



THE CAYMAN ISLANDS LAW REFORM COMMISSION



USURY:

THE COMMON LAW AND STATUTORY POSITION IN THE CAYMAN ISLANDS

DISCUSSION PAPER

1st NOVEMBER, 2021

THE CAYMAN ISLANDS LAW REFORM COMMISSION

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Stakeholders and members of the general public are invited to generally comment on the issues identified in the Discussion Paper and, in particular, to submit their views on the recommendations and draft legislation presented for discussion.

The Paper and supporting legislation may be viewed on the following website: **www.lrc.gov.ky** or **www.gov.ky** or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than 6th December, 2021 to the Director of the Law Reform Commission, 4th Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to **cilawreform@gov.ky**, or in writing, by post or hand-delivered.

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CAYMAN ISLANDS LAW REFORM COMMISSION

USURY: THE COMMON LAW AND STATUTORY POSITION IN THE CAYMAN ISLANDS

BACKGROUND

1. This Discussion Paper seeks to examine whether any prohibition against usury exists in Cayman Islands legislation, whether at common law, by statute, or both.
2. Legal commentators have expressed the view that no legislation exists in the Cayman Islands to regulate usury.¹ The clearest statement in this regard was made by the Cayman Islands Monetary Authority (CIMA) (the “Authority”) in response to a question posted on its website that asks whether or not the Authority monitors or supervises the spread between the interest rates that banks charge customers on loans and the interest rates that banks pay on deposits. At the time, CIMA responded, “No, there are no usury laws in the Cayman Islands. The Authority does not have power under the Monetary Authority Act (2013 Revision) or the Banks and Trust Companies Act (2013 Revision) to prescribe the maximum or minimum interest rates that may be charged or paid by retail banks and other deposit-taking institutions.”²
3. Accordingly, the research of the Law Reform Commission is seeking to bring clarity to this issue.

WHAT IS USURY?

4. The concept of usury has biblical origins. From as far back as the twelfth century, usury was forbidden by ecclesiastical law and was viewed as morally wrong.³ The canons of the church viewed acts of usury as sinful and against the scriptures.⁴ From the period of 1235, A.D. usury became a statutory offence under English Law⁵ and legislative provisions remained in place until 1854.⁶ The progression of the law in this regard will be examined in the ensuing discussion.
5. To put the concept of usury into perspective, it would be useful to examine the definitions that originate from various sources.
6. Usury is defined by *Stroud’s Judicial Dictionary* as a gain of anything above the principal, or that which was lent, exacted only in consideration of the loan whether it be corn, meat, apparel, wares, or such like, as money.⁷

¹ Alasdair Robertson and Tina Meigh, ‘Lending and taking security in the Cayman Islands: overview’, (Maples and Calder) <<https://uk.practicallaw.thomsonreuters.com/4-502-7605>>; Lexology - Getting The Deal Through, ‘Loans & Secured Financing 2017’ in George E Zobitz (Cravath, Swaine & Moore LLP) (ed), *Loans & Secured Financing*, (Law Business Research Ltd 2016) <https://www.walkersglobal.com/images/Publications/Articles/2016/09.24.2016_GTDL_Loans_Secured_Financing.pdf>; Lexology - Getting The Deal Through, ‘Ship Finance 2018’ in Lawrence Rutkowski (Seward & Kissell LLP) (ed), *Ship Finance 2018*, (Law Business Research Ltd 2018) <<https://www.harneys.com/media/1648/getting-the-deal-through-cayman-islands-ship-finance-ndp-eyc.pdf>>; Chambers Global Practice Guides, ‘Law & Practice - Cayman Islands’ in Appleby: Bryan Hunter, Peter Colegate, Katie Fleming (eds), *Fin-Tech* (Chambers and Partners 2018) <<https://www.applebyglobal.com/wp-content/uploads/2019/04/chambers-fintech-cayman.pdf>>;

² CIMA, ‘General - Banking Services’ <<https://www.cima.ky/banking-services-faqs>>

³ J.B.C. Murray, *The History of Usury from the Earliest Period to the Present Time: Together with a Brief Statement of General Principles Concerning the Conflict of the Laws in Different States and Countries, and an Examination Into the Policy of Laws on Usury and Their Effect Upon Commerce* (Philadelphia: J.B. Lippincott 1866). See p 13, reference to Fenton, “For if a woman should lend her neighbor two eggs to have three again, were it not damnable usury”.

