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LIMITS ON INTEREST RATES IN MARYLAND

By HAL M. SMITH*

In his recent article on Maryland zoning cases, Mr. Liebmann suggests that the court of appeals is following a policy of judicial restraint, refraining from interfering with legislative decisions.¹ He applauds the court's devotion to certainty in the law² and its support of legislative decisions. On the other hand, he seems to endorse the generalization that "to express a preference for local (or in many instances state) regulation of industries is to express a preference for a measure of laissez-faire."³ Recent decisions in the area of credit charges and interest could be used to support either the judicial restraint or the laissez-faire hypothesis. However, in accord with recognized legal method and the teaching of Mr. Liebmann, the temptation to "test" such over-simplified explanations of judicial behavior must be resisted. The proper question, at least to a lawyer, is whether the decisions are based on sense and reason, when tested against the discoverable legislative policies and the current needs of commerce and society.

Maryland has had a general usury statute limiting interest to six per cent since 1692.⁴ Usurious loans were declared void, and a treble forfeiture was imposed. However, since an 1845 revision of the statute, the only effect of charging usury is that the excess interest above the legal rate cannot be collected.⁵

Little can be said as to the reasonableness of the six per cent limit when enacted. Homer summarizes the lack of evidence as follows:

The extreme scarcity of specie led to many expedients, but not to a record of very high interest rates. High rates no doubt existed in commercial and personal transactions. But high interest rates were vigorously opposed by colonial law and custom and were therefore negotiated secretly and have not come down to us. Many very high rates will be reported from the Western frontier and from nineteenth century money markets, but few from the colonial period.⁶

Expedients to avoid usury limitations are undoubtedly still utilized.⁷ On the sale of goods or real estate on credit, the true interest rate can

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1. Liebmann, *Maryland Zoning — The Court And Its Critics*, 27 MD. L. REV. 39, 52 (1967).

2. *Id.* at 48.

3. *Id.* at 44.

4. Ch. 75, [1692] Laws of Maryland, as set forth in Archives of Md., Proceedings and Acts of the General Assembly of Md., 1684-1692 (1894) at 540. On loans payable in commodities, the limit was eight per cent per annum. The general limit is found in MD. CODE ANN. art. 49, §§ 1, 1A, 3 (1964 repl. vol.). § 3 being a fairly direct descendant of the 1692 statute.

5. Ch. 352, § 4, [1845] Laws of Maryland, now codified as MD. CODE ANN. art. 49, §§ 4, 5 (1964 repl. vol.). Moreover, once a debt plus usurious interest is fully paid, the usurious interest cannot be recovered. MD. CODE ANN. art. 49, § 5 (1964 repl. vol.).

6. S. HOMER, A HISTORY OF INTEREST RATES 275 (1963).

7. See Hershman, *Usury and the Tight Money Market*, 22 BUS. LAW. 333 (1967); Shanks, *Practical Problems in the Application of Archaic Usury Statutes*,

often be hidden by simply charging more, and effective limitation by law may not even be possible. Over the past three centuries, prime interest rates have typically been well below six per cent, although not always, and possibly the six per cent limit was fairly workable at most times.⁸ When the bankers of Maryland obtained special relief allowing discounting in 1827,⁹ they perhaps could also have obtained an increase in the rate if the statutory six per cent was so low that many needy farmers were unable to obtain loans.¹⁰

The pattern in this century has been to regulate particular types of loans by particular statutes.¹¹ In addition to Article 49, which contains the general provisions as to usury, Maryland now has nine different statutory limits on interest rates or credit charges. These statutes will be mentioned individually later, and the rates which can be charged under them are summarized in the table at the conclusion of this article. This legislative accumulation leaves many areas unregulated and many unanswered questions. It certainly prevents some high risk borrowers from obtaining loans through legal channels, as would any usury statute. As the prime interest rate rose to six per cent in 1966, the number who could not borrow at legal rates increased, and the need for relaxation of the usual six per cent legal limit became greater. The need to protect the borrower also continues, and passage of the federal Truth in Lending Act, requiring a lender to clearly state the true interest rate being charged, seems likely this year.¹² The Federal Trade Commission has proposed standards of disclosure in retail credit.¹³ The National Conference of Commissioners on Uniform State Laws is preparing comprehensive consumer protection legislation.¹⁴ On the other hand, in a recent article in this *Review* it was suggested that the general statutory limit be set on a flexible basis and that there be no interest ceiling on loans of not less than \$10,000 made to allow the borrower to carry on or acquire a business.¹⁵ Pending further legislation to clarify and improve the regu-

53 VA. L. REV. 327, 332-33 (1967); Comment, *Syndicate Loan-Shark Activities and New York's Usury Statute*, 66 COLUM. L. REV. 167 (1966).

8. See S. HOMER, A HISTORY OF INTEREST RATES (1963), chs. XVI, XVII.

9. Ch. 99, [1826] Laws of Maryland.

10. For a study demonstrating the various factors influencing political decisions on usury, including whether prices are rising or falling, see Friedman, *The Usury Laws of Wisconsin: A Study in Legal and Social History*, 1963 WIS. L. REV. 515.

11. Maryland was one of the first states to adopt small loan regulation. Ch. 836, [1912] Laws of Maryland 1621. This was replaced by the Uniform Small Loan Act in 1918. Ch. 88, [1918] Laws of Maryland 197, now found as MD. CODE ANN. art. 58A (1964 repl. vol.).

12. The Truth in Lending Act, S. 5, 90th Cong., 1st Sess. (1967), has been passed by the Senate and is pending before the House.

13. Proposed Guides Relating to Retail Credit Transactions, Dec. 24, 1966.

14. The Second Tentative Draft was discussed at the Conference's annual meeting last summer. The proposal is to cover in one code regulation of credit sales, revolving credit, credit cards, small loans and credit insurance. See Jordan & Warren, *A Proposed Uniform Code for Consumer Credit*, 8 B.C. IND. & COM. L. REV. 441 (1967).

15. Merriman & Hanks, *Revising State Usury Statutes in Light of a Tight Money Market*, 27 MD. L. REV. 1 (1967). A recent move in this direction is considered in a Note, *Usury — An Analysis of Usury Legislation and the Mississippi Corporate Exception Statute*, 38 MISS. L. REV. 347 (1967). Like Mississippi, New

lation of interest in Maryland, the court must accommodate the individual desire to borrow at whatever interest rate can be obtained in the market with the legislative policy of protecting powerless¹⁶ or possibly unwary borrowers from excessive interest charges. As a collateral benefit, a study of the response of the Maryland Court of Appeals to this conflict demonstrates the creative common law judicial process.

The consumer credit industry usually quotes interest rates on the basis of advance calculation on the original amount loaned, with a six per cent rate yielding an actuarial interest of about eleven per cent. The pending federal Truth in Lending Act would change this by requiring the lender to disclose both the total dollar credit charges and the "nominal annual rate determined by the actuarial method (United States rule)."¹⁷ What is known as the United States rule for computing interest was stated in *Story v. Livingston*.¹⁸

The correct rule, in general, is, that the creditor shall calculate interest, whenever a payment is made. To this interest, the payment is first to be applied; and if it exceed the interest due, the balance is to be applied to diminish the principal. If the payment fall short of the interest, the balance of interest is not to be added to the principal so as to produce interest.

Interest rates computed by this method will occasionally be referred to as true or real interest rates.

