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Declining Balance of Principle Must Be Accounted for When Calculating Interest at the Maximum Legal Rate.

Richard Meyer

USURY—Unsecured Installment Loans—Declining Balance of Principle Must be Accounted for When Calculating Interest at the Maximum Legal Rate

Cohen v. District of Columbia National Bank,
382 F. Supp. 270 (D.D.C. 1974).

Plaintiffs, David and Carla Cohen and Susan Davis, obtained three personal unsecured loans from the defendant, District of Columbia National Bank, each loan to be repaid in 12 equal monthly installments.[1] The bank calculated interest according to the amounts borrowed and the duration of the respective loans, without regard to the declining balances of the principals.[2] The plaintiffs filed suit in the United States District Court for the District of Columbia alleging a violation of the District of Columbia usury statute, which limits the maximum interest on a loan to 8 percent per annum.[3] The plaintiffs contended that computation of the interest should have taken into account the continuously diminishing unpaid balances, and that the bank's failure to do so resulted in removal of interest at a usurious rate. Held—*Judgment for plaintiffs.* Interest on personal, unsecured installment loans computed without regard to the declining balance of principal is usurious where the amount of interest charged exceeds the interest computed at the maximum permissible rate on unpaid balances of principal.[4]

1.

borrower:	David and Carla Cohen	Susan Davis	Susan Davis
principal:	$747.72	$591.48	$600.00
interest:	$ 48.24	$ 38.16	$ 45.56
monthly payment:	$ 67.00	$ 53.00	$ 54.34

Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270, 273 (D.D.C. 1974).

2. The declining balance of principal is equal at any given time to the amount obligated to be repaid minus the amount already repaid at that time. This relationship may be deduced by examining the calculations in *Cohen. Id.* at 287-91.

3. D.C. Code Ann. § 3301 (1967).

> The parties to an instrument in writing for the payment of money at a future time may contract therein for the payment of interest on the principal amount thereof at any rate not exceeding 8 percent per annum.

Id.

4. Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270, 286 (D.D.C. 1974). The following formula may be derived through observation of the calculations in *Cohen*:

interest rate = M x A/S where
M = # months (assuming 1 payment per month),
A = total interest charged,
S = sum of principal balances outstanding.

Generally, usury is an illegal contract for a loan of money, goods, or choses in action in which illegal interest is reserved or agreed to be reserved.[5] At common law the purpose behind usury law was to keep interest rates moderate enough so that money could be borrowed and trade encouraged, yet to set the interest rates high enough to encourage lending.[6] In the United States the purpose is to protect bank shareholders from inadequate securities which would be taken under the influence of high interest rates and to secure for the public loans at reasonable rates of interest.[7] Interest regulation in the United States does not necessarily have a constitutional inception; the constitutions of some states do not define usury but instead expressly grant the legislatures authority to establish maximum interest rates.[8] Consequently, many states have enacted usury laws pursuant to this authority.[9]

Historically, the question whether interest on a secured loan was usurious was often dependent on the method of calculation.[10] A system based on consideration of the declining balance of principal was recognized at common law in mortgage loan practice.[11] This principle has been expanded in most American jurisdictions, where it is now necessary to allow for the declining balance of principal when calculating interest at the maximum legal rate on secured installment loans.[12] In general, the rule is that the creditor shall

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Id. at 287-91. According to the equation above, usury exists where the interest rate is greater than the legal maximum interest rate.

5. *E.g.*, Rathbun v. W.T. Grant Co., 219 N.W.2d 641, 646-47 (Minn. 1974).

6. 2 W. BLACKSTONE, COMMENTARIES *455. Blackstone adds that a distinction must be made between a moderate and exorbitant profit, "to the former of which we usually give the name of interest, to the latter the truly odious appelation of usury . . . ." *Id.* at *456.

7. Farmers & Mechanics' Bank v. Baldwin, 23 Am. Rep. 683, 686 (Minn. 1876); 8 C. ZOLLMAN, BANKS AND BANKING § 5171, at 45 (1936); *see* Larson v. State, 97 So. 2d 776, 784 (Ala. 1957); State v. Bynum, 9 So. 2d 134, 139-42 (Ala. 1942); *cf.* State v. J.C. Penney Co., 179 N.W.2d 641, 656 (Wis. 1970).

8. *E.g.*, TEX. CONST. art. 16, § 11.

9. *E.g.*, TEX. REV. CIV. STAT. ANN. art. 5069, § 1.02 (1971).

> Except as otherwise fixed by law, the maximum rate of interest shall be ten percent per annum. A greater rate of interest than ten percent per annum unless otherwise authorized by law shall be deemed usurious . . . .