⁴ “Thou shalt not lend upon usury to thy brother, usury of money, usury of victuals, usury of anything that is lent upon usury. Unto a stranger thou may lend upon usury, but unto thy brother thou shalt not lend upon usury” (Deut. xxiii., 19, 20); “That the Lord thy God may bless thee in all thou put thine hands to, in the land whither thou go to possess it” (Deut. 23:20).

⁵ 20 Henry III, c. 5 A.D. 1235.

⁶ 17 & 18 Victoria, C90, A.D. 1854.

⁷ Stroud’s Judicial Dictionary of Words and Phrases, (7th Edition, Volume 3, Sweet & Maxwell Ltd) p 2927.

7. *Black's Dictionary* defines usury as the use of a thing by a beneficiary to satisfy personal and family needs.⁸
8. *Osbourne's Concise Law Dictionary* defines usury as the practice of charging excessive, illegal interest for the loan of money whereby a gain is made by way of compensation.⁹ Compensation does not only apply to money but also to goods, merchandise or anything else that has a financial value.
9. J.B.C. Murray, in his treatise *The History of Usury*,¹⁰ made reference to the concept of usury as defined by Sir Edward Coke. According to Coke, usury is "a contract upon a loan of money, or giving day forbearing money, debt or duty, by way of loan, cheviance, sales and wares, or any other things whatever."¹¹ In other words, usury means "the letting out or lending of one's property of any kind or description to others, and taking or contracting for an exorbitant return, profit or reward for the forbearance of such property or loan."¹²
10. It seems to have been in this sense of the term, which places usury in the light of oppression and extortion, that the ideas and opinions of men concerning its sinfulness were conceived, and handed down from a remote period of Christianity through succeeding ages, to the present century.¹³
11. In consolidating these various definitional iterations, usury means charging anything whether it is labelled as "interest" or something else for the loan of money.

THE LEGALITY OF USURY

12. In determining the legal position with respect to usury, a two tiered approach may be instructive. Firstly, we will need to examine whether any common law rules relating to usury were received in the Cayman Islands on settlement and whether such rules have been saved or expressly abrogated.
13. Secondly, we will need to examine the statutory laws of the Cayman Islands in order to determine the impact those laws would have had on the common law and, in particular, determine whether there are any enactments in respect of usury which are applicable to the Cayman Islands by way of either an extension to the Cayman Islands by Order in Council,¹⁴ the Jamaica Parliament¹⁵ or by enactment by the Legislature¹⁶ of the Cayman Islands.

⁸ Black's Law Dictionary, (10th Edition, Thomson West, May 9, 2014) p 1777.

⁹ Woodley, M., Osborn's Concise Law Dictionary, (Eleventh Edition, Sweet & Maxwell).

¹⁰ J.B.C. Murray, *The History of Usury from the Earliest Period to the Present Time: Together with a Brief Statement of General Principles Concerning the Conflict of the Laws in Different States and Countries, and an Examination Into the Policy of Laws on Usury and Their Effect Upon Commerce* (Philadelphia: J.B. Lippincott 1866).

¹¹ *Ibid*, p 14.

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ Interpretation Law (1995 Revision) s 40.

¹⁵ The Cayman Islands Act, 1863, c13 Act of the UK Parliament.

¹⁶ The Cayman Islands Constitution Order (2009), SI No. 1379, s 59, Schedule 1.

(a) Usury under the Common Law and the Ecclesiastical Jurisdictions

14. Under the common law, usury was considered unlawful¹⁷ and the payment of usury or interest could not be enforced by a legal remedy once the payment was determined to be excessive.¹⁸ In fact, there is legal authority which points to usury being an indictable misdemeanour at common law.¹⁹
15. There have been cases in which providing for the payment of [excessive] interest was determined to be unconscionable.²⁰ The common law position on usury has been debated between legal authorities such as Sir Edward Coke and Chief Justice Hale as represented in *The History of Usury*.²¹
16. Sir Edward felt that the common law prohibited usury and that it was unlawful and punishable. However, CJ Hale was of the view that only the Jewish usury of forty per cent was against the common law.²²
17. Baron Parke, in *Earle v. Oliver*²³ made reference to the dicta of Lord Mansfield, in *Hawkes v. Saunders*²⁴ and *Atkins v. Hill*²⁵ and stated that Lord Mansfield departed from the strict rule of common law. This departure was reflected in the case of *Flight v. Reed*.²⁶ One of the issues in contention in that case was with respect to the payment of the lawful interest rate of more than 51 per cent.
18. Lord Mansfield laid down the rule that “where the consideration was originally beneficial to the party promising, yet if he be protected from liability by some provision of the statute or the common law meant for his advantage, he may renounce the benefit of that law; and if he promises to pay the debt, which is only what an honest man ought to do, he is then bound by law to perform it.” In other words, a person who agreed to pay interest at a specified rate should be made to honour that agreement and no statute should absolve him from that obligation.
19. Additionally, Pollock C.B. and Wilde B. in *Flight v. Reed*²⁷ enunciated that the courts of law are bound with equal fidelity to give effect to this new and opposite view of the legislature. Interest above fifty-one per cent, should no longer be regarded as of necessity illegal or unrighteous, and no facility should be given to escape from an obligation to repay a real advance of money, or evade a contract.
20. In the case of *Barnes v Hedley*,²⁸ an original agreement made between the parties was discovered to be illegal and usurious. In order to avoid his whole debt being lost, the lender made a new agreement which was not usurious. The borrowers acknowledged and agreed to