THE RECENT MARYLAND DECISIONS

In 1966 and 1967, the Maryland Court of Appeals decided three important cases affecting interest rates. In *Falcone v. Palmer Ford, Inc.*,¹⁹ the court decided that the credit charge rates fixed in the Retail Installment Sales Act²⁰ for the sale of automobiles could be calculated in advance rather than on the declining balance due over the term of the extension of credit, thus allowing a true rate of about sixteen to twenty-seven per cent per year. In *Rothman v. Silver*,²¹ the court decided that a "promise to pay \$9,072 of deferred purchase price and \$2,177.28 of interest thereon" in equal installments over a four-year period was an agreement to pay only a credit price and not an agreement to pay any interest, so that the usury law was not applicable. In *Crest Investment Trust, Inc. v. Cohen*,²² it decided that it was not usurious both to compute interest in advance on the nominal amount of an installment loan at the maximum rate and to deduct the interest

York now has at least some interest limit on loans to corporations (25%). N.Y. PENAL LAW § 2401 (McKinney Supp. 1966).

16. In *Carozza v. Fed. Fin. & Credit Co.*, 149 Md. 223, 249, 131 A. 332, 342 (1925), the court said: "There is general recognition that laws against usury sprang from the notion that the needy and driven borrower was, by reason of his unfortunate circumstances, subject to the domination of the lender, with disastrous pecuniary loss and personal hardship."

17. S. 5, 90th Cong., 1st Sess. § 3(f)(1) (1967).

18. 38 U.S. 359, 370 (1839).

19. 242 Md. 487, 219 A.2d 808 (1966).

20. MD. CODE ANN. art. 83, §§ 128-53 (1965 repl. vol.).

21. 245 Md. 292, 294, 226 A.2d 308, 310 (1967).

22. 245 Md. 639, 227 A.2d 8 (1967).

so computed from the nominal principal amount to determine the amount actually to be advanced to the borrower.

Prior to these decisions, it was not clear in Maryland that credit sellers of automobiles could charge the statutory rates of interest for the whole term of the loan on the initial balance due. Moreover, it was not settled that credit sellers of goods other than motor vehicles could charge more than the general statutory rate of six per cent, whether computed in advance or in real interest terms on the declining balance.²³ And despite the dicta in two 1958 cases,²⁴ it was not finally settled that the seller of an automobile worth more than \$2,000 was limited only by the rates in the Retail Installment Sales Act rather than the general statutory rate of six per cent.

The Retail Installment Sales Act until 1965 defined "goods" as "all chattels personal having a cash price of two thousand dollars or less."²⁵ The amount was raised to \$5,000 in 1965. "Installment sale agreement" is defined as "any contract for the retail sale of goods. . . ."²⁶ Section 132 of the Act provides:

- (a) Time balance may include finance and insurance charges. The time balance in an installment sale agreement for a motor vehicle may include a finance charge. . . .
- (b) Maximum finance charge. — The finance charge imposed on the sales of a motor vehicle shall not exceed [certain rates].²⁷

Returning to definitions, we find also that "'Finance charge' means the amount in excess of the cash price of the goods sold . . . to be paid by the buyer for the privilege of purchasing the goods *under the installment sale agreement*."²⁸

Once it is assumed that the Act applies, the *Falcone* decision follows necessarily from the words of the Act. Section 132 prescribes the rates chargeable "on the principal balance." Principal balance is clearly defined to mean the balance due at the beginning, as required to be entered on the sales contract.²⁹ But the assumption that all credit sales of automobiles are regulated by a statute which only regulates sales up to a certain amount of money is questionable. The original Act, passed in 1941,³⁰ has a stated purpose of "regulating certain installment sales and installment sale agreements." It did not have a purpose of regulating credit sales above the stated dollar amount or where no security is retained by the seller, for these transactions were not within the limiting definitions. The 1954 amendment³¹ did have a title indicating regulation of credit charges on all automobile sales, but

23. In 1963, the time price doctrine was approved by the Attorney General even as to certain revolving credit arrangements. 48 MD. ATT'Y GEN. OPS. 260 (1963).

24. *Nuttall v. Baker*, 217 Md. 454, 456, 143 A.2d 500, 501 (1958); *Automobile Acceptance Corp. v. Universal C.I.T. Credit Corp.*, 216 Md. 344, 354, 139 A.2d 683, 688 (1958).

25. MD. CODE ANN. art. 83, § 152 (1957).

26. MD. CODE ANN. art. 83, § 152(b) (1965 repl. vol.).

27. MD. CODE ANN. art. 83, § 132 (1965 repl. vol.).

28. MD. CODE ANN. art. 83, § 152(m) (1965 repl. vol.) (emphasis added).

29. MD. CODE ANN. art. 83, §§ 152(a), 129(a) (1965 repl. vol.).

30. Ch. 851, [1941] Laws of Maryland 1501.

31. Ch. 80, [1954] Laws of Maryland 258.

vague titling is not controlling and the reference to "installment sale agreement" in section 132(a) could well have been held to limit its application.

Why did the auto dealers accept the earlier dicta without a day in court? It had not been settled whether the six per cent statute applied to credit sales, including sales of automobiles, for more than \$2,000 (\$5,000). Undoubtedly the auto industry was content with a definite and liberal limit of nine to fifteen per cent or, if the credit could be computed in advance, of about sixteen to twenty-seven per cent, rather than facing the possibility of a limit of six per cent or, if computation in advance was allowable, of about eleven per cent. The *Rothman* case, which established the time-price doctrine in Maryland, was not decided until 1967. And few would have dreamed of the freedom of the *Crest* case.

Rothman v. Silver could have been decided by allowing interest to be charged in advance under the general usury statute. The seller of a taxicab and franchise had added six per cent of the balance due on the agreed cash price to compute the installments due under the note and mortgage, thus collecting credit charges on the declining balance of more than eleven per cent. However, the court chose to validate the deal by opting for an extreme version of the time-price doctrine. The time-price doctrine essentially provides that if a seller charges more for goods sold on credit than he would if he had sold them for cash, he is merely charging a time-price for the goods and is not charging interest. The Maryland court was undoubtedly right in stating that the great weight of authorities validated a bona fide time-price "even though the price on credit is arrived at by adding a per cent to the cash price in excess of the legal rate of interest or is stated as a rate of interest."³² But the "Agreement of Sale" in question was for the sale of "the taxicab and the franchise for \$2,000 in cash and a balance of \$9,072 'to be secured by a Purchase Money Chattel Mortgage and a Confessed Judgment Note, both of which shall provide for the payment of said balance, plus interest at six per cent'. . . ."³³ Both the mortgage and the note were also phrased in terms of a price of \$9,072 plus interest. It is submitted that the court of appeals could have decided that there was at least a question of fact as to whether there was a bona fide time-price,³⁴ rather than concluding that Rothman

32. 245 Md. at 298, 226 A.2d at 311-12. See Annot., 14 A.L.R.3d 1065 (1967). The court's suggestion that such is the rule in "some forty-six states" must be viewed as a clerical error, for only forty-six states have general usury statutes. Comment, *Limiting Consumer Credit Charges by Reinterpretation of General Usury Laws and by Separate Regulation*, 55 Nw. U.L. Rev. 303 (1960).

33. 245 Md. at 215, 226 A.2d at 310.