Id.

10. *E.g.*, Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839); Binnington v. Harwood, 37 Eng. Rep. 1184, 1185-86 (ch. 1823).

11. Binnington v. Harwood, 37 Eng. Rep. 1184, 1185-86 (ch. 1823). In taking possession of the accounts of a mortgagee, recomputation of interest is required subsequent to any payment having the effect of reducing the principal outstanding.

12. Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839); *see* United States v. Speed Queen Corp., 210 F.2d 357, 358 (7th Cir. 1954); Interstate Eng'r Co. v. District of Columbia, 112 F.2d 214 (7th Cir. 1940); Union Sav. Bank & Trust Co. v. Dottenheim, 34 S.E. 217 (Ga. 1899). In Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839), the plaintiff argued that crediting rents received several times per year as though they were received annually meant that interest was being charged on principal which was already repaid. Agreeing with plaintiff, the Court reasoned that if rents were payable and received at intervals during the year, and if a portion of the rent received shall extinguish part of the debt thereby reducing the principal, then there is no reason why

calculate future interest whenever a payment is made.[13] Each payment is to apply first to the interest, with any excess applying to the principal.[14] Disposition and control of the borrowed sum must be considered; the period during which the borrower had use of the money must be taken into account, and interest must be calculated only on that portion of the principal as yet unpaid.[15] Consequently, calculation of interest at the maximum legal rate on the entire prncipal of the debt for the full term of the loan will result in usury if the loan is to be paid in installments.[16] This rule has been extended in some states to an expanded concept of interest, holding that a loan placement fee may be considered interest and as such should be prorated over the full term of the loan.[17]

The basic policies behind usury law do not distinguish between secured and unsecured loans,[18] but there are several types of transactions which, though similar in nature to loans, are exempted from usury law.[19] The most often litigated exception involves time price sales. Generally, it is not usury to increase the price of goods sold on credit even if the credit price is such as to exceed the cash price plus legal interest.[20] The rationale behind this

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the whole debt should continue to draw interest. *Id.* at 371. Union Sav. Bank & Trust Co. v. Dottenheim, 34 S.E. 217 (Ga. 1899) involved the computation of interest on a secured note for a mortgage loan. In deciding that the correct method of calculating interest should take into account the declining balance of principal, the court implied that calculating interest at the maximum legal rate on the principal of the debt for the full term of the loan will result in usury if the loan is then agreed to be paid in installments. *Id.* at 221; *see* Cooper v. United Security Life Ins. & Trust Co., 33 App. D.C. 205 (1909). The court used the declining balance of principal and determined that the loan secured by a deed of trust was not usurious. *Id.* at 208.

13. Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839). The Court did not state what exceptions, if any, exist to the general rule. *See* cases cited note 12 *supra.*

14. Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839); United States v. Speed Queen Corp., 210 F.2d 357, 358 (7th Cir. 1954).

15. *See* Atlantic Life Ins. Co. v. Wolf, 54 A.2d 641, 643 (D.C. Mun. Ct. App. 1947); *cf.* Montgomery Fed. Sav. & Loan Ass'n v. Baer, 308 A.2d 768, 771-72 (D.C. 1973).

16. *See* Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839); United States v. Speed Queen Corp., 210 F.2d 357, 358 (7th Cir. 1954).

17. Altherr v. Wilshire Mortgage Corp., 448 P.2d 859, 863 (Ariz. 1969); Montgomery Fed. Sav. & Loan Ass'n v. Baer, 308 A.2d 768, 770, 772 (D.C. 1973); *cf.* Griffin v. B & W Fin. Co., 389 S.W.2d 350, 353 (Tex. Civ. App.—Tyler 1965, no writ).

18. *See* Glenn v. McCarty, 130 S.W.2d 295, 301 (Tex. Civ. App.—Amarillo 1939), *aff'd*, 137 Tex. 608, 155 S.W.2d 912 (1941); 2 W. BLACKSTONE, COMMENTARIES *455, *456; 8 C. ZOLLMAN, BANKS AND BANKING § 5171, at 45 (1936).

19. *E.g.*, TEX. REV. CIV. STAT. ANN. art. 5069, §§ 1.01 (time credit exception), 1.06(1) (accidental and bona fide error exception) (1971).

