in England is the common denominator for all of them.⁷²

2.2 Meaning of a Moneylender?

⁷⁰ Moneylenders Act, Cap 124, LFN 1958.

⁷¹ Sagay IE, Nigerian Law of Contract (Spectrum Law Publishing, Ibadan, 2003) 379

⁷² Section 15(1) of Moneylenders Law; Section 2 MLL Cap M157 Laws of Ogun State

The Moneylenders Act and the Moneylenders Law of the various states of Nigeria lack exactitude and precision in their definitions of a Moneylender. Both the English Language dictionary and the Law dictionary contacted fared no better. The Moneylenders Law with its impreciseness and non-definitiveness led to varying ratios in court decisions as evidenced in *Eboni Finance And Securities Ltd. v. Wale Ojo Technical Service Ltd & 2 ORS*,⁷³ and *Veritas Insurance Co. Ltd v. Citi Trust Investment Ltd*.⁷⁴ Despite the exemption of some institutions by the Moneylenders Law from the web of its defined Moneylenders⁷⁹, some of its provisions⁸⁰ still intuitively cover some of the exempted institutions like banks who are not moneylenders per se as in the case of *Ojikutu v. Agbonmagbe Bank*.⁷⁵

In this chapter the research shall delve into the analysis of the definitions of a Moneylender from the various standpoints of the dictionary meanings, statutory and judicial definitions in an attempt to come up with who a Moneylender actually is via a less ambiguous, more definitive and a comprehensive definition.

2.2.1 Dictionary Definitions

In the Oxford Dictionary of Law,⁷⁶ a Moneylender is defined as: *A person whose business it is to lend money*. Also, Black's Law Dictionary⁷⁷ defines a Moneylender as: *someone whose business*

⁷³*Eboni Finance And Securities Ltd. v Wale Ojo Technical Service Ltd & 2 ORS* (1996) 7 NWLR pt 461 p 1464

⁷⁴*Veritas Insurance Co. Ltd v. Citi Trust Investment Ltd* (1993) 3 NWLR pt 28, p349

⁷⁵*Ojikutu v. Agbonmagbe Bank* (1966) NCLR 246

⁷⁶ The Oxford Dictionary of Law (2006, 6th Edition) 346

⁷⁷ Garner B (ed), Black's Law Dictionary (West Group, St. Paul, MINN, 9th Edition) 1685.

it is to make monetary loans to people at interest. The above definitions seem to have limited a Moneylender to just natural persons negating the inclusion of corporate entities as provided by Companies and Allied Matters Act (CAMA) as Amended.⁷⁸ Corporate entities are equally recognised in law to have the capacity to lend money to prospective borrowers.

The phrase *whose business it is to lend money*' as in the Oxford Law Dictionary sounds too generalized to identify a Moneylender as contemplated by the Moneylenders Law. The Oxford Dictionary definition herein implies that any person who is capable of lending to a prospective borrower is a Moneylender. This is a major defect. Also, the non-mention of interest in this definition, which is the consideration for the lender giving out the loan, is a misstep which makes the definition inadequate in identifying a Moneylender. The inclusion of the idea of interest is a credit to the Black's Law Dictionary definition.

2.2.1.1 The Black's Law Dictionary defines a Moneylender *as any person whose business it is to make monetary loans to people at interest*, as without the concomitant interest on loans a lender cannot be said to be a Moneylender.⁷⁹ The idea of a person or someone whose moneylending cannot be conducted by any individual or entity that engages in, promotes, proclaims, or puts itself up to be, hence the company would fail out as being in the business of

⁷⁸ Section 38 Companies and Allied Matters Act (CAMA), cap C20 Laws of the Federation of Nigeria (LFN), 2004

⁷⁹ Ibid

Moneylending who can be said to be a Moneylender except he is certified and licensed to do so.⁸⁰

These Law Dictionary definitions considered here appear to have the credit of not expressly mentioning Banks and other Financial Institutions who have not made Moneylending their sole businesses as persons who can be called Moneylenders within the purview of the definition of Moneylenders as provided in the statute. The express mention of one thing is to the exclusion of all others.⁸¹

By the application of this canon of interpretation, it means these definitions are in line with the exemptions⁸² provided in the statutory definition of a Moneylender. Thus these banks and other financial institutions are excluded from 'persons who can make it their business to solely lend money to prospective borrowers.' The ambiguity and the non-definitiveness in the identity, through definitions of a Moneylender, extends to the courts in their decisions such that it becomes an onerous task for an innocent lender to prove that he is not a Moneylender. Section 133(1)⁸³ of the Evidence Act provides thus:

*"It is the responsibility of the party that would be subject to the court's judgment in the absence of proof to prove or disprove a fact in a civil matter, with due consideration for any presumption that would result from the pleadings."*⁸⁴

It is hardly surprising therefore that it is not easy in practice for an innocent occasional moneylender to prove that he is not into the business of Moneylending; that he is not a

⁸⁰ The Oxford Dictionary of Law (2006, 6th Edition) 346.

⁸¹ Garner B (ed), Black's Law Dictionary (West Group, St. Paul, MINN, 9th Edition) 1685.

⁸² Section 5 of the Moneylenders Law, CAP M160, Laws of Ogun State 2006

⁸³ Section 133(1) of the Evident Act, Cap E14 Laws of the Federation of Nigeria (LFN) 2011

⁸⁴ Ibid

Moneylender in the contemplation of the Law. Magistrates and judges are always very cautious in entertaining actions brought by individual claimant who claims repayment of Money lent or unpaid loans.

The definition which states that 'every person who gives out money to individuals for the purpose of making profit is a Moneylender can work hardship on innocent lenders if interpreted literally as no one may actually lend money without an expectation of profit, especially against the backdrop of the fact that certain provisions of the Moneylenders Law actually targets the Moneylenders, and they are onerous.

2.2.2 Judicial Definition

Moneylender, from the judicial point of view, means more than someone who gives out money for profit. A moneylender can be defined broadly in legal terms, according to the court of appeals' decision in *Eboni Finance And Securities Ltd v Wole Ojo Technical Services Ltd & 2 Ors*⁸⁵ It covers everyone whose occupation is moneylending, as well as everyone who loans money with the expectation of interest or a bigger sum being repaid. The criteria apparent in the above judicial pronouncement for the definition or identification of a money lender in the contemplation of the law are:

- i. Every person whose business is that of Moneylending. The phrase *whose business* here seems to refer to a certified and licensed Moneylender,⁸⁶ or a professional Moneylender.⁸⁷

⁸⁵ *Eboni Finance And Securities Ltd v Wole Ojo Technical Services Ltd & 2 Ors* (1996) 7 NWLR (Pt 461) p1464

⁸⁶ Section 5, Moneylenders Law; CAP M160, Laws of Ogun State 2006

⁸⁷ Ibid

This leaves out non-professional or uncertified and unlicensed lenders. Occasional innocent Moneylenders seem not captured or contemplated in this judicial submission as Moneylenders.

- ii. Any person who lends money on interest or in consideration of a larger sum being repaid. This seems too generalized as there is hardly any lender who will not lend at interest or in expectation of a larger sum being repaid. A lender who does not charge interest cannot be said to be a Moneylender.

In the Court of Appeal case of *Veritas Insurance Co. Ltd v. Citi Trust Investment Ltd*⁸⁸ where the court submitted that ‘...any person who lends money in consideration of larger sum being repaid is deemed a Moneylender until the contrary is proved...’⁸⁹ This is also too generalized with a rebuttable presumption that requires a rebuttal in the form of legal argument onus of which is on the innocent lender to prove that he is not a Moneylender as contemplated by the Law.

