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**Law School Memories:
A Dissent in *Illinois Pawnbrokers
Association v. Illinois Department
of Financial & Professional
Regulation***

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INSTITUTE

BACKGROUND

There is a fierce battle being waged in Springfield about whether to pass legislation requiring pawnbrokers in Illinois to comply with the State's 36% rate cap on consumer loans. Other consumer lenders in Illinois are already complying with the cap, which was enacted in March 2021.

There are certain lessons in law school that a lawyer never forgets: A contract requires "consideration" to be binding. A person is liable if they "knew or should have known" their conduct could have caused an injury. "Truth" is a complete defense to a claim of defamation. Property rights are a "bundle of sticks."

In the area of statutory construction, ingrained in most former law students' heads is the rule that, when interpreting a statute, you first look to the "plain language" of the statute. If the plain language is clear, you're done. You turn to legislative history only if the plain language of the law is ambiguous. See *Policemen's Benevolent Labor Committee v. City of Sparta*, 2020 IL 125508 (Illinois Supreme Court finding law unambiguous; therefore, the court may not interpret the law in light of the legislative history or other aids of statutory construction).

Of course, another statutory construction adage is that specific supersedes general. We'll come back to that later.

Recalling the rules of statutory construction matters now because a fierce battle is being waged in the Illinois General Assembly over whether to pass a law specifically applying the State's 36% rate cap to pawn loans. The events giving rise to this battle began in January of 2021, when the Illinois Legislative Black Caucus (ILBC) led the

passage of Illinois' 36% rate cap, known as the Predatory Loan Prevention Act (PLPA). The PLPA, sponsored by Rep. Sonya Harper in the House and Senator Jacqueline Collins in the Senate, was part of an ILBC Policy Pillar devoted to "economic access" and aimed at eliminating systemic racism. The PLPA passed with a large bipartisan majority and was signed by Governor J.B. Pritzker on March 23, 2021. Except for commercial loans and loans made by banks or credit unions¹, the PLPA applies simply to "loans made or renewed on and after the effective date

of [the PLPA]." The PLPA rate cap applies to consumer loans "[n]otwithstanding any other provision of law," meaning the PLPA rate cap supersedes all prior laws regarding rate caps on consumer loans.

The pawnshop industry, however, in *Illinois Pawnbrokers Association v. Illinois Dept. of Financial & Professional Regulation*, Case

No. 2021-CH-43, persuaded Judge Raylene Grischow in Sangamon County to grant an injunction in September 2021, allowing pawnshops to disregard the PLPA. (Infamously, Judge Grischow would later strike down Governor Pritzker's mask mandate for schools finding a mask mandate to be a "modified quarantine." See *Austin v. Pritzker*, Case No. 2021-CH-500002.) In the pawnbrokers' case, Judge Grischow held that, under the Pawnbroker Regulation Act (PRA), 205 ILCS 510/2, the

“
If the plain language is clear, you're done. You turn to legislative history only if the plain language of the law is ambiguous.
”

PRA superseded the PLPA since it specifically applies to pawnbrokers, and as a matter of statutory construction, the specific governs the more general. Under the PRA, a pawnbroker can charge interest and fees on a loan up to “one-fifth of the loan amount,” which equates to around 240% APR.

CHATHAM JEWELRY & LOAN INC.
645 E 79TH ST
CHICAGO, IL 60619
(773) 487-9595

PAWN TICKET Trans #: 202101404
Date Made: 06-24-21
06-24-2021

ID# [REDACTED] DOB [REDACTED]
ID [REDACTED] SSN [REDACTED]
HT 5,7 Ht 130 Sx F 28 B
HPH Hr Hr Ey

Did on 06-24-21 at 11:29
PLEDGE & DELIVER
the following property.

MATURITY DATE
08-24-21

Item #	Brand	Description	Amount
202101564		14KYS MMS BRACELET/LINK/S/CHARMS/ 13.5 TM	400.00

See your contract document for any additional information concerning non-payment, default, and repayment returns or penalties.