20. *E.g.*, Harper v. Futrell, 164 S.W.2d 995, 996 (Ark. 1942); Kass v. Garfinkel Brooks Bros., Miller & Rhoades, Inc., 299 A.2d 542, 543, 544 (D.C. 1973); Schauman v. Solmica Midwest, Inc., 168 N.W.2d 667, 670 (Minn. 1969); Hernandez v. United States Fin. Co., 441 S.W.2d 859, 861-62 (Tex. Civ. App.—Waco 1969, writ dism'd). *Contra*, State v. J.C. Penney Co., 179 N.W.2d 641, 646 (Wis. 1970). Even the cases falling within the time credit exception recognize the importance of accounting for de-

rule is that the difference between the two prices is not "interest" within the contemplation of usury law, but that there are two prices as a matter of law—a cash price and a credit price.[21]

Generally, it is within the bank's discretion to take any real or personal property as collateral security for a loan.[22] The taking or giving of security for a loan has no bearing on whether the loan is usurious.[23] Basically, this is because usury is an attribute of the loan and not of the property mortgaged to secure its payment: the security is merely an incident to the principal transaction.[24] For example, it is well settled in equity that a creditor holding collateral is not bound to use such security before enforcing his direct remedies against the debtor.[25] Consequently, at least one jurisdiction has treated secured and unsecured loans alike under usury law, but there has been no express judicial or legislative pronouncement of such equality.[26]

The concept of "hazard" to principal has been utilized to determine interest rates, and distinctions within usury law concerning secured and unsecured loans can be more clearly understood by application of this concept.[27] In the context of interest rates a hazard has been described as a contingency greater than the ordinary risk.[28] Likewise, the risks commonly incurred by

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clining principal balance. *See, e.g.*, Kass v. Garfinkel Brooks Bros., Miller & Rhoades, Inc., 299 A.2d 542 (D.C. 1973).

21. *See* cases cited note 20 *supra.*

22. F. TIFFANY, LAW OF BANKS AND BANKING §§ 61-62, at 239, 246 (1912). No distinction is drawn by Tiffany between those loans where a bank has taken collateral security and those where it has not. "[A] national bank may charge on *any* loan . . . interest at the rate allowed by *the laws of the state* where the bank is located" and that exceeding this rate is usury. *Id.* at 239 (emphasis added). Examination of authority on usury reveals that there is no express distinction between secured and unsecured loans. Considering this with Tiffany's comment regarding *any* loan, it is implied that the same laws should apply to both secured and unsecured installment loans.

23. St. Germain v. Lapp, 48 A.2d 181, 184 (R.I. 1946); 14 S. WILLISTON, CONTRACTS § 1694C, at 773 (3d ed. 1972); *see* Cooper v. Cherokee Village Dev. Co., 364 S.W.2d 158, 161 (Ark. 1963). *See also* 5 R.C.L. § 64, at 982. In St. Germain v. Lapp, 48 A.2d 181, 184 (R.I. 1946), the court said:

> When a contract made and to be performed in one state is secured by a mortgage or other lien on land situated in another state, the question as to whether the interest provided for is usurious is generally held to be determined by the law of the former, on the ground that the mortgage is merely collateral to the principle obligation.

24. Cases cited note 23 *supra.*

25. Merrill v. National Bank, 173 U.S. 131, 146 (1899); *see* American Sur. Co. v. Bethlehem Nat'l Bank, 314 U.S. 314, 317 (1941).

26. *Compare* Friend v. Bank, 146 S.E.2d 110, 111 (Ga. Ct. App. 1965) *with* Union Sav. Bank & Trust Co. v. Dottenheim, 34 S.E. 217, 221 (Ga. 1899).

27. Securities & Exch. Comm'n v. First Sec. Co., 366 F. Supp. 367, 373 (N.D. Ill. 1973); Britz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960); Admiral Trading Corp. v. Bourne, 157 N.Y.S.2d 206, 208 (Sup. Ct. 1956); Vee Bee Serv. Co. v. Household Fin. Corp., 51 N.Y.S.2d 590, 600 (Sup. Ct. 1944).

28. Vee Bee Serv. Co. v. Household Fin. Corp., 51 N.Y.S.2d 590, 600 (Sup. Ct. 1944); *accord*, Britz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960); Diversified Enterprises, Inc. v. West, 141 So. 2d 27, 30 (Fla. Ct. App. 1962).