Mc Cardie, J, in the case of *Edgelow v Macelwee*⁹⁰ stated that:

A man does not become a Moneylender by reason of occasional loans to relations, friends or acquaintances, whether interest be charged or not.... Nor does a man become a Moneylender merely because he may, upon one or several isolated occasions, lend money to a stranger. There must be more than occasional and disconnected loans. There must be a business of Moneylending; and the word ‘business’ imports the notion of system, repetition and continuity.

The confusion brought about by the ambiguity and the non-definitiveness of the Moneylenders Law in the definition of who a Moneylender is, is evident in the provisions of Moneylenders Law which not only primarily regulates the activities of certified and licensed Moneylenders but

⁸⁸ *Veritas Insurance Co. Ltd v. Citi Trust Investment Ltd* (1993) 3 NWLR (pt 28) p 349

⁸⁹ Section 5 of the Moneylenders Law Cap M7, Laws of Cross River State 2004.

⁹⁰ *Edgelow v Macelwee* (1918) 1 KB 205 p 206

also extend to persons other than a Moneylender⁹⁵. In the case of *Ojikutu v. Agbonmagbe Bank Ltd*,⁹¹ it was held that the expression 'persons other than Moneylenders' are human persons (not institutions such as banks)⁹² who do not make money lending their regular business, but who may be involved in a single or occasional transaction of Moneylending.

In other words, these are not Moneylenders, *but where they give out loans which are often regarded as friendly loans, and charge interest, they must be bound by the provisions of the Moneylenders Law relating to interest charging.*

The height of the confusion from the legal perspective is the Anambra State High court case of *Felix Azubuike v. Kenneth Onyekwere*⁹³ unreported, decided by Justice B.A Ogbuili. The plaintiff claimed:

- i. A declaration that the plaintiff is not indebted to the defendant and that he is entitled to a refund of ₦420,000.00 being the excess money deducted from the Plaintiff's salary from May, 2009 to August, 2010 by Mr. Alloysius Udolisa, the headmaster Akwa Community School, and paid over to the defendant in respect of the loan agreement.
- ii. An order of court compelling the defendant to refund to the plaintiff the sum of ₦420,000.00 and any other sum that may be deducted from his salary till judgement is delivered in this suit being the excess deduction made from the plaintiff's salary and paid over to the defendant by Mr. Aloysius Udolisa, Headmaster Akwa Community School, and the interest

⁹¹ *Ojikutu v. Agbonmagbe Bank Ltd* (1966) NCLR 246

⁹² Section 15(1) of the Moneylenders Law Cap M7, Laws of Cross River State 2004.

⁹³ *Felix Azubuike v Kenneth Onyekwere* Suit No HIH/40/2010

calculated at the rate of 20% per annum on the judgement sum from the date of judgement until the entire judgment sum is liquidated.

The defendant on his part counter-claimed as follows:

- i. A declaration of court that the plaintiff should liquidate the loan of ₦350,000.00 obtained from the defendant.
- ii. An order of court directing the plaintiff to be paying the agreed interest to the registry of this honourable court for collection by the eventual winner of this suit.

The court found as a fact that the parties were in a loan agreement in which the defendant advanced the sum of ₦350,000.00 to the plaintiff at an interest rate of 10% per month. The plaintiff testified that he had paid a total of ₦840,000.00 towards repaying the loan. This testimony was not challenged by the defendant nor was it expressly upheld by the court. The court then went on to raise the issue of legality of the loan contract suo motu. Section 13(1) and (3) of the Anambra State Moneylenders Law⁹⁴ provides that simple interest on unsecured loan should not exceed 48% per annum. The court further stated that the section 14(1) of the said Law renders the transaction in which a lender charges interest above the said rate illegal.

In his judgement, the court held that the interest rate of 10% per month charged by the defendant amounting to 120% annually made the transaction illegal.

The court submitted: *"in this particular case, the contract of lending between the parties, in so far as it involves an interest rate or incidental charge, whatsoever name called, is illegal and the court cannot be used to enforce it..."*

⁹⁴ Section 13(1) and (3) of the Anambra State Moneylenders Law 1991.

The court then went on to state that though section 14 of the Moneylenders Law did not categorically proclaim that a contract of Moneylending, where an interest rate contravenes the section is unenforceable. He cited the provisions of section 225, 227 and 228(1) of the Contract Law of Anambra State. He also relied on the authority of *Shodipo v. Lemminkanem & Anor*⁹⁵ and *Ekwunife v. Wayne (W/A) Ltd.*⁹⁶

The court further held that the deductions made from the plaintiff's salary at 10% interest rate is illegal, but in converse held that both parties' claims failed.

It is apparent that:

- i. The court raised the issue of illegality suo motu, without taking arguments from the parties, even though it is on this singular issue of illegality that the case was decided.
- ii. The court did not decide whether the contract was one of Moneylending and whether the provisions on interest chargeable applied to the case because it was a Moneylending contract or whether the interest rate provisions applied generally to all loan contracts. In essence the court did not state how the provisions on interest chargeable applied to the case.

It can be observed that the entire case was decided per incuriam of the section 26 of the Moneylenders Law.⁹⁷ Section 26⁹⁸ provides thus:

⁹⁵ *Shodipo v. Lemminkanem & Anor* (1986) 1 NSCC, 79

⁹⁶ *Ekwunife v. Wayne (W/A) Ltd* (1989) 5 NWLR (pt122) 422

⁹⁷ Section 26, Moneylenders Law Cap M92 Laws of Anambra State; section 26, M170 Laws of Ogun State

⁹⁸ *Ibid*

1. The plaintiff is required to provide an accounting in accordance with the requirements of section 22 of this legislation if legal action is commenced to collect or enforce a loan or any agreement or security pertaining to such loan.
2. In cases where the court finds evidence that the interest charged on the loan amount is higher than the legally allowable rates, the court can reopen the transaction and determine how much each party owes each other. This can happen even if there has been an agreement to close the books on previous dealings and create a new obligation. The court can also reopen any accounts that have already been taken and release the party sued from paying any amount that is more than what is reasonably due for the principal, interest, and charges, taking into consideration the risk and all relevant circumstances.
3. The creditor may be ordered by the court to repay any excess amount paid or allowed by the debtor in their account up to the amount mentioned in subsection (2) of this section. The court also has the power to annul, modify, or change any security agreement or pledge made for the loaned funds, and if the lender has given security, they can be ordered to indemnify the borrower or anyone else hurt by this.⁹⁹

The court clearly did not disregard the requirements in the least, rendering its judgment per incuriam, even if the ability to exercise it is discretionary under subsections (2) and (3). The court's decision to reject the parties' claims is unfair because it assumes that the plaintiff's salary was unlawfully withheld at 10% interest per month and that the court should have refunded the

⁹⁹ Ibid

excess amount according to subsection (3). With these obvious confusion in the ratio decidendi of the judex, it is clear that a best-fit definition of who a Moneylender is would be better obtained by reading sections 2, 4, 5 & 7 (3) (a) (b) & (c) together under the guidance of The Context Rule of Interpretation of Statute.

2.2.3 Statutory Definitions

The Moneylender Law¹⁰⁰ provide thus: *The term 'Moneylender' encompasses any individual engaged in the business of moneylending, including those who promote or represent themselves as such, regardless of whether they possess assets or funds from non-lending sources, and irrespective of their role as a principal or agent. However, it excludes:*

- a. *any society registered under cooperative societies law;*
- b. *any corporate entity authorized by specific legislation to lend money in accordance with that law;*
- c. *any individual genuinely conducting banking or insurance operations, or any business not primarily focused on moneylending, during which they may lend money;*
- d. *any individual or corporate entity exempted from this law's provisions by an order from the Executive Council.*

¹⁰⁰ Moneylenders Law, Cap M158, Laws of Ogun State.