¹⁷ Dealings With The Dead by A Sexton of the Old School, Volume 1 (Dutton and Wentworth, 33 and 35 Congress Street: and Ticknor and Fields, Corner of Washington and School Streets, 1855). See p 188, which cited where Lea, C.J., Palm 292 quoted, “the usury condemned at common law, was the ‘biting usury’ of the Jews”.

¹⁸ Mark Ord, Esq. Barrister At Law, An Essay on the Law of Usury (Third Edition: Comprising the later decisions in England, Ireland, and America, with notes and references by Thomas Day, Counsellor At Law, Hartford, Con., 1809) p 11.

¹⁹ *Flight v Reed* 1H&C 716.

²⁰ *Samuel v Newbold* [1906] AC 461; *Re A Debtor, Ex parte The Debtor* [1903] 1 KB 705.

²¹ J.B.C. Murray, *The History of Usury from the Earliest Period to the Present Time: Together with a Brief Statement of General Principles Concerning the Conflict of the Laws in Different States and Countries, and an Examination Into the Policy of Laws on Usury and Their Effect Upon Commerce* (Philadelphia: J.B. Lippincott 1866).

²² *Ibid*.

²³ *Earle v Oliver* (1848) 154 ER 410.

²⁴ *Hawkes v Saunders* (1782) 1 Cowp 289.

²⁵ *Atkins v Hill* (1775) Cowp. 284.

²⁶ *Flight v Reed* (1863) 158 ER 1067.

²⁷ *Ibid*.

²⁸ *Barnes v Hedley* 1809 2 Taunt 183.

the new agreement and the old agreement was cancelled and burned. The court was left to determine if the lender was entitled to the principal monies advanced under the original [illegal] agreement. The court found that although the usurious securities were destroyed by mutual consent, there was sufficient consideration. Therefore, the agreement was binding and the borrowers were ordered to pay the outstanding monies owed under the original agreement.

21. In the case of *Barnet v Tompkins*,²⁹ Treby C.J.³⁰ was of the view that the crime of usury equally affected both parties and it was held that a borrower could not claim back money already paid upon a usurious bond. However, the decision of Treby C.J. was overruled in the case of *Browning v Morris*³¹ where it was held that the party who suffered might be able to bring an action and recover the excess interest.
22. In the case of *Wright v Wheeler*³² it was ruled that where an obligee cancelled a bond by which usurious interest was payable and the obligor gave him another bond for principal and interest only, then it would be considered valid.
23. The *Statute 37 Henry VIII, AD 1545*³³ abrogated the common law and ecclesiastical jurisdiction entirely but was later repealed by the *Statute 5 & 6 Edward VI, A.D. 1551*³⁴ which revived the common law and ecclesiastical jurisdictions.
24. The *Statute of Elizabeth, A.D. 1571*³⁵ repealed the common law, but in this instance expressly saved the ecclesiastical jurisdictions. There is however some doubt expressed in the highest authorities relating to whether or not the *Statute of Elizabeth, A.D. 1571*³⁶ repealed the common law entirely.
25. If we return to the quote of Baron Parke, in *Earle v. Oliver*,³⁷ where he stated that Lord Mansfield had departed from the strict rule of common law in *Flight v. Reed*,³⁸ arguably, this statement confirms that usury was a common law offence.³⁹
26. Mr. Plowden in his *Treatise on Usury*⁴⁰ stated that “the common law is still in force and unaltered or affected by the statute so far only as the statute expressly goes. So where an Act of Parliament is made concerning any point of common law, the common law concerning that point is changed, altered or affected by the statute so far only as the statute expressly goes...I should say positively, without hesitation, that the common law of usury at this moment exists in its full extent, except as to these instances in which it has been expressly altered by substituting statutes.”⁴¹
27. Mr. Plowden was also of the view that Sir Edward Coke had substantially contradicted his own opinion upon the abrogation of the common law of usury. Initially, Lord Coke stated that “the

²⁹ *Barnet v Tompkins* (1693) 90 ER 155.