34. See *Raben v. Overseas Barters, Inc.*, 36 U.S.L.W. 2107 (N.Y. Sup. Ct. 1967); Annot., 14 A.L.R.3d 1065, 1124-36 (1967). The writer of a Note, *Judicial and Legislative Treatment of "Usurious" Credit Sales*, 71 HARV. L. REV. 1143, 1145 (1958), stated:

The chief requisite of this doctrine is that the credit price — the "bona fide time price" — be stated as a total price specifically agreed upon by the parties as complete payment rather than a sum arrived at by adding various charges to the cash price, the periodic payments then being computed on the basis of a total price which is never revealed.

In *Financial Credit Corp. v. Williams*, 229 A.2d 712 (Md. 1967), the parties had agreed upon a contract price of \$3200, of which \$2160 was to repay another in-

was entitled to payment in full of all installments provided in the note. Moreover, one primary foundation of the time-price cases has been that the state's general usury statute applies only to the forbearance of money, not goods.³⁵ In Maryland, Section 3 of Article 49 expressly covers a loan of goods or chattels. Of course, our legal thinking permits the court to say that a sale is not a loan, if policy so demands.

The facts in the *Crest* case were not in dispute, the case having been disposed of on motions for summary judgment. The *Crest* loan was characterized by the court of appeals as follows:

Cohen needed \$10,000 to buy a taxicab and the Public Service Commission permit authorizing its use. Crest loaned him the money. . . . Crest had him sign a \$14,500 note which required 261 successive weekly payments of \$55 and a final payment of \$145.00.³⁶

Although the court of appeals focused on the final form of the note, the trial court seemed more interested in the substance of the transaction. Judge Harris found the following:

The undisputed facts in this case show that . . . the complainant . . . purchased a taxicab, together with the Public Service Commission permit applicable thereto, for a price of \$10,000; that he borrowed the sum of \$10,000 from the respondent . . . in payment therefor; that he was given a settlement sheet . . . which disclosed that a purchase price mortgage loan was obtained from Crest in the total sum of \$14,500, and the \$10,000 paid for the taxicab. There is no reference in the settlement sheet to any charge made for an insurance premium.³⁷

When Cohen failed to pass the necessary medical examination, \$500 was refunded to him, representing the cost of credit life insurance which Crest had intended to obtain. The note was secured by a chattel mortgage of the taxi and permit, by a mortgage of two parcels of improved real estate, and by a partial guarantee of the note by the Checker Cab Company.

The issue, as seen by the court of appeals, was whether Crest could "charge, as it did here, 13.46 per cent interest." Crest's theory,

stallment loan owed by the borrower, about \$500 represented the cost of certain home improvements, and the remainder was understood to be finance and insurance charges. After the contract for \$3200 was signed, the creditor got the debtor to sign a note and mortgage in the amount of \$6,399.60. The case chiefly turned on a finding of fraud, but the court did say that the difference between the \$3200 agreed price and the \$6,399.60 was interest and was usurious. 229 A.2d at 713. If the original contract had called for the signing of a note with additional finance charges, so the transaction could be said to be "integrated" as in *Rothman*, the *Rothman* case perhaps would require the conclusion that there was no usury under its broad phrasing of the time-price doctrine. The *Williams* case did hold, on a minor issue, that the \$3200 contract was not usurious under the time price doctrine. The court placed the burden of proof on the borrower as follows: "There was no evidence to show that \$3200 did not include a 'time-price' for home improvements. . . ." 229 A.2d at 717.

35. *E.g.*, *General Motors Acceptance Corp. v. Weinrich*, 218 Mo. App. 68, 262 S.W. 425 (1924).

36. 245 Md. at 640-41, 227 A.2d at 9.

37. Brief for Appellant at E.2, *Crest Inv. Trust, Inc. v. Cohen*, 245 Md. 639, 227 A.2d 8 (1967).

accepted by the court, was that the loan was really of \$14,500, not \$10,000 or \$10,500, and the interest charged on this amount exceeded by only \$12.50 a rate of five and one-half per cent per annum in advance. Cohen contended that the \$4,500 charge on a loan of \$10,000 was based on an interest rate of nine per cent per annum "add-on;" or considering the refund of \$500, constituted an "add-on" rate of 7.6 plus per cent. As all agreed that the applicable limit was six per cent, the allowable method of computing the interest became the crucial issue. Neither the trial court nor the court of appeals seemed to think that the factual question of how the interest charge had in fact been computed or agreed upon was very important.

Cohen's amended complaint sought relief from all interest over that due on a loan of \$10,000 on a direct reduction basis, that is, computed from week to week on the declining balance due. This method would have allowed interest of about \$1200.³⁸ The trial court accepted this method, modifying the requested relief only to the extent of treating the \$500 refund as additional principal loaned. The court of appeals held that the maximum allowable interest on a five year loan is thirty per cent of the sum of the principal and interest, that is, that the discount method can be used along with the computation in advance. Thus on a five year loan of \$10,500, a Maryland lender is allowed to charge \$4,500 interest, not just the \$3,150 chargeable under the add-on or computation in advance method. As pointed out in appellee's brief,³⁹ this allows a real interest rate of 15.04 per cent. As it would seem that the court of appeals also held that an additional charge of two per cent for investigation can be made, this would raise the allowable true interest rate on a five year loan to about 16.5 per cent. Under the advance and discount method now allowed, a ten year true loan of \$760 would be represented by a note for \$2000 (60% interest and 2% investigation fee), the borrower paying about twenty-four per cent a year interest.

The 1963 amendment⁴⁰ to the general usury statute clearly allows the add-on, or computation in advance, method of computing interest except where the loan is secured by a mortgage on real estate. Since the six per cent statutory rate was unrealistic even in 1962, there could be no quarrel with a decision that the add-on method, allowing somewhat less than twelve per cent true interest, could and should have been permitted under the pre-1963 interest statute. The twelve per cent would remain as a uniform limit, regardless of the term of the loan. The argument used by the court to get beyond this twelve per cent limit is a disturbing tribute to the flexibility of our legal rules.

The argument of appellant Crest which was accepted by the court of appeals was that a computation by an advance-discount method was

38. At \$55 a week the loan would have been fully repaid in less than four years. The plaintiff in his amended complaint sought to be relieved of all interest charges in excess of \$1,100 on the basis of his declining balance computation and his having tendered payment in full before the end of the five year term.

39. Brief for Appellee at 9, *Crest Inv. Trust, Inc. v. Cohen*, 245 Md. 639, 227 A.2d 8 (1967).

40. Ch. 871, [1963] *Laws of Maryland 2014*, appearing as MD. CODE ANN. art. 49, § 1A (1964 repl. vol.).

allowed by Section 22 of Article 58A of the Maryland Code which provides:⁴¹

This Article shall not apply to any person, copartnership or corporation doing business under any law of this State, or of the United States, relating to banks, trust companies or building and loan associations, or to companies or corporations making loans at a rate of interest not exceeding 6% per annum, on the principal amount of the loan, in advance, charging an investigation fee not exceeding four (4%) per cent of the amount of the loan, or loans of three hundred dollars (\$300) or less and charging a fee of not exceeding 2% on amount above three hundred dollars (\$300) which companies, persons or corporations may require the borrower to give as security for such loan, mortgage on real or personal property, or to purchase certificates of investment . . . and to pay therefor in equal weekly or monthly installments covering approximately the period of the loan. . . .