- e. *any pawnbroker licensed under the Pawnbrokers Law where loan is made in accordance with the provisions of the Pawnbrokers law and does not exceed the sum of ten thousand naira.*

The above definition, apart from the exemptions, seems to be too wide; indefinite and lacks exactitude, it is not comprehensive as it leaves out corporate entities and fails to regulate who can be a lender. By reading Sections 2, 4, 5 and 7 (3) (a) (b) & (c) of Moneylenders Law¹⁰⁵ together as a whole via the application of The Context Rule of Interpretation of Statute will, without any equivocation, enable one to arrive at a comprehensive and a definitive meaning or definition of a Moneylender.¹⁰¹

2.2.3.1 Criteria over which the statute recognises an entity as a Moneylender.

Herein below are the identifying factors (criteria) in each of the sections of the Moneylenders Law considered and read in context that are key to arriving at a comprehensive and definitive definition of a Moneylender.

Moneylenders Law in its interpretation Section defines moneylenders to include;¹⁰²

- a) i. Every person whose business is that of Moneylending
- ii. Every person who carries on or advertises or announces himself as a Moneylender

¹⁰¹ Ibid

¹⁰² Section 2(1) Moneylenders Law, Laws of Ogun State; Section 3(1) Moneylenders Law, Laws of Cross River State; Section 2(1) Moneylenders Law, Laws of Lagos State; Section 2(1) Moneylenders Law, Laws of Northern Nigeria

- iii. Every person who holds himself out in anyway as carrying on the business of moneylending
- b) Whether or not he also possesses or owns property or money from other sources.
- c) Whether or not he carries on business of a Moneylender as a principal or as an agent. The Moneylenders law defines a moneylender further as:¹⁰³
- d) Save as excepted in paragraphs (a) (b) (c) (d) (e) of the definition of a Moneylender in section 2
- iv. Any person who lends money at interest or
- v. Any person who lends a sum of money in consideration of a larger sum being repaid, shall be presumed a Moneylender until the contrary is proved.

This section provides a rebuttable presumption that all lenders for profit are Moneylenders. The Moneylenders Law in another Section Provides that;¹⁰⁴

- vi. Every person who carries on a Moneylending business in his true name is a Moneylender– section 7(3)a
- vii. Every name of a firm in which the moneylender is a partner, not being a firm required by Part II of CAMA 1990 (as amended) to be registered
- viii. Every firm, whether of an individual or a firm in which he is a partner that has existed for at least 3 years both as a Moneylender under the Law or under the Moneylenders Act and under Part II of CAMA 2004.

¹⁰³ Section 4(1) Moneylenders Law, Laws of Ogun State; Section 3(1) Moneylenders Law, Laws of Cross River State

¹⁰⁴ Section 7(3) (a) (b) and (c) Moneylenders Law Laws of Ogun State

This section provides for firms and companies to be captured in the web of moneylending. It also provides for smooth transition from the older Law to the new (CAMA).

Section 5(1) & (2) provides for Licenses to be taken out by Moneylenders.

- ix. Every Moneylender, whether carrying on the business alone or as partner in a firm shall take out annually in respect of every address at which, and in respect of the name with which he carries on his business as such, a licence, referred to as Moneylenders licence.

This section provides that every Moneylender shall be certified and licensed as a condition precedent to practice.

2.2.4 The Redefinition of a Moneylender

The combined application of The Context Rule of Interpretation of Statute to the Moneylenders Law by reading sections 2, 4, 5 and 7 (3) (a) (b) & (c) of the Moneylenders Law together will, without any equivocation, enable one to come up with a more comprehensive and more definitive definition of a Moneylender. Herein below is an attempt at redefining a Moneylender¹⁰⁵ as it ought to have been defined statutorily by the Moneylenders Law via the combined operation of Sections 2, 4, 5 and 7 (3) (a) (b) and (c) of The Moneylenders Law¹⁰⁶ state thus; A 'Moneylender' includes every person; whether natural or a body corporate or a firm, either as a principal or as an agent, whose sole business is that of moneylending, or who carries

¹⁰⁵ Oyeleye J.B., *The Procedure for Licensing Moneylenders in Nigeria*. (Jiddy Law Publications, 2016) 32

¹⁰⁶ Sections 2, 4, 5 and 7 (3) (a) (b) and (c) of The Moneylenders Law Cap M157, Laws of Ogun State

on or advertises or announces himself or holds himself out in any way as carrying on solely Moneylending business, with the object of charging interest, and licensed under the regulation of the Moneylenders Law; but shall not include:

- a) *any society registered under the Cooperative Societies Law; or*
- b) *any body corporate, incorporated or empowered by Special Act or Law to lend money in accordance with such Law; or*
- c) *any person bonafide carrying on the business of banking or insurance, or bonafide carrying on any business, not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or*
- d) *any person or body corporate exempted from the provisions of this law by order of the Executive council; or*
- e) *any pawnbroker licensed under the Pawnbrokers Law where loan is made in accordance with the provisions of the Pawnbrokers law and does not exceed the sum of ten thousand naira.*

The above comprehensive re-definition makes it clearer who a Moneylender is in contradistinction to the statutory definition which is a replica of the English Moneylenders Act of 1927. The Nigerian Moneylenders Laws¹⁰⁷ did not contemplate the Business Registration Act

¹⁰⁷ Nigeria Moneylenders Ordinance, 1939; The Moneylenders Act 1958 and The moneylenders laws of various states.

1968 and Companies and Allied Matters Act (CAMA) 1990 as it fails to capture the corporate entities in the mould of Limited Liability Companies.

It also provides a roadmap for legal practitioners engaged in licensing Moneylenders. The licensing officers will also be well informed as to the Moneylender/Applicant that could be said to be qualified to be licensed to operate or do business as a Moneylender. Thus any attempt to license a moneylender will definitely fail or collapse where a moneylender is not comprehensively and definitively defined.

Chapter Three

3.1 Legal and Institutional Framework Guiding Consumer Credit Transactions

The legal frameworks guiding consumer facilities are set of laws regulating various types of consumer credit facilities which include:

- a. Moneylenders Law (various states)
- b. Consumer Protection Council Act (Cap 25) 2004
- c. Contract law
- d. The Constitution of The Federal Republic of Nigeria (CFRN) 1999
- e. Banking and other Financial Institution Act (BOFIA) 2020
- f. Criminal and Penal Code 2004
- g. Companies and Allied Matters Act (CAMA) 1990
- h. Federal Competition and Consumer Protection Act (2019)
- i. Central Bank of Nigeria (CBN) Act 2007
- j. Credit Reporting Act 2017
- k. Consumer Credit Act (Cap C28) LFN (1990)

3.1.1 Moneylenders law of the various states

This is a statute which regulates moneylending consumer credit facility business. Moneylenders Act 1927 England was domesticated in Nigeria as Moneylender Ordinance 1939 which was replaced by Moneylenders Act 1958 up till 1990 when Moneylenders Act 1958 was repealed and was replaced by Moneylenders Laws of various states. However the Moneylenders Laws of the 36 states were similar in content and character save a pagination and staggering of sections.¹⁰⁸

¹⁰⁸ Moneylenders Law, Laws of Ogun, Lagos, Kwara, Anambra and Cross River States

3.1.1.2 Licensing of Moneylenders

The law stipulates that Moneylenders must be licensed before going into practice. The law provides for the processes and procedure for the certification and licensing of a prospective moneylender.¹⁰⁹

3.1.1.3 Regulation of Interest Chargeable on Loans

As a result of the exploitative tendencies of Moneylenders and arbitrary and whimsical fixing of high interest rate, the law set out to regulate the rate of interest chargeable on loans by moneylenders and other person who are not moneylenders.¹¹⁰

3.1.2 Nigeria Consumer Credit Corporation Act: This is an Act establishing the Nigerian Consumer Credit Corporation It provides a framework for the removal of structural market and policy barrier, and accelerate access to consumer credit to 50% of all working Nigerian by 2030.¹¹¹

3.1.3 Consumer Credit Act: This Act covers credit agreement such as credit cards, personal cash loans, overdrafts and store cards, as well as higher purchase agreement such as buying a car by installment.¹¹²

¹⁰⁹ Moneylenders Law Cap M157, Laws of Ogun State 2006.