³⁰ As cited in a treatise upon the law of usury, p 215.

³¹ *Browning v Morris* (1770) 98 ER 1364.

³² *Wright v Wheeler* (1798) 170 ER 236.

³³ 37 Henry VIII, c 9 A.D. 1545.

³⁴ 5 & 6 Edward VI. CH. 20, A.D. 1551.

³⁵ 13 Elizabeth, c.8. A.D. 1571.

³⁶ 13 Elizabeth, c.8. A.D. 1571.

³⁷ *Earle v Oliver* (1848) 154 ER 410.

³⁸ *Flight v Reed* (1863) 158 ER 1067.

³⁹ See *Hawkes v Saunders* (Cowp 290) and *Atkins v Hill* 1775(Cowp. 284).

⁴⁰ Francis Plowden, LL.D., a Barrister of Lincoln's Inn. 'A Treatise upon the Law of Usury and Annuities' (London, 1796, 1797. 8 vo.).

⁴¹ *Ibid* p 62.

ecclesiastical jurisdiction was saved by the Statute of Elizabeth” but then later he stated “the common law was not abrogated or abolished by the 27th Statute of Henry VIII: for if it had been, then the ecclesiastical jurisdiction over usury could not have been saved, though it might have been revived by the subsequent Act of Elizabeth.⁴² Plowden also was of the view that the saving of the ecclesiastical jurisdiction was the direct saving of the common law.⁴³

28. The case of *Patten v Castlemen* confirms that ecclesiastical matters were heard by common law courts.⁴⁴
29. Based on the forgoing discussion it is clear that usury has a very long and complex history, most of which concerned the creation of exceptions to the prohibition in aid of commerce. Prior to the *Statute of 17 & 18 Victoria, 1854*,⁴⁵ which will be later discussed, it would seem that at common law, usurious contracts were illegal and therefore, a usurious contract was void for illegality and would be declared as such by the Court of Chancery.⁴⁶
30. There is some uncertainty as to whether a usurious contract is outright illegal at common law or whether it is illegal only to the extent that the interest charged exceeded a certain rate.⁴⁷

(b) Usury and the Common Law Position in the Cayman Islands

31. In the Cayman Islands, English law, including existing English statutes and the common law, was received into the law of the Cayman Islands either in 1725 or in 1734. The first date is specified in section 40 of the *Interpretation Act (1995 Revision)*⁴⁸ and the second is suggested by the fact that the earliest grants of land in the Islands were made in 1734.⁴⁹ Section 40 of the *Interpretation Act (1995 Revision)* provides that “all such laws and Statutes of England as were, prior to the commencement of 1 George II Cap. 1, esteemed, introduced, used, accepted or received as laws in the Islands shall continue to be laws in the Islands save in so far as any such laws or Statutes have been, or may be, repealed or amended by any Law of the Islands.”⁵⁰
32. In addition, if usury was regarded as an offence at common law, unless it has been expressly abrogated, then the offence would have been preserved by section 2(a) of the *Penal Code (2019 Revision)*⁵¹. It is to be noted that the *Penal Code (2019 Revision)* provides no exception for the offence of usury. This leads to the question of whether there exists any legislation in the Cayman Islands which repeals the common law in relation to usury.
33. As mentioned earlier, the representations of legal commentators seem to suggest that there is no law on usury in the Islands, thereby implying that there are no restrictions with respect to the rate of interest that can be levied on monies borrowed.

⁴² Francis Plowden, LL.D., a Barrister of Lincoln’s Inn. ‘A Treatise upon the Law of Usury and Annuities’ (London, 1796, 1797. 8 vo.) p 66.

⁴³ Ibid p 66.

⁴⁴ *Pattern v Castleman* (1753) 1 Lee 387; 161 ER 143.

⁴⁵ Statute of 17 & 18 Victoria c. 33, 1854. This Act abolished the offence of Usury and has been commonly referred to as the Usury Laws Repeal Act, 1855.