A natural reading of this statute is that it specifies certain persons who are not subject to "this Article," that is, the Uniform Small Loan Law.⁴² But this reading would not give effect to the language as to investigation fees on loans for more than \$300. The small loans act only regulates persons in the business of making loans up to \$300, so it is arguable that section 22 constitutes an affirmative grant of authority rather than merely an exemption from the Article. The authorization of Morris plan loans⁴³ by this section is further evidence that an affirmative grant of power was intended.

The opinion of the court of appeals reads more like the decision of a court in a civil law jurisdiction than one in the Anglo-American tradition.⁴⁴ A 1957 opinion of the Attorney General⁴⁵ is quoted at length, omitting the factual problem being discussed by the Attorney General, and the language is adopted as the proper reading of the statute. The usual bridge to legislative intent is made by saying:⁴⁶

However marginal the views of the Attorney General may have been in March 1957, it must be conceded that subsequent

41. MD. CODE ANN. art. 58A, § 22 (1964 repl. vol.).

42. This section can be read as exempting banks, regardless of the interest they charge, as is done in the Act regulating Industrial Finance Companies, MD. CODE ANN. art. 11, § 166 (1957).

43. See B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION 52-53 (1965), for a description of the practice of requiring purchase of investment certificates as a means of increasing the true interest rate. A statute authorizing this method of charging interest on the initial amount of an installment loan was held to conflict with a constitutional usury provision in *Community Fin. & Thrift Corp. v. State*, 343 S.W.2d 232 (Tex. 1961). The offended constitutional provision was amended in 1960. TEX. CONST. art. XVI, § 11 (1876), as amended.

44. Professor Schlesinger states:

A civilian often displays a lack of interest in the precise facts of the former case on which he relies. . . . The abstract proposition which can be distilled from a precedent or a line of precedents is more likely to impress itself on a civilian's memory than the factual setting in which that proposition was applied. R. SCHLESINGER, COMPARATIVE LAW 313 (2d ed. 1959).

45. 42 MD. ATT'Y GEN. OPS. 68 (1957).

46. 245 Md. at 647-48, 227 A.2d at 13.

events, or the lack thereof, have enhanced their validity. The Legislature has since met, in either regular or special session, seventeen times and is presently in regular session. It cannot be supposed that the published opinion of the Attorney General rendered to such an important state agency in respect of a business practice in which so many citizens have an interest, can have escaped the notice of the Legislature. Indeed, standing alone the passage of Chap. 871 of the Laws of 1963, Code, Art. 49, § 1A (Repl. Vol. 1964), would suggest that the Legislature took a hard look at the practice of charging or deducting interest in advance.

The court then goes on to dismiss some contrary legislative history as to computing interest in advance on the sole authority of the opinion of the Attorney General.

The question before the Attorney General was the validity of the following procedure:⁴⁷

This procedure is to calculate 6% per annum (illustration with a \$100.00 loan), \$6.00, and to add it to the loan (\$6.00 plus \$100.00), \$106.00 being the amount of the note taken. \$100 is given borrower. This is then made payable in twelve installments, one due in each of the next successive twelve months. . . .

The Attorney General recognized that Section 22 does not contain a clear affirmative grant of power. However, he found some support for such a reading in the titles of acts amending the section. He then cited general authorities on long established administrative practice and concluded:⁴⁸

Similarly, the Legislature, following the passage of the original Act in 1918, undoubtedly had knowledge of the fact that banks and other institutions employed the discount procedure under discussion, and in 1939 even inserted the words "in advance" to describe the procedure accurately. In our opinion there is no impelling reason to depart from a construction of the said Section 22 which has been accepted for many years by your Department and concurred in by the Maryland Legislature.

We, therefore, conclude that Section 22 of Article 58A exempts from the application of the usury laws the practice in question of discounting 6% interest per annum in advance and requiring the borrower to repay the principal amount of the loan in equal weekly or monthly installments.

Although the Attorney General used the words "discounting 6% interest per annum in advance," he was talking about advancing \$100 and charging \$6 per year interest. Had the discussion been of discounting in the sense used by Crest in justifying its charges to Cohen, then the interest charged would have been about \$6.38 on a loan of \$106.38, with \$100 being advanced.

47. 42 MD. ATT'Y GEN. OPS. 68 (1957).

48. *Id.* at 75.

The use of the word "discounting" by the Attorney General was inaccurate, inapplicable to the facts being considered, and apparently inadvertant. Its use by the court of appeals was not inadvertant, for the Appellant's brief devoted more than five of its thirteen pages of argument to the issue: "Do the words IN ADVANCE as used in Article 58A Section 22 permit the DISCOUNTING of all interest charged on a term loan at the inception of the loan where the loan is paid back in equal periodic installments?"⁴⁹ One cannot argue with Appellant's position, supported by a multitude of quotations, that a discount is interest taken in advance from the agreed principal amount. Of course, that is not what Crest did. All agreed that Cohen wanted and got a loan of \$10,000 (at \$10,500), not \$14,500. Nor do general quotations of commercial meaning of terms determine how a statute such as Section 22 using the term "principal amount of the loan" is to be read. On a fifteen year loan of \$100 at six per cent, the interest in advance is \$90. If the borrower is given only \$10 but signs a note for \$100, the principal amount can be said to be \$100 only by a technical reliance on language contrary to accepted legal method requiring a consideration of substance, context, and policy.

It can be urged that no ambiguous usury statute should be construed to allow both computation of interest in advance and discounting because the limit on the real interest rate becomes very high, the interest rate used in selling the loan and calculating the deal may be deceptive, and the limit varies with the term of the loan. To illustrate only the deception point, a person who borrows \$2,000 for three years at 4.5 per cent interest may find himself paying on the advance-discount basis or on the slightly less burdensome double add-on basis. Under the double add-on system, the bank would first add on 13.5 per cent (4.5 times 3 years) of the \$2,000, or \$270; then it would add on 13.5 per cent of the \$270, giving a total due of \$2,306.45. The true interest rate would be nearly ten per cent, but the customer is told he is getting a 4.5 per cent loan.

The 1957 opinion of the Attorney General was concerned with the computation of interest in advance on installment loans, not with discounting. He found that advance computation at six per cent was usurious under Article 49,⁵⁰ but not under § 22 of Article 58A. Citing court of appeals' decisions in which it was stated that Article 49 could not be avoided by any subterfuge, he assumed that the true interest rate was the rate intended by Article 49. This conclusion is in line with the authority in other states interpreting general usury statutes.⁵¹ No Maryland cases have been found, prior to *Rothman* and *Crest*, where the issue of computation of interest in advance on installment loans was contested.

On the issue of discounting, however, there is considerable authority that the maximum interest chargeable is determined by applying

49. Brief for Appellant at 5, *Crest Inv. Trust, Inc. v. Cohen*, 245 Md. 639, 227 A.2d 8 (1967).

50. He concluded it was usurious under § 3 of art. 49, which further shows that he was not concerned with discounting in the usual sense, as to which the § 1 language "charge or deduct" would have been important.