¹¹⁰ Ibid

¹¹¹ Nigeria Consumer Credit Corporation Act LFN

¹¹² Consumer Credit Act, Cap C28 LFN 1990.

3.1.4 Consumer Protection Council Act 2004: This act provides a framework for consumer rights protection include those borrowing from moneylenders and established the Consumer Protection Council.¹¹³

3.1.5 Contract Law: This governs the agreements between lenders and borrowers including terms of loan repayment and interest.

3.1.6 Banking and Other Financial Institution Act (BOFIA): This regulates the broader financial sector including aspects relevant to moneylending.¹¹⁴

3.1.7 Criminal Code and Penal Code: This regulates activities relating to fraud, extortion and other criminal tendencies that may arise in lending practices.¹¹⁵

3.1.8 Constitution Of The Federal Republic Of Nigeria (CFRN) 1990 (as amended): It has relevant provision concerning property rights and access to justice.

¹¹³ Consumer Protection Council Act LFN 2004

¹¹⁴ Banking and Other Financial Institution Act LFN

¹¹⁵ Criminal Code Act Cap C38 2004 LFN

3.1.9 Fintech Law and Regulations 2024: Fintech or financial technology, refers to any software that provides financial services, including internet banking, mobile payment app and even crypto currencies.¹¹⁶

3.1.10 Federal Competition and Consumer Protection Act (2019): An Act to safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit.¹¹⁷

3.1.11 Central Bank of Nigeria (CBN) Act 2007: An Act establishing the Central Bank of Nigeria as a regulatory body for banks, lenders of money and other financial institutions including fintech companies.¹¹⁸

3.1.12 Credit Reporting Act 2017: It is a Nigerian Law that regulates credit reporting agencies and the collection, processing and dissemination of credit information.¹¹⁹

3.2 Institutional Framework guiding consumer Credit Facilities transactions.

These are institutions directly administering and regulating consumer credit transactions ensuring consumers protection. These include:

¹¹⁶ Ibid

¹¹⁷ Federal Competition and Consumer Protection Act LFN 2019

¹¹⁸ Central Bank of Nigeria (CBN) Act LFN 2007

¹¹⁹ Credit Reporting Act 2017

- i. Central Bank of Nigeria
- ii. National Financial Inclusion Strategy
- iii. Consumer Protection Council
- iv. Nigerian Deposit Insurance Corporation NDIC
- v. The Judiciary
- vi. Law Enforcement Agencies. EFCC ICPC Police Scum NFU
- vii. Non Governmental Organizations (NGO)
- viii. Nigerian Consumer Credit Corporation.
- viii. Banks
- ix. Fintech companies
- x. Online Lenders
- xi. Credit Bureau
- xii. Banking and Payment System of the CBN

3.2.1 Central Bank of Nigeria: This regulates financial institutions and oversees compliance with financial laws including those related to moneylending.

3.2.2 National Financial Inclusion Strategy NFIS: This institution aims to provide access to financial services including responsible lending practices

3.2.3 Consumer Protection Council now Federal Competition and Consumer Protection Commission: This protects consumer rights and addresses complain against moneylenders.

3.2.4 Consumer Protection Council: This protects consumers right and addresses complains against the moneylenders.

3.2.5 Nigerian Deposit Insurance Corporation NDIC: Although this is primarily for deposit-taking institutions its impact is felt in the broader financial landscape especially in the area of the insurance of these moneylenders.

3.2.6 The Judiciary: Courts play a critical role in adjudicating between lenders and borrowers

3.2.7 Law Enforcement Agencies: Such as Economic and Financial Crimes Commission, Independent Corrupt Practices and other Offences Commission Act 2000, Police, Special Control Unit Movement, Nigeria Financial Intelligent Unit etc. are responsible for enforcing laws related to fraud and illegal lending practices.

3.2.8 Non-Governmental Organizations (NGO): Some NGOs focus on financial literacy and consumer right providing support to borrowers

3.2.9 Nigerian Consumer Credit Corporation: This a Development Finance Institution (DFI) of the Federal Government of Nigeria, established with one mandate: to democratize access to consumer credit for Nigeria's working population. Consumer Credit plays an important role in modern day economies by facilitating the improvement of citizens. It is regulated by the Consumer Credit Act.

3.2.10 Fintech companies: A portmanteau of financial technology refers to the application of innovative technologies to product and services in Nigeria.¹²⁰ This broad term comprises of a

¹²⁰ <<https://en.m.wikipedia.org/wiki/>> Accessed on 27 September of 2024.

wide array of technological advancements in Financial services, including mobile banking, online lending platforms, digital payment systems, robo-advisors, and blockchain-based applications such as crypto currencies.¹²¹ In Nigeria, fintech companies are regulated by various bodies, including the Central Bank of Nigeria (CBN), Nigerian Deposit Insurance Commission (NDIC), Securities and Exchange Commission (SEC) and National Insurance Commission (NICO) among others. Key regulations include Central Bank of Nigeria (CBN) which has primary responsibility in regulating financial services in Nigeria, issuing licensing to banks and other financial institution

The Federal Competition and Consumer Protection (FCCPC) regulates the digital lenders, mandating registration and placing them on watch list to protect consumer. The CBN regulates payment system including international money transfer services and diaspora remittances. Popular fintech companies in Nigeria are Kuda, Palmpay, Moniepoint, Opay etc.

3.2.11 Online Lenders

These offer convenient and accessible loan options. They can be classified into four categories thus:

1. Licensed online lenders which includes:

- i. Paylater (now Carbon)
- ii. Renmoney
- iii. FairMoney

¹²¹ Schindler J.W., *Fintech and Financial innovation* (Macmillan and Co, London, 2017) 77.