⁴⁶ See *Flight v Reed* (1863) 1 Hurlstone & Coltman 703 (Exch.).

⁴⁷ *Flight v Reed* 1H&C 716.

⁴⁸ Interpretation Act (1995 Revision), s 40.

⁴⁹ This is explained in detail in *Quayum et al v Hexagon Trust Company* 2002 CILR 161 at para. 14 ff.

⁵⁰ The Cayman Islands Interpretation Law (1995 Revision), s. 40.

⁵¹ Penal Code (2019 Revision), s 2(a).

(c) *Usury under Statute*

(i) *The United Kingdom Statutory Position*

34. In the United Kingdom, as early as the reign of King Alfred, penal laws were enacted against usury and punishment for usury was to forfeit any chattels owed to the King. Punishment for usury was extended even at death, as the burial of a usurer could not be held in the church.⁵²
35. During the twentieth year of the reign of Henry III, A.D. 1235, the *Statute of Merton*⁵³ was enacted. This seemingly was the first statute in which the word usury appeared.⁵⁴
36. The reign of Edward I, A.D. 1272, followed and made usury an indictable offence. Under the reign of Edward III, the church complained to the King that usury was still being committed and demanded that the usury laws be enforced.⁵⁵
37. The reign of Henry VII saw many statutes against usury being passed. The *Statute of 11 Henry VII, A.D. 1495*⁵⁶ set out that the usurer would be required to forfeit the value of the property which was used as the subject of the bargain with half going to the King and the other half to the informant.
38. Later, during the reign of Henry VIII, the *Statute 37 Henry VIII, A.D. 1545*⁵⁷ was enacted.⁵⁸ This Statute was followed by the *Statute of 5 & 6 Edward VI, A.D. 1552*,⁵⁹ which repealed the *Statute of Henry VIII, 1545*,⁶⁰ and entirely forbid interest upon loans. The prescribed penalty was forfeiture of the principal and the interest charged.⁶¹ The *Statute of 5 & 6 Edward VI, A.D. 1552*⁶² did not diminish acts of usury but instead caused the imposition of usurious terms in contracts to increase.⁶³
39. The *Statute of 13 Elizabeth, A.D. 1571*⁶⁴ restored the *Statute of Henry VIII, A.D. 1545*⁶⁵ and expressly stated “it being found that the Act of Edward had not done so much good as was hoped for, but rather that the vice of usury had much more exceedingly abounded,⁶⁶ and the *Statute of Henry VIII, A.D. 1545* being one by which the vice of usury was well suppressed”. Therefore, the *Statute of Henry VIII, A.D. 1545* was partially revived with the maximum legal rate of interest set at ten per cent and declared that “all usury being forbidden by the law of God, is sin and detestable”.⁶⁷

⁵² Hon. Robert Eden, *Waterman's Eden on the Law and Practice of Injunctions* (Third Edition) p 37-2.

⁵³ 20 Henry III, A.D. 1237.

⁵⁴ Sir Edward Coke was of the view that usury intended by this statute was not unlawful and that the prohibition on usury was extended to the Jews only. Co. Lit., 246.

⁵⁵ J.B.C. Murray, *The History of Usury from the Earliest Period to the Present Time: Together with a Brief Statement of General Principles Concerning the Conflict of the Laws in Different States and Countries, and an Examination Into the Policy of Laws on Usury and Their Effect Upon Commerce* (Philadelphia: J.B. Lippincott 1866) p 40.

⁵⁶ 11 Henry VII A.D. 1495, c.18.

⁵⁷ 37 Henry VIII. C.9. A.D. 1545.

⁵⁸ This Statute was the first to recognise the legality of taking of interest upon loans and set the limit of interest at 10%. Sanctions were also set out and imprisonment and fines were imposed for those in breach. This statute also abolished the power of the Pope of England and Henry VIII declared himself the supreme head of the church.

⁵⁹ 5 & 6 Edward VI. CH. 20, A.D. 1552.

⁶⁰ 37 Henry VIII 1545c.9 A.D. 1545.

⁶¹ This statute had a more damaging effect to the merchants and manufacturers.

⁶² 5 & 6 Edward VI. CH. 20, A.D. 1552.

⁶³ Hume's History of England 4 vol. p 354.

⁶⁴ 13 Elizabeth, CAP. 8, A.D. 1571.

⁶⁵ 37 Henry VIII. C.9. A.D. 1545.