51. Annot., 57 A.L.R.2d 630, 663-67 (1958).

the legal rate to the actual amount advanced. In the 1882 case of *Montague v. Sewell*,⁵² a loan was disguised as a sale by the borrower of his interest in real estate, the lender leasing the ground rent back with an option to repurchase. The borrower wanted \$30,000 and was willing to pay up to 6.5 per cent interest. The lender advanced the \$30,000, but the papers were drawn on the basis of a sale with lease-back and a repurchase option at \$31,500. The annual rent was fixed at six per cent of the \$31,500, as to which the court said, "rent was required to be paid in respect to \$1,500 of the price of the ground rent that had never been received by the parties selling it." The court concluded that all amounts above six per cent for ten years calculated on the actual loan of \$30,000 were usurious.⁵³ Since *Crest* was expressly based on statutory language first appearing in 1939, it cannot technically be said that *Crest* has overruled *Montague*. But it is reasonably clear that the *Crest* holding applied to the *Montague* facts would indicate that the total obligation undertaken by the borrower was the \$31,500 option price plus the ten years rent of \$18,900, a total of \$50,400; since six per cent interest is allowed over the ten years, the lender could have advanced as little as \$20,160 without being guilty of usury.

The *Crest* case is distinguishable from *Montague* in that in *Crest* the note for \$14,500 did not bear interest. Discounting of short term, single payment loans is clearly valid under the prior decisions.⁵⁴ But it is doubtful that this principle should have been applied to the facts of *Crest*, where Cohen wanted a loan of \$10,000, not \$14,500, for a long term. There is nothing in the *Crest* record indicating what interest rate Cohen thought he was paying. Under the *Montague* decision, if a borrower asks for a loan of \$100 for three years, and the lender agrees to advance him \$100 at six per cent interest, and \$100 is actually advanced, then the loan is for \$100, and the maximum interest which can be charged is \$18. Neither the double add-on method producing an interest of \$21.24 nor the advance-discount method producing an interest of \$22 would have been proper, even though the final note is for the combined principal and interest.

Where the negotiations are for a \$100 loan for three years at six per cent, but only \$82 is advanced to the borrower, there would be a true discount. Perhaps if the parties really agree to a discount basis of charging the interest and the borrower still goes through with the deal even after he sees how little he is getting, then the discount method

52. 57 Md. 407 (1882).

53. The same result was reached in *Gaither v. Clarke*, 67 Md. 18, 31-32 (1887). See also *Brenner v. Plitt*, 182 Md. 348, 351, 34 A.2d 853, 855 (1943), where the court suggests that the interest is to be computed on the amount actually advanced against a mortgage bearing 6% interest payable in installments. *Andrews v. Poe*, 30 Md. 485 (1869) and *Real Estate Trustee v. Lentz*, 153 Md. 624, 139 A. 351 (1927) arrived at a contrary result, allowing interest on the face amount, but apparently without the issue having been contested. On the other hand, the court in these last two cases did not engage in a computation of the interest in advance to try to validate part or all of the bonus or discount. The parties intended 6% on the declining balances and the lender was stuck with that method.

54. *Duncan v. Maryland Savings Institution*, 10 Gill & J. 299 (Md. 1838). See *Penrose v. Canton Nat'l Bank*, 147 Md. 200, 127 A. 852 (1925).

should be allowed. The practical problems of selling a loan should provide a barrier against gross abuse in this area. Thus if a borrower understood that the bank was loaning him \$1,000 for ten years but at closing was told that he would actually receive only \$400, he would probably back out of the deal. A more certain solution would have been to decide that the reference to *Rowlett's Tables* in Section 1 of Article 49 meant that that section was limited to loans for two years or less.⁵⁵ As to longer loans, Section 3 of Article 49 should be applied. Section 3 is the descendant of the original 1704 usury statute and, although amended by Section 1, continues in the Code and should perhaps be given some meaning. The ancient definition of allowable interest in Section 3 is the exacting one of "the value of six dollars for the forbearance of one hundred dollars for one year." Under this language there would be little doubt that the relevant amount is the amount actually "foreborne," *i.e.*, advanced to the borrower. In any event, the fact that the court relied on Section 22 of Article 58A, which only speaks of "making loans at a rate of interest not exceeding six per cent per annum, on the principal amount of the loan, in advance" and does not even use the language of Section 1 of Article 49, "charge or deduct," requires the conclusion that the court was making law in the *Crest* case, not just applying it.⁵⁶

Despite the weaknesses in the court's reasoning, it is difficult to say that the decision was wrong. If legitimate commercial needs demand an interest rate of more than twelve per cent per annum, then the *Crest* holding may be viewed as being in the grand tradition of

55. J. ROWLETT'S TABLES OF DISCOUNT, OR INTEREST (1802), set forth the interest on amounts from \$1 to \$5,000 at 6% for times from one day to twenty-four months. It contains no suggestion as to whether discounting or computation in advance is allowable except from the use of the words discount and interest interchangeably. See Annot., 35 A.L.R.2d 842, 850 (1954), for cases indicating that ROWLETT'S TABLES permit using a 360 day year as a basis for calculating interest. Although there are cases limiting discounting to short term loans, Annot., 57 A.L.R.2d 630, 637, 640 (1956), no such case has been found which relies on ROWLETT'S TABLES to reach the result.

56. In *Agostini v. Colonial Trust Co.*, 28 Del. Ch. 39, 36 A.2d 33 (1944), a different conclusion was reached under a Small Loan Act which provided: "Any such lender may charge in advance the legal rate of interest of six per cent upon the entire amount of the loan and may make such loan [repayable in installments]." 36 A.2d at 37. The court concluded that this provision should be interpreted as adopting the prior law as to general usury statutes, which permitted discounting only for short term loans. It said, at 37-38:

There is no express limitation of the period for which interest may be thus charged in advance. However, it is clear that unless the period be restricted, the actual rate of interest would be shockingly high in cases of loans for relatively long terms. . . . Such a construction would defeat one of the purposes of the statute, which is to restrict the rate of interest chargeable upon loans permitted by the act.

It further said, at 39, "This construction by no means renders the provision superfluous. In view of the authorization to make loans repayable in installments, there is grave doubt that advance collections of interest computed on the entire amount of a loan would be permissible unless expressly authorized." But see a later opinion, *Agostini v. Colonial Trust Co.*, 28 Del. Ch. 360, 44 A.2d 21 (1945), suggesting that proof of a contrary banking custom would have required a contrary result. In *Allen v. Dunn*, 71 Neb. 831, 99 N.W. 680, 681 (1904), a statute providing that "such rate of interest, when agreed upon, may be taken yearly or for any shorter period, or in advance, if so expressly agreed" was held to mean that "the taking of interest for more than one year in advance is unauthorized, if by such action more than 10% interest is received."

common law judging. It is not certain that the holding is contrary to legislative intent, especially since legislative intent can properly be re-interpreted in the light of modern high interest rates and the great increase in the number of possible sources of credit.⁵⁷ No definitive answer can be given as to what are reasonable interest charges. The factual settings are too varied. A nearly insolvent businessman may reasonably agree to pay fifty per cent a year interest for that small amount of capital which he needs to give his business another chance to survive. On the other hand, the Maryland legislature seems to have declared as to real estate loans that the true or actuarial interest rate should not exceed about six per cent. Appellee's brief in *Crest* pointed out that the advance-discount method would allow rates ranging from 11.58 per cent on a one-year loan to 22.24 per cent on a ten year loan.⁵⁸ Adding in the investigation fees which are allowed under Section 22 of Article 58A, the general usury limit in Maryland is now approximately sixteen per cent per year for one year and twenty-four per cent per year for ten years.