AMOUNT FINANCED: The amount of cash given \$200.00
FINANCE CHARGE: The dollar amount the credit will cost you. 160.00
TOTAL OF PAYMENTS: Amount required to receive your item back. 560.00
ANNUAL PERCENTAGE RATE: The cost of your loan. 240.00%

PAYMENT SCHEDULE: Total of payments to be made. See your contract document for details.
PREPAYMENT: If you pay off early, you may be entitled to a refund of part of the Finance Charge.

By signing, I agree to all terms and conditions on the front and back and acknowledge receipt of a copy of this ticket.

Pledger's Signature: [REDACTED] NOTICE: See Reverse Side

PAYMENT DUE ON OR BEFORE 08-24-21
TRANSFERRED FOR RESALE AFTER 30 DAYS

Actual Contract from “secret shopper” investigation

In reaching this conclusion, the court diverted from the “plain language” principle of statutory construction. Rather than determine whether the plain language of the PLPA applied to pawn loans, Judge Grischow stated the matter at issue “is whether the [PLPA] was intended to regulate the pawn industry” (Prelim. Injunction at 1).

In fact, the matter at issue was whether the plain language of the PLPA applies to pawnbrokers. The PLPA is very straightforward. The entire Act is about five pages, and the rate cap itself is less than half a page. A pawn loan is covered by the PLPA if the product falls within the definition of loan in the PLPA. Under the PLPA:

“Loan” means money or credit provided to a consumer in exchange for the consumer’s agreement to a certain set of terms.

During a recent investigation, Woodstock Institute found that pawnbrokers charged 240% APR or more 19 out of 20 times. In a pawn loan, a consumer offers a piece of personal property as collateral, and the pawnbroker provides money to the consumer typically in exchange for these terms or terms very similar to them:

If the Pledger [Consumer] fails to redeem or extend this pawn on or before the thirtieth (30th) day following the Maturity Date, the pledged property shall be automatically forfeited to the Pawnbroker, and absolute right, title, and interest in and to the pledged property vests in and is deemed conveyed to the Pawnbroker, and no further notice is necessary.

— Excerpt from pawn contract dated 6/18/21

Placing a pawn loan within the context of the PLPA’s definition of loan, a pawn loan is money provided to a consumer in exchange for the consumer’s agreement to relinquish ownership of their property if they fail to repay the pawnbroker by the maturity date. Put more simply, a pawn loan is money provided to a consumer in exchange for the consumer’s agreement to a certain set of terms. It plainly falls within the PLPA’s definition of loan. The State’s 36% rate cap has, since its enactment, applied to pawn loans.

PUTTING ASIDE THE LEGAL MUMBO JUMBO

A legal analysis of pawn loans should hardly even be necessary to determine whether a pawn loan falls within the PLPA’s definition of loan. The pawnshops sometimes argue that a pawn loan is not a loan, but rather, is a “pawn.” The Pawnbroker Regulation Act and the pawnshops themselves, however, call the products loans:



Photo Taken 12|18|2022, 3900 North Broadway, Chicago, IL

Pawn Loans in Illinois & Iowa

Pawn King

Pawn King always lends you the most cash
in a matter of minutes!

Screenshot Taken 12|18|2022

<https://www.pawnkingloansmore.com/pawn-sell-buy/pawn-loans>

In sum, when considering whether a pawn loan is a loan, one need only – quite literally – open their eyes to see whether the product is a loan.

WHACK-A-MOLE

From a policy standpoint, it would be foolish for the PLPA not to cover pawn loans. Illinois has had a lot of experience playing “whack-a-mole” with consumer finance companies. It began in 2005 when Illinois first began trying to rein in the worst abuses in the consumer loan market. The Payday Loan Reform Act of 2005, 815 ILCS 122, set a rate cap and established other consumer protections applicable to 30-day payday loans.² The industry immediately and unabashedly responded by creating a 31-day loan product.