- iv. QuickCheck
- v. FastCredit
- vi. Okash

2. Peer-to-Peer Lending Platforms such as

- i. Famcrowdy
- ii. ThriveAgric
- iii. Porkmoney
- iv. Livestock247

3. Digital Banking Platforms include

- i. GT Bank's Quick Credit
- ii. Access Bank's PayDay Loan
- iii. Zenith Bank's Z-Money

4. Microfinance Banks:

- i. LAPO Microfinance Bank
- ii. Fortis Microfinance Bank
- iii. Addosser Microfinance Bank

Regulations: Activities of licensed on-line lenders include:

- i. Central Bank of Nigeria Guideline for online lending
- ii. Federal Competition and Consumer Protection Commission (FCCPC) regulations

- iii. National Information Technology Development Agency (NITDA) guidelines for data protection

Benefits: Benefits derivable from on-line lending include:

- i. Convenience and accessibility
- ii. Quick loan processing and disbursement
- iii. Minimal documentation
- iv. Flexible repayment plans
- v. Competitive interest rates

Challenges faced by on-line lenders include

- i. High interest rates
- ii. Risk of debt trap
- iii. Lack of transparency
- iv. Inadequate consumer protection
- v. Cybersecurity risks

Regulatory Requirement: On-line lenders' regulation requirement include:¹²²

- i. Licensing from CBN or state governments

¹²² Federal Competition and Consumer Protection Commission (FCCPC) Act 2019

- ii. Compliance with anti-money laundering (AML) and know-your-customers (KYC) regulations
- iii. Data protection and confidentiality
- iv. Clear disclosure of loan terms and conditions¹¹²³
- v. Fair and transparent lending practices¹²⁴

Consumer Protection Tips:

- i. Research and compare lenders
- ii. Read and understand loan terms
- iii. Check interest rate and fees
- iv. Verify lender legitimacy
- v. Report suspicious activities

3.2.11.1 Loan Recovery Methods:¹²⁵ These includes

- i. Soft collection through phone calls, emails and SMS reminders.
- ii. Hard Collection: This employs Debt collection agencies, and litigation (Legal action)
- iii. Debt counseling involves working with borrowers to restructure loans
- iv. Loan restructuring to temporarily reduce payments or interest rates

¹²³ Central Bank of Nigeria (CBN) Guidelines for On-line Lending (2020)

¹²⁴ Ibid

¹²⁵ 50 Debt Recovery Tips, Tools and Strategies <callminer.com> Accessed on 27 September 2024.

- v. Credit reporting: This is the reporting of owing borrower to the credit bureaus which provides lenders the financial history of the borrower so as to make informed decision about lending money to such borrower.

3.2.11.2 Unfair Debt Collection Practices

Unfair debt collection practices are actions taken by debt collectors that violate consumer rights and protections under laws such as the Fair Debt Collection Practices Act (FDCPA).¹²⁶

Prohibited practices include:

- i. Harassment in the form of excessive phone calls, threats or intimidation.
- ii. Misrepresentation in the form of false or misleading information about the debt, creditor and the collector.
- iii. Unfair practices

3.2.12 Credit Bureau: This is also known as Credit Reporting Agency. It collects and maintains information about individuals' and businesses' credit history. Functions include:

- i. Collecting Credit Information
- ii. Maintaining Credit Databases
- iii. Providing credit report to lenders
- vi. Offering credit scores and ratings

¹²⁶ Fair Debt Collection Practices Act (A federal Law in USA)

- vii. Facilitating credit monitoring and alerts

3.2.13 Banking and payment system of the CBN

This receives report from lenders about the financial history of a borrower that leads to the CBN instructing all banks not to open new account for the defaulting borrower and to render his existing accounts inoperable.¹²⁷

3.2.14 Unlicensed Online Lenders

On the back of the tough loan conditions imposed by commercial banks, the rise of online lenders has brought relief to thousands of borrowers. However, the unconventional loan recovery tactics deployed against defaulting borrowers has brought untold pains and emotional trauma to many Nigerians.¹²⁸ Online lenders have become part and parcel of the nation's banking system in recent years when tough economic conditions have made many to resort to borrowing from such loan firms.

The use of technology and the ability to advance loans to customers without collecting any form of collateral have made online banks the delight of many Nigerians. Some even give soft loans within a relatively short period of time. Unfortunately scores of unprofessional online lenders have deployed very crooked and illegal means to recover loans from those they describe as

¹²⁷ Ibid

¹²⁸ Unlicensed lenders *Punch Newspaper Publication* (Lagos 28th December 2021) 18

recalcitrant debtors even within few days of default. Public image of many desperate borrowers have been tarnished after borrowing ridiculously low amount of money from online lenders.¹²⁹

One of their stock in trade is to ask a prospective borrower, during registration process, for access to their phone contacts and location. Once you allow this it automatically gives the loan firm access to all your contact. Without using any personality in his contact as a guarantor, once a borrower defaults in the repayment of the loan, the loan firm goes after his contacts to embarrass him.

In saner circumstances, lenders should report defaulters to the Credit Bureau for delayed payment the reason being to get other firms or banks not to advance any loan to the defaulter when they check his credit score from the report of the Credit Bureau. Many Nigerians have become victims of online unprofessional bankers despite the insignificance of the loan amount as loan sharks hardly lend significant amount to victims. A number of loan sharks are registered with the Corporate Affairs Commission but with fake addresses.

3.3 Challenges of Loan and Interest Recovery

Lenders are faced with so many challenges in the recovery of their loans and interest.¹³⁰ The challenge surface at different stages of the lending transaction some of the challenges of the lenders may include:

¹²⁹ Jacob B.S., 'Challenges in Loan Recovery' [2018] 4(1) *International Journal of Advanced Research Management and Social Science* 201.

¹³⁰ Ibid

- I. Default risk: Thus the challenge of borrowers failing to repay loan¹³¹
- II. Interest rate risk: This is where interest rates affect loan profitability
- III. Liquidity risk: This is the difficult of selling or recovering collateral
- IV. Regulatory compliance: This is the challenge of complying with regulatory requirement as in licensing requirements, keep of records and following procedures
- V. Operational cost: This is the high costs of recovering process such as cost of litigation.

Other challenges are:

- a. Local defaulting borrowers: This is the difficulty experienced by lenders in finding the defaulting debtors as a result of incomplete details.
- b. Verification: This is confirming customer's identity and debt validity.¹³²
- c. Lack of effective communication with borrowers.
- d. Problem of reaching mutually acceptable repayment agreements.
- e. Costly and time-consuming litigation.
- f. Licensing challenge.
- g. Consumer Protection: The difficulties in balancing recovery effort with borrower rights.
- h. Fairlending: This is avoiding discriminatory practices

¹³¹ Dickens C.A., 'Loan Recovery Strategies' [2019] 3(2) Journal of Financial Services Research (2019)

¹³² Section 2 CAP 158 Vol 3 Law of Ogun State

Chapter Four

4.1 Moneylenders Law Loan and Interest Recovery

The main complaint to the moneylenders Law, which differentiates the provision that controls chargeable interest from moneylender regulation.¹³³ Generally, all money lenders are obligated to

¹³³ Section 15 of the Moneylenders Law Cap M157, Laws of Ogun State 2006.

adhere to the stipulations of the Moneylenders Law governing the permissible interest rates.¹³⁴ Persons other than Moneylenders who give out friendly loans on interest¹³⁵ are constrained by the stipulations of the Moneylenders Law concerning interest rates, although not being subject to other rules directly applicable to moneylenders, such as the licensing requirement.

4.1.1 Regulation of the Moneylenders

The moneylending transaction is a financial contract involving the moneylender and the borrower and in some cases, the surety; the loans are generally mostly unsecured, and the interest serves as the consideration. This transaction, a special contract¹³⁶ is regulated by the Moneylenders Law of the various states in Nigeria which has the object of regulating the activities and personalities of the Moneylenders¹³⁷ also to regulate the interest chargeable on their loans.

4.1.1.1 Licensing of Moneylenders

Section 5¹³⁸ of the moneylenders law states that any individual seeking to operate as a moneylender must obtain a license and demonstrate suitability in terms of character and integrity.

¹³⁴ Ibid

¹³⁵ Sagay IE, *Nigerian Law of Contract* (Spectrum Law Publishing, Ibadan, 2003) 390.