In the absence of statutory distinction between highly secured and unsecured loans, or between high expense, small loans and relatively expense-free, large loans, the Maryland court had to interpret the statutes so as to fix an interest limit applicable to all types of loans not otherwise regulated. In this context, statutes in other states regulating consumer loans are material evidence of what business and society consider to be reasonable interest rates. A large number of states have statutes limiting the credit charges which may be made in connection with the sale of a motor vehicle. A somewhat smaller number have limits on credit charges in the sale of other types of goods for personal, family or household purposes, with some including the rendering of services on credit and home repairs or improvements. These statutes have been summarized by Curran in her report on the American Bar Foundation study of consumer credit regulation.⁵⁹ From that summary it appears to be the consensus of the various state legislatures that true interest rates in the range from fourteen per cent to twenty-five per cent per annum, depending upon the age of the vehicle or the amount of money involved, are reasonable. The usual rate allowed in the non-automobile statutes on credit in excess of \$1,000 is sixteen per cent per year, and an allowable rate of twenty per cent on such amount is not uncommon. Assuming that few advance-discount installment loans will be made for more than five years, the seventeen per cent allowed by the *Crest* decision on a five year loan is within

57. No authority need be cited for the basic proposition that our case law grows and changes to meet changing circumstances. Llewellyn concluded in 1959:

Nor have I found any court which, judged on a sequence of cases, is not moving with regard to statutes about as freely in the average as it is in the case-law field. . . . What you get in the statutory field is a jerkier, less predictable movement: here more of a hitch, there a sudden jump, so to speak, under cover; with no adequate guidance, as to when which will occur. That is not healthy judging. K. LLEWELLYN, JURISPRUDENCE, REALISM IN THEORY AND PRACTICE 227 (1962).

58. Brief for Appellee at 9, *Crest Inv. Trust, Inc. v. Cohen*, 245 Md. 639, 227 A.2d 8 (1967).

59. B. CURRAN, TRENDS IN CONSUMER CREDIT LEGISLATION 254-77 (1965) (Charts 11, 12, 13).

the range fixed in other states and in this state. Recent Maryland legislation allows about twenty-two per cent per year in credit charges on the installment sale of consumer goods at a price of \$1,000 or less and about twenty per cent on credit sales for \$2,000.⁶⁰

Further support for the reasonableness of interest rates in the range from fifteen to twenty-five per cent per year is found in a recent study of the consumer finance industry.⁶¹ Nine major companies were included in the study. The data for 1964 show for each \$100 of average outstanding credit a gross income of \$21.40, expenses including income taxes of \$19.07, and a net profit of \$2.33. The average net return of 8.7 per cent on total assets and thirteen per cent on equity funds in 1964⁶² was certainly not excessive, considering the nature of the industry. To many, this twenty-one per cent average rate will still seem too high. Much of the loss and collection expense on consumer loans comes from job loss or severe medical problems.⁶³ Perhaps in the better world of the future, private and social insurance will so reduce the need for the high risk, high interest rate loans and the losses and collection expenses on consumer loans that lower interest rates will be possible.

CREST AND THE 1963 GENERAL USURY STATUTE

The general usury provisions in Article 49 were amended in 1963 by adding Section 1A:⁶⁴

Except in the case of loans secured by a mortgage or deed of trust on real property, interest computed on the principal amount of a loan at a rate permitted by § 1 [6%] of this article may be charged or deducted in advance where the borrower is required to repay the indebtedness in equal or substantially equal monthly, or other periodic installments.

As a later passed statute, it may be assumed that this provision will take precedence over Section 22 of Article 58A so that real estate loans are limited to six per cent interest on the declining balance. As Section 1A says nothing about investigation fees, and in view of the tendency of the court of appeals to minimize the effect of limitations on interest charges, it may be that the grant of the power to charge four per cent or two per cent fees for investigation will be held to survive the enactment of Section 1A. Such a result would be warmly received by those lending money on real estate mortgages.⁶⁵ As to the allowable method of

60. Ch. 589, § 132A, [1967] Laws of Maryland 775.

61. Smith, *Recent Trends in the Financial Position of Nine Major Consumer Finance Companies*, in J. CHAPMAN & R. SHAY, *THE CONSUMER FINANCE INDUSTRY: ITS COSTS AND REGULATION* 38 (1967).

62. *Id.* at 48.

63. Siporin, *Bankrupt Debtors and Their Families*, 12 *SOCIAL WORK* 51, 57 (1967).

64. MD. CODE ANN. art. 49, § 1A (1964 repl. vol.).

65. Prior to the *Crest* decision, whether points were charged to the mortgagor or to the vendor, they apparently could lead to a defense of usury. *Glass v. Third Nat'l Bldg. & Loan Ass'n*, 156 Md. 26, 143 A. 587 (1928); *Real Estate Trustee v. Rebhan*, 153 Md. 624, 139 A. 351 (1927). The charging of three points is reportedly common today in Maryland. Two points on a twenty year loan would produce a true interest rate of about 6.3%. The Fed. Home Loan Bank Board estimate of interest on con-

computing and charging interest, it would seem to be much easier to arrive at the rule of the *Crest* case under the Section 1A language, "interest computed on the principal amount of a loan . . . may be charged or deducted in advance" than it was for the court under the Section 22 language, "on the principal amount of the loan, in advance."

The language "charged or deducted" first appeared in the 1860 codification of Section 1 of Article 49.⁶⁶ This provision was introduced by the Act of 1826 which legalized all "discounts" theretofore made by banks and allowed interest to be "calculated or deducted" according to the interest tables of *Rowlett*.⁶⁷ An Act of 1830 extended this permission to all lenders.⁶⁸ To repeat, the simplest discount would be to loan \$100 at six per cent for one year, advancing only \$94 to the borrower, with the true interest rate being something more than six per cent. The Report of the Governor's Commission to study Article 49 in December, 1962, stated:

The Commission is informed that the legality of the banking practice of discounting of loans in advance is a troublesome problem that should be resolved. The Deputy Bank Commissioner, the Maryland Bankers' Association and the mortgage bankers all endorse the request for legal clarification of the practice.⁶⁹

In view of the statutory history, it is difficult to locate the source of doubt. Discounting was clearly to be allowed. The unstated doubts were possibly as to the discounting of installment loans and of loans for more than the two-year time found in *Rowlett*.

If the law was unclear before the 1963 enactment of Section 1A and the legislature merely continued the old language, then prior to *Crest*, but after 1963, the law was still unclear as to the legality of discounting at the maximum legal rate. It is arguable that "charged or deducted in advance" meant nothing more than the procedure which was the subject of the 1957 Attorney General's report, namely first adding the six per cent to the loan, then deducting it before determining the amount to be disbursed to the borrower. Such an interpretation would violate the commercial sense of the statute as well as its judicial interpretation⁷⁰ and must be rejected. The argument that discounting is not allowed on installment loans is expressly laid to rest by the new Section 1A. The two year *Rowlett* argument is still open, which would mean limiting both Section 1 and Section 1A to loans for two years or less, and finding the limit for longer term loans in Section 3 of Article 49.⁷¹ However, the argument is weak, for Section 1 is not obviously

ventional first mortgages, as reported in the Federal Reserve Bulletin, was 5.99% plus 0.57 point in April, 1966 and 6.38% plus one point in April, 1967.