⁶⁶ “Thus the forbidding of all usury, is the very maintaining of damned usury; therefore, that which is lawful, in my conceit, should be approved, and the restriction and stints clearly sette downe and nominated.” Ex. Of Neshec” (See Bolton on Usury).

⁶⁷ Statute of Henry VIII, A.D. 1545. See s 9 of the Act.

40. The *Statute of 21 James, A.D. 1624*⁶⁸ reduced the legal interest rate further to six and a half percent. This reduction was followed by another reduction through the *Statute of 12 Charles II, A.D. 1660*⁶⁹ which reduced the rate to six percent. The legal interest rate was further reduced to five per cent by the *Statute 12 Anne, A.D. 1713*.⁷⁰
41. Following the *Statute 12 Anne, A.D. 1713*, the *Statute of 3 George I, A.D. 1716*⁷¹ exempted parties who had taken a bill or note upon a usurious consideration. The *Statute of 3 George I, A.D. 1716*⁷² was intended to repeal much of the *Statute of 12 Anne, A.D. 1713* however this latter statute was confined to the party who had discounted or given value to notes founded upon usurious consideration and it set out that the usurious paper was not void but given for illegal consideration.
42. The *Statute 3 & 4 William IV, A.D. 1833*⁷³ provided that bills and notes were payable at or within three months and were exempted from the operation of usury laws. The gradual reduction in penalties against usury was evidenced in a subsequent Act in the same reign, the *Statute of 5 & 6 William IV, A.D. 1835*⁷⁴ which provided that notes given for usurious consideration were not void, but deemed to have been given illegal consideration.⁷⁵
43. The exemption from the operation of usury laws provided in the *Statute 3 & 4 William IV, A.D. 1833* was extended by the *Statute 2 & 3 Victoria, A.D. 1839*⁷⁶ to bills and notes having more than twelve months to run and to contracts for loans or forbearance of money above the sum of ten pounds so that such bills or notes and contracts for loans would not be void by reason of any interest taken or secured.
44. However, the *Statute 2 & 3 Victoria, A.D. 1839* did not sanction the recovery in any court of law or equity, more than the legal rate, unless it appears to the court, that a different rate of interest was agreed upon between the parties.
45. The *Statute of 17 & 18 Victoria, A.D. 1854*⁷⁷ (*Usury Repeal Act, 1854*) repealed all existing laws relating to usury in England and Scotland, Great Britain and Ireland. The *Usury Repeal Act, 1854* subsequently provided that interest is payable on any contract, express or implied, for payment of the legal or current rate of interest.⁷⁸
46. Since the *Usury Repeal Act, 1854*, the Commission has not been able to identify any new statute dealing with usury in the manner detailed in the earlier enactments. However, it may be useful to note that the executives of City of London Bank were contacted in 2009 by campaigners who were requesting the reinstatement of usury laws to restrict the interest rates that are charged by loan sharks and credit card companies.⁷⁹ Politicians and various bankers responded to the

⁶⁸ 21st James I. A.D. 1624.

⁶⁹ 12 Car. II. C.13, A.D. 1660.

⁷⁰ 12 Anne, Stat.2, C.16, A.D. 1713.

⁷¹ 3 George I, C 8 A.D. 1716.

⁷² 3 George I, C 8 A.D. 1716.

⁷³ 3 & 4 William IV, c 98, s.7, A.D. 1833.

⁷⁴ 5 & 6 William IV. C 41, A.D. 1835.

⁷⁵ A practical treatise on bills of exchange, checks on bankers, promissory notes, bankers' cash notes and bank notes with references to the law of Scotland, France and America by Joseph Chitty, esq 1854 p 98.

⁷⁶ 2 & 3 Victoria, c 37 A.D. 1839.

⁷⁷ 17 & 18 Victoria, c.90 A.D.1854.

⁷⁸ Plowden was of the view that the proper meaning of the words, "acts, statutes and laws" and the construction that they intended to bear seems to include written and unwritten law, that is, both the statute and common law. The statute designated as "acts and statutes" and the common law described as "laws". Francis Plowden, LL.D., a Barrister of Lincoln's Inn. 'A Treatise upon the Law of Usury and Annuities' (London, 1796, 1797. 8 vo.) p 56.