¹³⁶ Ibid

¹³⁷ Section 4(1) of the Moneylenders Law, Cap M14 Laws of Cross River State; Section 4(1) of the Moneylenders Law, Cap M160 Laws of Ogun State.

¹³⁸ Ibid

This must be certified by a magistrate based on a police recommendation, which serves as a prerequisite for the issuance of a moneylending license.¹³⁹

To get a magistrate's certificate, the prospective moneylender must submit an application to the magistrate of jurisdiction in the locality where the moneylending business would be conducted.¹⁴⁰ prior to submitting the official application for the magistrate's certificate, the moneylender must provide prior notification of his purpose to apply for the certificate to the appropriate magistrate and the local police¹⁴¹ The notice must be sent by registered post at least 14 days before application.¹⁴²

Other moneylending licensing requirement therein applicable are as follows:

- Every magistrate's certificate must be in respect of one proposed moneylender and in respect of one business address.¹⁴³
- There can be no issuance of certificate to a firm of partners, but to individuals and for one place of business.¹⁴⁴
- Where a moneylender uses a business name or operate as a firm, he must do so in his own name and the certificate is for him alone and for the address indicated.¹⁴⁵

¹³⁹ Section 8 of the Moneylenders Law, Cap M161, Laws of Ogun State; Section 5 of the Moneylenders Law, Laws Cross River State

¹⁴⁰ Ibid

¹⁴¹ Ibid

¹⁴² Section 4(1) 9 Moneylenders Law Laws, Laws of Cross River State; Section 5(1) Moneylenders Law, Laws of Ogun State (supra)

¹⁴³ Section 7 (3) (a) 9 Moneylenders Law Laws Laws of Ogun State; section 4(3) (a) Moneylenders Law Laws of Cross River State.

¹⁴⁴ Ibid

¹⁴⁵ Ibid

- For every additional place of business there must be a fresh certificate.¹⁴⁶
- Every moneylender shall obtain a licence annually in respect of every address at which he carries out his business.¹⁴⁷
- Such licence shall expire on the 31st of December next after it is granted¹⁵¹.
- Penalties for the breach of licensing requirements.¹⁴⁸

If any person –

- (a) Takes out a moneylender's licence in any name other than his true name; or
- (b) Carries on business as a moneylender without being in possession of a valid moneylender's licence authorising him so to do within State; or
- (c) Being licensed as a moneylender, carries on business as such in any name other than his authorised name, or at any other place than his authorised address or addresses; or
- (d) Enters into any agreement in the course of his business as a moneylender with respect to the advance or repayment of moneylender, otherwise than in his authorised name,

He shall for each offence be liable on summary conviction –

- (i) If other than a body corporate, to a fine of fifty thousand naira and in the event of a second or subsequent conviction to imprisonment for three months or a fine of fifty thousand naira or both; and

¹⁴⁶ Section 5(2) 7(3) of the Moneylenders Law Laws Cap M160 Laws of Ogun State

¹⁴⁷ Section 7(4) of the Moneylenders Law Laws Cap M161, Laws of Ogun State

¹⁴⁸ Section 69 of the Moneylenders Law Laws Cap M160 Laws of Ogun State

- (ii) In the case of body corporate, to a fine of fifty thousand naira and in the event of a second or subsequent conviction to a fine of two hundred and fifty thousand naira.

Section 9 provides that a magistrate may refuse to grant the moneylending certificate of a moneylender for the following reasons:¹⁴⁹

- a. In the absence of adequate proof on the applicant's excellent character and that of the business managers.
- b. In the absence of enough proof demonstrating that the applicant and the individuals managing the firm are fit and appropriate persons, considering their histories and backgrounds.
- c. In instances where a court order disqualifies the applicant and the business managers from possessing a certificate.
- d. In instances where the applicant or any individuals responsible for managing the business have previously committed forgery of a magistrate's certificate; and, when the applicant has failed to adhere to the regulations governing the issuance of the certificate.

In matter of *Re Marcus O. Ajaero*,¹⁵⁰ An appeal against the magistrate's refusal to provide a certificate to the High Court, despite the moneylender's prior status as a moneylender. The applicant possessed a license for a duration of two years. In the third year, the police opposed the renewal on legal grounds, resulting in the magistrate's refusal to provide his certificate. The court

¹⁴⁹ Section 9 of the Moneylenders Law Laws of Ogun State

¹⁵⁰ *Re Marcus O. Ajaero* (1952) 20 NLR 77

rejected his appeal on the basis that he was entitled as of right due to having previously acquired the certificate.

4.1.1.2 Moneylender's Contract

Section 13 of the Moneylender's Law mandates that all moneylending contracts must be documented in writing and signed by the involved parties or their authorized representatives prior to the disbursement of funds or provision of security; any violation of this requirement deems the contract unenforceable by the moneylender against the borrower¹⁵¹ in *Oyebode v Oloyede*¹⁵² The condition that a contract must be executed or collateral provided prior to the disbursement of funds became a focal point of legal disputes. In this instance, it was determined that if a transaction indicates that an activity was undertaken for the purpose of the loan, it should be believed to have occurred prior to the issuance of the loan or the provision of security, particularly where the timing of the action cannot be definitively established. In this instance, the borrower's assertion that 'this residence was utilized as collateral for the loan' was determined to create a presumption that the security was furnished prior to the disbursement of the loan, notwithstanding the borrower's dubious claim. No particular form of the contract is prescribed; a note or memorandum in writing will suffice and once the note or memorandum contains all the terms of the contract particularly:

¹⁵¹ Section 13(1) of the Moneylenders Law Laws Cap M163, Laws of Ogun State 2006; section 10(1) 9 Moneylenders Law Laws Cap M7, Laws of Cross River State 2004 and Moneylenders Law Cap M7, Laws of Lagos State 2003.

¹⁵² *Oyebode v Oloyede* (1999) 2NWLR (pt 592) 523

- i. The date on which the loan is made
- ii. The amount of the principal of the loan
- iii. The rate of interest per centum per annum. Payable in respect of the loan

All dates and numbers shall be written in English numerals notwithstanding that the contract, memorandum or note is written in another language.¹⁵³ It should be noted that a moneylender contract is not null and void or unlawful, but it is unenforceable¹⁵⁸ if it does not adhere to the criteria of its form and substance. For a lending contract to be legally binding, the moneylender must adhere strictly to all applicable laws and regulations. In *Balogun v Obisanya and Anor*.¹⁵⁴ The transaction was deemed unenforceable against the borrower in cases where the moneylender neglected to provide a copy of the mortgage deed that secured the loan, as mandated by section 12 of the Moneylender's Law Ordinance of Nigeria, 1939. In *Ogbonuju v Ogbeide*.¹⁵⁵ "The responsibility of evidence resides with the moneylender to demonstrate compliance with legal requirements pertaining to the terms of the contract, as these are necessary prerequisites to initiating legal proceedings".

In section 19, moneylenders are prohibited from charging for expenses on loans granted. If a moneylender and a borrower or prospective borrower enter into an agreement for the borrower or prospective borrower to pay the moneylender any amount as account or for costs, charges, or expenditures related to the loan, the loan cannot be legally granted. Any amount that a

¹⁵³ Ezejio Okonkwo & Ilegbunen, *Nigeria Business Law* (Sweet & Maxwell London 1982) p 151

¹⁵⁴ *Balogun v Obisanya and Anor* (1956)1 ESC 22

¹⁵⁵ *Ogbonuju v Ogbeide* (1966) NCLR 150

moneylender receives from a borrower can be recouped as a debt that the borrower owes the lender.¹⁵⁶

Section 20 of the law prohibits moneylenders from employing agents or canvassers. No such agent or canvassers shall demand or receive directly or indirectly any amount or commission from a prospective lender for introducing the borrower to the lender.¹⁵⁷ Any agreement between a borrower and a moneylender about the payment of a commission for the acquisition of a loan is invalid, and the agent or canvasser involved might face a fine of up to 10,000 naira upon conviction if any such sum had been paid for the service.¹⁶³

Section 21 requires that every moneylender give receipts¹⁵⁸ and to keep record of transaction.¹⁵⁹ This is a stringent obligation with accompanying sanction.