66. MD. CODE art. 95 (1860).

67. Ch. 99, [1826] Laws of Maryland.

68. Ch. 152, [1832] Laws of Maryland.

69. Report of the Governor's Commission to Study Article 49 of the Maryland Code 14 (1962).

70. *Duncan v. Md. Sav. Institution*, 10 Gill & J. 299 (Md. 1838).

71. In a number of states, discounting is allowed but only on short term loans. *E.g.*, *Agostini v. Colonial Trust Co.*, 28 Del. Ch. 30, 36 A.2d 33 (1944); *Castleberry v. Weil*, 142 Ark. 627, 219 S.W. 739 (1920); 55 AM. JUR. *Usury* § 41 (1946).

limited to two year loans, and the reference to real estate loans suggests coverage of loans for longer terms.

The effect of discounting is rather small in short term loans. In a future case involving a loan for a long term of years, the court of appeals could reinterpret the facts in the *Crest* case so as to avoid the decision, especially if the lender has been too rapacious. The 13.46 per cent charged by *Crest* was not substantially higher than the approximately eleven per cent it could have charged by simply computing in advance without discounting, and is even closer to the approximately twelve per cent it could have charged without discounting if it had taken a fee for investigation. But in a case where the true interest rate charged was, for example, forty per cent a year, it would be sound jurisprudence for the court to say:

The *Crest* case involved a true loan of \$14,500. This case (hypothetical) involves only a loan of \$10,000. That is all the borrower asked for or thought he was getting. This is not a true discount, but is a mere sham to avoid the usury statute. No more than six per cent per year on the amount actually borrowed, computed in advance, may be charged. *Montague v. Sewell*.

OTHER STATUTES

The *Crest* decision brings the general usury statute in line with the practice as to loans from \$300 to \$1500. The Industrial Finance Companies Act, which regulates such loans, allows licensees to "charge, contract for or receive, interest, in advance at a rate not to exceed six per cent per year . . . of the original principal amount of the loan or advance. . . ."⁷² In addition, charges in advance for services or expenses are allowable at the rate of four per cent on loans up to \$500 and two per cent on larger loans.⁷³ As the phrase "principal amount of the loan" is the same language as was applied in *Crest*, a good argument can be made that the advance-discount method is allowable under the Industrial Finance Companies Law. However, perhaps this statute, on the theory that it is remedial legislation, is to be strictly interpreted to protect the borrower.⁷⁴ Although the word "advance" in the phrase "principal amount of the loan or advance" can be read as indicating that the legislature intended the interest to be computed on the amount of money actually advanced, not the face amount of an add-on note, the permission to "receive, interest, in advance" fairly supports the present regulatory interpretation allowing discounting.⁷⁵

72. MD. CODE ANN. art. 11, § 196(A)(1) (1957).

73. If Maryland companies want to engage in the business of lending \$1,500 or less without submitting to regulation under the Industrial Finance Companies Law, § 165 would prohibit any service fee charges, thus limiting the effective interest to twelve per cent on one year loans, sixteen per cent on five year loans, and twenty-two per cent on ten year loans.

74. 45 MD. ATT'Y GEN. OPS. 17 (1960). Such interpretation has also been called liberal. *Fisher v. Bethesda Discount Corp.*, 221 Md. 271, 275, 157 A.2d 265, 268 (1960).

75. The Industrial Finance Co. statutes of Hawaii and Utah have been so interpreted. *Carey v. Hilo Finance & Thrift Co.*, 170 F.2d 236 (9th Cir. 1948) (fifteen month loan); *Peoples Finance & Thrift Co. v. Varney*, 75 Utah 355, 285 P. 304 (1930) (ten month loan). But see note 39 *supra*.

The 1964 act regulating the business of making loans for payment of insurance premiums provides that one-half per cent for each thirty days may be "charged in advance, upon the entire amount advanced, payable in installments."⁷⁶ This statute is rather similar to the Industrial Finance Companies Act. However, because the interest is to be charged on the "amount advanced," because the interest is arguably to be payable in installments, and because the word "receive" does not appear, discounting should not be allowed. As noted earlier, the term "charged" was used in the 1860 codification of what is now Section 1 of Article 49 as a substitute for the term "calculated."

The Land Installment Contract Act is similar to the Retail Installment Sales Act in that it requires a clear disclosure of the cash price, additional charges, and the "principal balance" owed.⁷⁷ But the limit on interest is not in terms of the phrase "principal balance," as in the sales act. Section 112(1)(h) speaks of "the interest on the unpaid balance not to exceed six per cent per annum." Does this mean the "unpaid balance" at the beginning, from year to year, or on each payment date?⁷⁸ In view of the long term of the typical land installment contract and the textual context, it is very doubtful that unpaid balance means the principal balance plus the interest. Discounting should not be allowed. On the other hand, simple six per cent on the declining balance, the typical way of computing interest in real estate loans, may be impractical.⁷⁹ One answer is that the parties may agree upon an inflated cash price, thus giving the vendor his appropriate return.

The new Secondary Mortgage Loan Law⁸⁰ allows a loan origination fee of no greater than two per cent of the net proceeds of the loan and seems to set the interest rate at twelve per cent on the declining balance from time to time due. Thus it was probably intended to limit the true interest to a little more than twelve per cent. However, there is some possibility that interest may be discounted, the net proceeds due being after interest, so that the true allowable interest rate may be much higher. Under this possibility, a loan of \$1,000 for five years would first be computed to bear \$334.66 interest on the declining balance at twelve per cent. Discounting, the net proceeds payable would be \$665.34. Then a two per cent origination fee of \$13.31 could be deducted, leaving \$652.03 for the borrower, who signs a note for \$1000. The true annual interest rate would then be more than eighteen per cent. The ambiguous Section 61(a) reads as follows:⁸¹

A Lender may make a secondary mortgage loan in such an amount that the net proceeds thereof shall equal a predetermined sum, and may take interest in advance upon the full amount of

76. MD. CODE ANN. art. 48A, § 486D (Supp. 1966).

77. MD. CODE ANN. art. 21, § 112 (1966 repl. vol.).

78. See the dissent of Judge Horney in *Falcone v. Palmer Ford*, 242 Md. 487, 500, 219 A.2d 808, 814 (1966) and cases in note 56 *supra*.

79. The national average interest charge on real estate mortgages is currently greater than 6%. Investigation fees apparently cannot be charged. The service charges allowed in § 112(1)(b) probably must be for actual services rendered to the purchaser, not merely for making the loan. Cf. 45 MD. ATT'Y GEN. OPS. 9 (1960), finding that a premium charge for an FHA guaranty of the loan was not additional interest.

80. Ch. 390, [1967] Laws of Maryland 783.

81. Ch. 390, § 61(a), [1967] Laws of Maryland 789.

such loan for the period from the making of the loan to the date of maturity of the final installment. The total interest, however, shall not exceed the amount that would accrue throughout the term of the loan, if charged at the rate of 12 per cent per annum at the end of each installment period upon the descending balance.

As the legislature did specify that the origination fee is to be charged on the "net proceeds of the loan," but spoke only of the "descending balance" when fixing the base for the twelve per cent interest rate, it is not clear that the twelve per cent is to be computed on the descending balance of the net proceeds.⁸² The first sentence certainly indicates that the loan may be drawn up in an add-on or discount form, so that the balance which would literally be due on the loan from month to month would include both principal and interest. The legislature has presented another difficult problem to the courts. Even if interest may be charged on interest by the discount method, the 18.3% thus allowable on a five year loan is perhaps reasonable. But for ten years, the amount advanced against a \$1000 note would be only \$272.19, with true interest far exceeding the Small Loan Act limits.