⁷⁹ <https://www.theguardian.com/business/2009/jul/19/banking-royal-bank-scotlandgroup>.

campaigners by promising to cap the interest rates charged and to consider restricting lending on other financial products with egregious interest rates.⁸⁰

47. The Financial Conduct Authority⁸¹ has a duty to regulate fees and charges for providers of high cost short term credit in order to protect consumers from excessive charges. The “price cap rules”⁸² that were introduced by the Financial Conduct Authority in January 2015 impose a limit to the amount of fees and interest a consumer would pay, in particular if they were unable to meet repayments. Under the price cap rules, consumers cannot be charged more than 100% of the original loan value in fees and interest; there is a £15 cap on default fees; and, an initial cap of 0.8% interest per day cannot be exceeded.⁸³

(ii) *The Jamaica Statutory Position*

48. The various usury laws in the United Kingdom including the *Usury Repeal Act, 1854*, based on the examination by the Commission, were not expressly extended to the overseas colonies.⁸⁴ The first legislation enacted in Jamaica relating to usury was the *Jamaican Usury Law, 1905*. The Jamaican Usury Law placed a limit of 8 per cent on the aggregate amount of interest per annum on money lent.
49. The Jamaican Usury Law was later repealed by the *Moneylending Law, 1937* (later referred to as the “*Moneylending Act, 1938*”) which prohibits compound interest and provides that interest exceeding 20 per cent per annum shall be presumed by the court to be harsh and unconscionable.⁸⁵ The *Jamaican Money Lending Act* continues to be in force.

(iii) *The Cayman Islands Statutory Position*

50. Under the *Cayman Islands Act, 1863*,⁸⁶ the Cayman Islands became a dependency of Jamaica and received all of the Laws of Jamaica that were deemed applicable. The *Cayman Islands Act, 1863* was repealed by the *Cayman Islands and Turks and Caicos Islands Act, 1958*⁸⁷ which provided for the Cayman Islands to adopt a new Constitution, namely the Cayman Islands (Constitution) Order in Council 1959⁸⁸ (the “1959 Constitution”).
51. Although, the 1959 Constitution (as well as subsequent Constitutions) have sought to keep in force the existing Laws of the Cayman Islands, with Jamaica’s independence it was appropriate for the Cayman Islands to develop its independent body of statute law. The 1959 Constitution conferred law-making power “for the peace, order and good government of the Islands” on the Administrator, later the Governor, with the advice and consent of the Legislative Assembly, (now Parliament), with power reserved to Her Majesty in Council.

⁸⁰ <https://www.polishprofessionals.org.uk/aktualnosci,70/anti-usury-campaign-launched-at-city-of-london-assembly.html>.

⁸¹ See section 1A of the Financial Services and Markets Act 2000. Available at <https://www.legislation.gov.uk/ukpga/2000/8/data.pdf>.

⁸² <https://www.fca.org.uk/publication/policy/ps14-16.pdf>.

⁸³ Critical Research, Ten-16-075. Price Cap Research Summary Report <https://www.fca.org.uk/publication/research/price-cap-research.pdf>.

⁸⁴ The Colonial Laws Validity Act 1865.

⁸⁵ Money Lending Act, 1937, s 3(1).

⁸⁶ 1863 Cayman Islands Act (26 & 27 Vict. c. 31). 129, (the “Cayman Islands Act 1863”).

⁸⁷ 6 and 7 Eliz 2, c. 13. See https://www.legislation.gov.uk/ukpga/1958/13/pdfs/ukpga_19580013_en.pdf.

⁸⁸ (SI 1959 No. 863).