In the case of the PLPA and pawn, putting a 36% rate cap on all other consumer finance companies, payday lenders, auto title lenders, installment lenders, etc., but not on pawnbrokers, would have the unintended

consequence of pushing the high-cost loan market to the pawnbrokers. It’s happened before. When Ohio put a rate cap on payday loans, the pawn industry ballooned by 97%. See *PYMNTS, Payday Lending Laws Drive Traffic To Pawn Shops* (Oct. 4, 2019), <https://www.pymnts.com/news/alternative-financial-services/2019/what-is-powering-the-emerging-pawnnaissance/>

Despite all these reasons why the PLPA already covers pawnshops, a broad coalition of consumer groups, including the Catholic Conference of Illinois, Heartland Alliance, United Way, NAACP, and the Chicago Urban League, are advocating for a law that would amend the pawnbroker law and remove any grounds for claiming the PLPA does not apply to pawnbrokers. The Illinois General Assembly has until January 10, 2023, to pass SB 4241 or its companion in the House HB 5840. By passing these bills, the ILGA will be fulfilling the PLPA’s original purpose of protecting consumers from all types of predatory consumer loans.

FOOTNOTES:

1. If the plain language of the law was ambiguous, the principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the other) would strongly suggest the PLPA applies to pawn loans. The PLPA made a point of stating the law does not apply to commercial loans and does not apply to loans made by banks or credit unions. If the PLPA had meant to exclude another type of product or a type of lender, it would have listed them.
2. The definition of payday loan was later amended to cover loans of 120 days or less. 815 ILCS 122/1-10

ABOUT THE AUTHORS:

William C. Kling, J.D. has been practicing law for 35 years. He has passionately represented local governments, nonprofits and socially conscious businesses on a wide variety of issues. He currently has an academic appointment as a Project Director at DePaul University Chaddick Institute for Metropolitan Development and is a Clinical Assistant Professor (retired) at University of Illinois Chicago. He has taught as Adjunct Professor at IIT-Kent College of Law for 26 years. He has served on a number of nonprofit boards and has been appointed to several state advisory boards and councils. He received his BA in Economics from the University of Colorado-Boulder, and his JD with a Certificate in Environmental and Energy Law from IIT-Chicago Kent College of Law.

Michael P. Seng is a professor of law at UIC Law School in Chicago, Illinois. He teaches in the areas of Constitutional Law, Civil Rights Law, Federal Courts, and Restorative Justice. He is the Director of the UIC Law School Fair Housing Legal Support Center. In 2003, he was awarded a Pioneer of Fair Housing Award by the U. S. Department of Housing and Urban Development. He also coordinates the law school’s exchange program with the Czech Republic and its Restorative Justice Project. He has been a Fulbright Professor in Nigeria and the Czech Republic and has regularly taught in the Czech Republic, Taiwan, and China. He has co-authored books on Eyewitness Testimony and on Restorative Justice and has written articles on fair housing law, mortgage lending discrimination, and testing. He is a graduate of the University of Notre Dame and the University of Notre Dame Law School. He is the recipient of an Honorary Doctor of Laws degree from Masaryk University in the Czech Republic. Prior to teaching he was a law clerk for John F. Kilkenny, United States District of Oregon, an associate attorney at Jenner & Block in Chicago, and Directing Attorney for the Land of Lincoln Legal Assistance Foundation in Cairo, Illinois.

Brent E. Adams, J.D. has been licensed attorney since 1997 and has experience as a litigator, lobbyist, political organizer, teacher, and policy advocate. He began his career as an employment lawyer at Katten Muchin Roseman. In 2002, he pursued his passion for nonprofit advocacy and became a policy associate for the AIDS Foundation of Chicago, and later, became the Policy Director for Citizen Action/Illinois. At Citizen Action, he authored the Payday Loan Reform Act of 2005. In 2009, Illinois Governor Pat Quinn appointed Mr. Adams the Secretary of Financial and Professional Regulation. In 2016, he joined Woodstock Institute and is currently its Senior Vice President of Policy & Communication. Mr. Adams received a B.S. with Distinction in Honors Communication Studies and an M.A. in Rhetoric from Northwestern University and his J.D. from New York University School of Law.