The acts regulating the business of making loans less than \$300,⁸³ credit unions,⁸⁴ automobile sales,⁸⁵ sales of consumer goods,⁸⁶ and revolving retail credit⁸⁷ all seem to preclude the discount method. The first two types of loans can only be made on a declining balance interest basis. Automobile sales credit can be extended, under the *Falcone* case, on the basis of interest computed in advance. However, we can only be sure that automobile credit "interest" cannot be computed on an advance-discount method if we read the definition of "principal balance" into Section 132(b) of Article 83. The statute defines "principal balance" as the amount due before adding the finance charge. Although a necessary basis of the *Falcone* decision was that Section 132(b) was a separate statute, the opinion makes it clear that the definitions in the Retail Installment Sales Act (except the dollar limit) are applicable to that section.

The permissible credit charges in Maryland are summarized in the following table:⁸⁸

82. Cf. 49 MD. ATT'Y GEN. OPS. 298 (1963) interpreting art. 58A, § 18, "If the Legislature had intended to restrict this type of insurance to decreasing term insurance, the limitation would have been clearly spelled out as an amount not to exceed the amount of outstanding indebtedness or some such similar terminology."

83. MD. CODE ANN. art. 58A, § 16 (1964 repl. vol.).

84. MD. CODE ANN. art. 11, § 153 (1957) ("one per cent. per month, on unpaid balances").

85. MD. CODE ANN. art. 83, § 132 (1965 repl. vol.).

86. Ch. 389, § 132A, [1967] Laws of Maryland 776.

87. Ch. 389, § 153D, [1967] Laws of Maryland 780. The new subtitle, Retail Credit Accounts Law, contains its own definitions and allows computation of the service charge on the cash price in advance, without discounting, or computation at a higher apparent rate on the basis of the declining balance due.

88. The true annual rates have been rounded to the nearest full percentage point. If the Industrial Finance Act is interpreted to further its purpose of protecting borrowers, discounting is not allowed, and the permissible true rates for all amounts and terms are less than twelve percent. The basis of these computations may be found in the text, *supra*, accompanying and following these footnotes: Small Loans, note 83; Industrial Finance, note 72; Credit Unions, note 84; Art. 49, note 64; Consumer Goods, note 86; Automobile Sales, note 85; Revolving Consumer Credit, note 86;

<i>Statute</i>	<i>Nominal Rate</i>	<i>True Annual Rate</i>
Small loans (up to \$300)	3% a month	36%
Ind. Finance (\$301-\$1500)	6% a year plus fees	20% on \$1000, 4 month loan
		20% on \$400, 1 year loan
		16% on \$1000, 1 year loan
		16% on \$1000, 5 year loan
		24% on \$1000, 10 year loan
Credit Unions	1% a month	12%
General Statute: Art. 49		
Real Estate	6% a year plus fees	6% on long term loans
Other	6% a year plus fees	21% on \$2000, 4 month loan
		16% on \$2000, 1 year loan
		17% on 5 year loan
		24% on 10 year loan
Consumer goods install- ment sale		
To \$1000	12% a year	22% on 2 year term
On \$2000	11% a year	20% on 2 year term
Automobile installment sale		
New auto	9% a year	16% on 2 year term
Two years old	12% a year	22% on 2 year term
Older	15% a year	27% on 2 year term
Revolving Consumer Credit		
Precomputed	12% a year on \$1000	22% on \$1000
Added monthly	1½% monthly to \$500	18% on \$500
	1% monthly over \$500	15% on \$1000

Land Installment Contracts, note 77; Second Mortgages, note 80; and Insurance Premium Loans, note 76. The indicated maximum rate for credit unions is reportedly not always honored in practice.

<i>Statute</i>	<i>Nominal Rate</i>	<i>True Annual Rate</i>
Land Installment Contracts	6%	11% or possibly 6%
Second mortgages	12% a year plus 2 points	12% on 5 year loan or 18% on 5 year loan
Insurance Premium Loans	½% per 30 days plus \$10	11% on large amounts

CONCLUSION

In *Falcone*, *Rothman*, and *Crest*, the Maryland Court of Appeals has either completely freed transactions from the limitations of the usury statutes or has drastically limited any protection given by these statutes. With our rapid communications, availability of alternative sources of loans, and higher level of education, perhaps today there are no sufficient policy reasons for limiting the interest which a party may knowingly choose to pay. Perhaps various desirable lines of commerce require interest rates beyond those nominally specified in the Maryland statutes. Such considerations may have been the unstated bases of these decisions. If the court's decisions were so motivated, then minimizing the protection of borrowers from usury is good law making, for the court of appeals must constantly make policy and adjust the meaning of statutes to the needs of the community. Professor Llewellyn, in his climactic book, *The Common Law Tradition, Deciding Appeals*, concludes his chapter on "Reckonability of Result: Sense and Reason Again" with a discussion of a Cardozo decision and with this statement:

No, what we have is advocacy informing the court at the *appellate stage* about wise choice of concept and consequent rule, in view of the inherent needs of the type of situation; informing so persuasively that the court turns its back on the plain text of a statute to strong-arm an exception which the legislature has lacked the knowledge and prudence to provide.⁸⁹

Although the Maryland court has alleviated some of the pressure for further legislative reform, credit regulations in this state are certainly in need of further reform. As has been seen, many of the statutes are confused or ambiguous, and most encourage misleading of borrowers. Moreover, the regulation is uneven and incomplete. A \$300 loan may be made at thirty-six per cent a year, while a \$400 loan can be made at only twenty per cent for one year. Credit given for home improvements or any services rendered should be regulated. Automobile credit, other sales credit and consumer loans should be placed on a more equal footing. In view of these present deficiencies, the con-

89. K. LLEWELLYN, *THE COMMON LAW TRADITION* 212 (1960).

sumer credit code being drafted by the Commissioners on Uniform State Laws is greatly needed in this state. Whether such legislation should fix only high limits on interest, leaving the usual rates to be adjusted by competition, or should set lower rates to be charged in the typical case, will be one of the more difficult questions to resolve in this area.⁹⁰

90. The arguments for having only high limits are simply and forcefully stated in Johnson, *Effect of Personal Loan Rate Reduction on the Consumer*, 17 PERSONAL FINANCE L.Q. REP. 46 (1962). However, a pattern of regulation similar to that in Maryland is described in Shanks, *Practical Problems in the Application of Archaic Usury Statutes*, 53 VA. L. REV. 327, 332 (1967), as follows:

The effect of these statutes is to raise the legally permissible interest on many kinds of loans far in excess of the six per cent rate which was retained as a generally applicable limit. Such legislation is simply a surrender to the economic laws which actually fix the price of credit, while allowing the legislature to retain a pretense of regulation.

For a careful analysis concluding that rates, not just limits, should be set, see McEwen, *Economic Issues in State Regulation of Consumer Credit*, 8 B.C. IND. & COM. L. REV. 387, 402-06 (1967). For a thorough analysis of the need for much more regulation to protect poor consumers, see Comment, *Consumer Legislation and the Poor*, 76 YALE L.J. 745 (1967).