Section 21(3)¹⁶⁰ provides that the entries in the said book shall be made contemporaneously with the making of the loan or the receipt of the sums paid in respect thereof the case may be.

Section 21(4)¹⁶¹ stipulates that a moneylender who does not meet any of the criteria set out in this section will not be able to collect on any debt associated with a defaulted transaction.¹⁶⁸ In addition to being found guilty of a crime under the law, he might face a fine of N5000.00 upon conviction. If the offense is ongoing, the punishment could be N2500.00 for each day or portion

¹⁵⁶ Section 19 of the Moneylenders Law Laws Cap M166, Laws of Ogun State

¹⁵⁷ Section 20 of the Moneylenders Law Laws, Laws of Ogun State

¹⁵⁸ Section 21(2) of the Moneylenders Law Laws Laws of Ogun State

¹⁵⁹ Section 20(2) of the Moneylenders Law Laws, Laws of Ogun State

¹⁶⁰ Section 21 (1) of the Moneylenders Law Laws, Laws of Ogun State

¹⁶¹ Section 21(4) of the Moneylenders Law Laws Laws of Ogun State

of a day that the offense persists. In *Kasumu v Baba Egbe*¹⁶² the plaintiff mortgaged certain lease hold property to Kasumu, a licensed moneylender, to secure a loan of 2000. The moneylender had admittedly kept no book recording the transaction as required by section 19 of the moneylenders Ordinance of Nigeria, which is verbatim and litem with section 21,¹⁶³ section 2¹⁶⁴ and Section 17¹⁶⁵

A little over one year following the loan, the moneylender foreclosed on the plaintiff's property and kept all of the rent and earnings. It was the plaintiff's argument that the mortgage is null and void, or that they should be repossessed, that prompted them to initiate this case. The defendant was ordered to deliver-up control of the property together with the cancelled deeds and title deeds of the property to the plaintiff after the West African Court of Appeal reversed the ruling of the trial court and declared that the mortgage transaction was unenforceable. Essentially, the plaintiff was under no legal obligation to pay the defendant the remaining balance of €1,541 2s 6d.

The defendant took his case to the Privy Council, arguing that the plaintiff should have been required to pay the remaining sum of 1,541 2s 6d plus interest before the court could have granted relief. This argument was dismissed and the ruling of the West African Court of Appeal was sustained. The Privy Council went on to say that the lender did not have a legal right to

¹⁶² *Kasumu v Baba Egbe* (1956) 3 WLR 575; (1956) AC 539

¹⁶³ Section 19 of the Moneylenders Ordinance 1939

¹⁶⁴ Section 2 of the Moneylenders Law, Laws of Ogun State

¹⁶⁵ Section 17 of the Moneylenders Law, Laws of Lagos State 2004; Section 17 of the Moneylenders Law laws of Cross River State 2003

recover his funds since the Ordinance forbade the enforcement of any loan that did not meet the statutory criterion. The court's own stance toward such a transaction would be expressed if repayment terms were a prerequisite to granting relief, and this policy would be at odds with the ordinance's.

In *Nwakwo v Orji*,¹⁶⁶ citing a precedent set in *Kasumu's* case, the court ruled that the moneylender's failure to provide the borrower with a receipt and record the transaction in accordance with section 19 of the ordinance rendered the transaction null and void. Another important obligation is that of disclosure¹⁶⁷ as provided in section 22 Moneylender's Law of Ogun State. The moneylender has a responsibility to provide the borrower with all relevant information about the transaction.

The borrower has the right to demand payment of a fair sum for the expenditures incurred in order to waive this duty of disclosure. If the moneylender refuses to provide the necessary information after the borrower has paid a fair amount to cover the moneylender's expenditures, he would be fined N200 for each day of default upon summary conviction. He will not be able to get his money back—principal plus interest—that accumulated before the information demand was issued, unless he pays the penalty and complies with the demand.

He will also forfeit the interest that would have accrued after the demand absolutely.

¹⁶⁶ *Nwakwo v Orji* (1964) 8 ENLR 1

¹⁶⁷ Section 19 of the Moneylenders Law Laws of Cross River State; Section 22 of the Moneylenders Law, Laws of Ogun State

The law in Section 22 also provides for the limitation of time for proceedings in respect of money lent by money lenders thus:

If a moneylender wants to get their money back or interest on money they loaned out after this law went into effect, or if they want to enforce an agreement they made or security they took out for a loan they made, they have to start the process within twelve months of when the cause of action began.¹⁶⁸

4.2 Regulation Of The Interest Chargeable On Loans.

4.2.1 The Moneylenders Law extensively made provisions for the interest chargeable on loans by moneylenders and persons other than moneylenders

The section¹⁶⁹ provides thus:

(1) The interest which may be charged on loans, whether by a moneylender or by any person other than a moneylender shall not exceed the respective rates specified hereunder –

- (a) for loans that are backed by a charge on freehold property, government bonds, insurance policies, debentures, shares of companies, bills or sales of goods, legally enforceable personal rights, third-party indemnities or guarantees, the simple interest rate is fifteen percent per annum for the first two hundred thousand naira or part thereof, and twelve and a half percent per annum on any amount above two hundred thousand naira;

¹⁶⁸ Section 22 Moneylenders Law, Laws of Ogun State

¹⁶⁹ Section 15 (1) (2) (3) Moneylenders Law, Laws of Ogun State

(b) for loans that are backed by a second charge on assets mentioned in paragraph (a) of this subsection, there will be simple interest of 77.5 percent per annum on the first 200,000 naira or portion thereof, and a rate of 15 percent per annum on any amount above 200,000 naira;

(c) on unsecured loans simple interest at the rate of forty-eight per centum per annum

(2) Rate of interest where sums lent to same person at various times

If the same individual is lent many sums at the same or various periods, the interest rate that is authorized will be applied to the total amount that is owed as if the entire amount had been loaned at the time of the final loan, regardless of when the loans were made.

(3) Interest defined

Everything paid or payable to the lender in relation to a loan, including but not limited to discounts, commissions, bonuses, fines, expenses, and any amount over the principal, is referred to as interest. However, charges, expenses, or costs pertaining to –

- (a) stamp duties;
- (b) registration of any document in accordance with the provision of any law;
- (c) preparation of any document by a qualified legal practitioner;
- (d) investigation of title to any property;
- (e) insurance on property;

- (f) obtaining a copy of the record of the judgement of any court;
- (g) inspection of any property by the mortgagee prior to the mortgage; or
- (h) any costs specifically allowed by any court before which the matter may come for adjudication.

It is worth noting that the moneylenders Law governs not only the actions of registered money lenders but also those of non-moneylenders who charge interest on loans. In the case of *Ojikutu v Agbonmagbe Bank Ltd*,¹⁷⁰ the court determined that "persons other than moneylenders" refers to individuals, not organizations like banks, who engage in one or sometimes monetary lending but do not make it their primary business. That is to say, they do not lend money per se, but when they do lend money—loans that are generally considered friendly loans—and charge interest, they are required to comply with the regulations of interest charging.