52. An Order in Council was one method through which Laws could have been extended to the Cayman Islands during this period. However, there is no evidence to suggest that any such Order was extended with respect to usury.
53. Section 3 of the Revised Edition of the *Cayman Islands Law, 1960* provided for the Governor to appoint Commissioners to prepare a revised edition of the laws of the Cayman Islands and to prepare, under section 8, a table of the Acts and Laws in force on 31 December, 1963. The Jamaica statutes that were deemed applicable to the Cayman Islands were compiled in the Law of the Cayman Islands Revised Edition 1963.
54. The consolidated list of the Cayman Islands Statutes found in the Cayman Islands Revised Edition 1963⁸⁹ sets out the laws that were in place when Cayman was removed as a dependent of Jamaica. The consolidated list does not however reflect the *Jamaican Money Lending Act, 1938* which was the Act which regulated the interest rates in Jamaica. Therefore, although the *Moneylending Act* is in force in Jamaica, this law was not extended to the Cayman Islands in any form.
55. It is arguable that the English usury laws pre-1727 did form part of the received laws of Jamaica. But Jamaica subsequently passed its own usury laws, including the *Jamaican Usury Law, 1905*, section 2 of which limited interest to a maximum of 8 per cent per annum. The *1905 Law* appears to have been repealed sometime before 1953, by which time the *Jamaican Moneylending Act, 1938* was the only relevant Jamaican/Caymanian statute restricting the amount of interest recoverable.
56. When the Cayman Islands became a separate British Overseas Territory in 1962, (the year Jamaica became an independent Commonwealth realm) many of the then existing Jamaican statutes were expressly adopted. Neither the *Jamaican Money Lending Act, 1938* assuming that it had not been repealed before 1962 nor any of the prior Jamaican Usury Laws were amongst them.
57. It is to be recalled that the *Usury Repeal Act, 1854* repealed “all existing laws against usury” in England.⁹⁰ Since this statute post-dates the time of reception (1725/1734), it forms a part of the law of the Cayman Islands only if it is made applicable by express words or by necessary intendment.
58. Pursuant to the *Colonial Laws Validity Act, 1865*⁹¹ there is nothing in the *Usury Repeal Act, 1854* that makes it apply to the Cayman Islands. In the Commission’s opinion, it is at least arguable that the Act does not apply here by necessary intendment either.
59. There are no statutory provisions of general application relating to usury in the Cayman Islands. The *Cooperative Societies Act (2001 Revision)* sets out that interest should be at a fair and reasonable rate. It is reasonable to construe these provisions as being aimed at usurious loans. However, the Act only applies to the members of a registered credit union. In order to

⁸⁹ Revised Edition (Laws of the Cayman Islands) (Amendment) Law, 1963 (the Revised Edition).

⁹⁰ Ibid, s 1.

⁹¹ *Colonial Laws Validity Act, 1865*, 28 & 29 Vict., c. 63.

have effective statutory legislation over the commercial banks, legislation similar to the *Jamaican Moneylending Act* would be required.

60. Additionally, the *Building Societies Act (2014 Revision)* prohibits any society from charging interest in excess of 12.5 per cent per annum.⁹² Similar to the *Cooperative Societies Act (2001 Revision)*, this legislation is only applicable to a building society established pursuant to the rules of the *Building Societies Act*. While statutory usury provisions are in place, these provisions only extend to certain societies.

CONCLUSION

61. The tracing of the common law and statute law may portray a complex and perhaps uncertain picture about the status of usury in the Cayman Islands. We know that the *Interpretation Act (1995 Revision)* provides that laws before 1728 *George II* should be saved. We have articulated the constitutional relationship between Cayman Islands and Jamaica and have established that despite the express repeal of all acts, statutes and laws by the *Usury Repeal Act, 1854*, the Cayman Islands did not receive the *Usury Repeal Act, 1854*. The evidence suggests that the common law still existed in 1729 and was saved by the *Interpretation Act*. The Law Reform Commission is therefore of the view that there is a strong basis to argue that the common law prohibition on usury remains applicable in the Cayman Islands.
62. As indicated earlier in this discussion, legal commentators have suggested that no law exists in the Cayman Islands which restricts the imposition of interest on monies borrowed. While we must acknowledge the existence of the *Cooperative Societies Act (2001 Revision)* and the *Building Societies Act (2014 Revision)*, these statutes are of specific and limited application.

RECOMMENDATIONS

63. Given the views on this issue emerging from case law and legal commentators, the Law Reform Commission believes that legislative clarity would be beneficial to stakeholders operating within the commercial and financial sectors. Should it ever be deemed necessary or desirable to impose restrictions on rates of interest charged in any commercial contract, the Commission is of the view that it would be more appropriate for such restriction to be included in legislation which prescribes the precise scope and extent of such restriction.
64. The Commission accordingly recommends the formulation of usury abrogation legislation which will seek to abrogate any common law rule in relation to usury. It is also recommended that the legislation provide that it will not –
- (a) affect the rights or remedies of a person who is a party to an agreement;
 - (b) diminish or alter the liabilities of a person who is a party to an agreement;
 - (c) affect the interest payable under an agreement, whether express or implied; or
 - (d) affect any debt or sum of money in respect of which interest is payable under an agreement.

⁹² *Building Societies Act (2014 Revision)*, s 5(1).

65. The Commission accordingly recommends for consideration, the *Usury (Common Law Abrogation) Bill, 2021* as reflected in the appendix.

The Cayman Islands Law Reform Commission

APPENDIX

The Usury (Common Law Abrogation) Bill, 2021