4.2.2 The Laws also provides for penalty for charging unauthorised interest thus:¹⁷¹

Penalty for charging unauthorised interest

- A fine of 25,000 Naira per loan would be levied on anyone found guilty of lending money at an interest rate that exceeds what is allowed by this law.
- It is necessary to get the agreement of the Attorney-General before instituting a prosecution for an offense under this provision.

¹⁷⁰ *Ojikutu v Agbonmagbe Bank Ltd* (1966) NCLR 246

¹⁷¹ Ibid

The imposition of unauthorized interest is an offense, rendering the moneylender's contract illegitimate and unenforceable. In the case of *Nwakwo v. Nzeribe*¹⁷² the court determined, among other things, that a loan transaction demonstrating a violation of Section 15 of the Moneylenders Law by the imposition of unauthorized interest constitutes an invalid contract, which the court would not uphold.¹⁷³ Also in the case of *Okonkwo v Okoro*.¹⁷⁴ In a case where a moneylender extended a secured loan to the defendant at an interest rate of 48% per annum, above the legal limit of 15% per annum, the court determined that the transaction was unlawful and thus unenforceable.

The legal restrictions concerning chargeable interest are crucial, necessitating rigorous adherence. Thus in the case of *Dawodu v. Tinubu*¹⁷⁵ In a case where the interest stipulated in the contract was articulated as '9d per \$ per month' rather than as a percentage per annum, it was determined that this phrasing inadequately conveyed the interest amount, rendering the loan transaction invalid..

Chapter Five

5.1 Conclusion

Moneylending is an essential consumer credit mechanism in Nigeria and globally. The increased gratification that customers derive from the moneylending sector prompted banks to develop a

¹⁷² *Nwakwo v Nzeribe* (2004) 13 NWLR (pt 890) 422

¹⁷³ *Ibid*

¹⁷⁴ *Okonkwo v Okoro* (1962) 6 ENLR 74

¹⁷⁵ *Dawodu v Tinubu* (1959) LLR 128

variety of goods and promotions resembling moneylending services. Customers may withdraw a certain sum of money 'without collateral' aside from their accounts to facilitate the purchase of consumer products or fulfill other personal requirements. In addition to maintaining a bank account, the borrower must also possess a consistent financial inflow, such as a wage, into their accounts. There exists a significant disparity between banking services and moneylending. The unsecured aspect of the moneylending loan is unparalleled, as the necessity of maintaining an account and a consistent revenue stream serve as collateral in itself. The straightforward nature of moneylending renders it appealing, leading borrowers to pursue it despite the exploitative inclinations of lenders and the negative perceptions fostered by longstanding beliefs and animosity towards moneylenders, as articulated in scriptural texts and by various philosophers, notably Aristotle, on moral grounds throughout history. The moral prejudice was ultimately addressed through the exposition of Ayn Rand's Objectivist ethics or rational egoism.

Ayn Rand was a Russian-American author and philosopher known for her work, Philosophy of Objectivism which emphasizes individualism, self-interest and the belief that doing business is a moral activity, and also pursuit of happiness is a moral endeavour. Her rational egoism holds that every man's existence is intrinsically valuable and that his rational intellect is his primary tool for survival. If you want to live a moral life, you have to think about and create the ideals that will bring you satisfaction, all the while letting other people believe and do what they think is right for them.

Each person should act rationally and in their own long-term best interest, according to her objectivist ethics. People should also be able to think for themselves, create values, and decide whether, with whom, and on what terms to trade. An ideology based on individualism, autonomy, and duty to one's own interests. She argued that the capacity to reason is the very essence of man and so an essential aspect of human nature.

She settled on the idea that, contrary to popular belief, the human brain is the most powerful tool for saving lives. To her, being moral meant engaging in profit-seeking, which she defined as "the use of one's mind to discover, create, and trade life-serving values".¹⁷⁶ The justification of moneylending relies on Ayn Rand's objectivist ethics, which gives a moral basis for the economic arguments in favor of usury. It proved and clarified why lending money is morally unacceptable.

From ancient times to the present day, this historical narrative disproves the long-held philosophical, economic, and religious views that money lending is inherently bad because it is unproductive, leads to unjust profit, and is a zero-sum transaction. Objectivist ethics and rational egoism, two of Ayn Rand's twentieth-century writings, did not solve the moral dilemma that has persisted to the present day.

Indeed, by imposing strict rules on lenders, the Nigerian Moneylenders Law adequately protects borrowers against lenders' exploitative inclinations. Thus, One may argue that the law benefits borrowers at the expense of lenders. Consequently, the vast majority of Nigeria's money lending

¹⁷⁶ Leonard Peikoff, *Objectivism: the Philosophy of Ayn Rand* (New York: Dutton, 1991)

operations operate under the radar and are considered illicit. As a result of the burdensome provisions of the Moneylender's Law, the lender's right is hedged around with numerous restrictions, some of which are highly technical. Additionally, a debtor may be able to escape liability for both interest and principal repayment if they breach any requirement of the specific lending law.¹⁷⁷ We can all agree that the legal constraints of nearly a century ago did not make business sense in the same way that they do now. As a result of the legislation's expansive interpretation, businesses have been less effective and have had to find ways to operate outside of the letter of the law.

It goes without saying that a review of the Moneylenders Law is long overdue in the different states of Nigeria, the majority of which have not updated their laws since 1927. It is more appropriate to penalize the interest than to impose any restrictions on obtaining a license. No moneylender should ever lose his principal, even if he loses his interest for charging too much; our court should be more lenient in its reading of the law. An additional six months should be added to the statute of limitations for filing a lawsuit. This clause is particularly heinous since it might lead to the loss of principle and interest for an unsuspecting lender if they fail to commence the case within twelve months of the accrual date. While the interest rate of 48% per annum on unsecured loans may seem reasonable when contrasted with the 20% to 40% charged monthly by illegal moneylenders, it is clear that this rate is too high for the consumer, who is the ultimate beneficiary of the credit facility.

¹⁷⁷ Goodie RM, *The Legal Regulation of Lending in Diamond AL* (ed), *Installment Credit* (Steven and Sons, London, 1970) 88

Money lending is here to stay; it is no longer seen as optional; it is becoming indispensable. Consequently, regulation ought to promote it instead of impede it. Just as in other industrialized nations, where consumer credit transactions are regulated by a single law,¹⁷⁸ it is recommended that a comprehensive law should be enacted to govern all consumer credit transactions in Nigeria, including but not limited to money lending, hire-purchase, and credit sale.

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National School of Secretaryship and Accountancy, Yaba, Lagos. 1970

Ebenezer Comprehensive High School, Ijaye-Ojokoro, Lagos. 1971-1973

African Church Grammar School, Abeokuta, Ogun State. 1974-1978

Kwara State College of Technology, School of Basic Studies Ilorin,

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Nigeria Law School, Yola Campus.	2019-2020
Lead City University, Ibadan Oyo State, Nigeria.	2009-2013
University of Lagos, Akoka, Lagos, Lagos State, Nigeria.	2003-2005
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Federal Polytechnic Ilaro, Ogun State, Nigeria.	1981-1986

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Higher National Diploma (HND) Building Technology	1986
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Stirling Civil Engineers, Assistant Soil Engineer.	1984-1985
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This is to certify that this thesis by Ibikunle Oladapo AKINDE in the Department of Private and Business Law, Faculty of Law, Lead City University, Ibadan is in full compliance with the approved University Format and Style.

Name

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