creditors, such as death or insolvency of the debtor, do not constitute such hazards as will authorize the lender to stipulate for more interest than is authorized by the usury statutes.[29] At common law there was one maximum interest standard for all loans, regardless of the hazard.[30] By contrast, *Tyson v. Rickard*,[31] an early Maryland case, indicates that applicaton of usury law is dependent on the absence of hazard to the principal of the loan.[32] In that case the defendant attempted to hide a colorable loan by disguising it as a purchase of real property. Looking beyond the instrument of conveyance, the court examined the intention of the parties and found a usurious loan. Although the court was dealing with a secured loan, the court's reasoning indicates that an unsecured loan places the principal in hazard and excludes the transaction from the scope of usury law.[33] In this respect, *Tyson* implies that mere safety from bona fide hazard is not sufficient, and the principal must be secured if the borrower is to obtain usury protection.[34] This is inconsistent with the later case of *Colton v. Dunham.*[35] In *Colton*, the New York Chancery Court dealt with a defendant lender who attempted to evade the usury law by contending that his loan to plaintiff was an investment. Looking beyond the disguise, the court found a usurious loan.[36] *Colton* indicates that a transaction falls within the scope of usury law so long as the borrower unconditionally agrees to return the amount advanced.[37] More re-

29. Vee Bee Serv. Co. v. Household Fin. Corp., 51 N.Y.S.2d 590, 600 (Sup. Ct. 1944); Colton v. Dunham, 2 N.Y. Ch. Rep. 901, 903 (1830); *see* Britz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960); Admiral Trading Corp. v. Bourne, 157 N.Y.S.2d 206, 208 (Sup. Ct. 1956).

30. 2 W. BLACKSTONE, COMMENTARIES *463.

31. 5 Am. Dec. 424, 426 (Md. Ct. App. 1810) (secured loan).

32. The court stated:

> [T]o constitute a loan . . . [i]t is enough if the principal is secured, and not bona fide put in hazard; and it matters not what the nature of the security is. . . . The true ground is, not that there must be a stipulation to repay the principal at all events in money, but that it must in some way be secured, as distinguished from being put in hazard; but whether it is secured by pawn or pledge . . . is not material.

Id. at 426; *cf.* Securities & Exch. Comm'n v. First Sec. Co., 366 F. Supp. 367, 373 (N.D. Ill. 1973) (not usury to receive more interest than is prescribed by statute where hazard is present); Diversified Enterprises, Inc. v. Wolf, 141 So. 2d 27, 30 (Fla. Ct. App. 1962). *But see* Brintz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960).

33. Tyson v. Rickard, 5 Am. Dec. 424, 426 (Md. Ct. App. 1810). *Contra*, Brintz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960).

34. Tyson v. Rickard, 5 Am. Dec. 424, 426 (Md. Ct. App. 1810).

35. 2 N.Y. Ch. Rep. 901 (1830).

36. *Id.* at 903.

37. In determining that the secured loan was usurious, the court said:

> Where there is a negotiation for a loan or advance of money, and the borrower agrees to return the amount advanced at all events, it is a contract of lending, within the spirit and meaning of the statute. And whatever shape or disguise the transaction may assume, if a profit beyond the legal rate of interest is intended to be made out of the necessities or improvidence of the borrower, or otherwise, the contract is usurious.

Id. at 426; *accord*, Brintz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960).

cently, language in *Rubenstein v. Small*,[38] a New York Supreme Court case, indicates that a loan is protected by usury law so long as there is no hazard to the principal, but that security is necessary when a hazard is present.[39] The implication of *Rubenstein* is that if in normal banking transactions an unsecured loan does not place the principal in any hazard greater than the normal risks of potential death or insolvency of the borrower, then the usury statutes apply.[40]

Cases in the District of Columbia have established that the declining balance of principal must be accounted for when calculating interest on secured installment loans.[41] For example, in *Cooper v. United Security Life Insurance & Trust Co.*,[42] the auditor of the court used the declining balance method to compute interest on an installment loan secured by a deed of trust.[43] Likewise, in *Atlantic Life Insurance Co. v. Wolf*,[44] the court considered all repayments of principal during the term of the loan in determining whether the interest charged on a loan secured by a deed of trust was usurious.[45] Although precedent in the District of Columbia was clear concerning the application of declining balance to calculation of interest on secured installment loans, it did not indicate if the application of declining balance would be identical in unsecured situations.

Thus, *Cohen v. District of Columbia National Bank*[46] is a case of first impression in the District of Columbia and also the federal system.[47] *Cohen* extends the prior District of Columbia holdings in its application of the declining balance principle to unsecured installment loans.[48] It is also the first case in Anglo American jurisprudence to expressly find no distinction

38. 75 N.Y.S.2d 483 (Sup. Ct. 1947).

39. The court held the usury laws inapplicable to a transaction where the hazard was too great in that the plaintiff-bank was running too great a risk of losing all monies advanced to the defendant-borrower for a theatrical venture. *Id.* at 485. The court said, "For a true loan it is essential to provide for repayment absolutely and at all events or that the principal in some way be secured as distinguished from being put in hazard." *Id.* at 485 (emphasis added). In finding no loan, the court used a test which would recognize a loan protected by usury law regardless of collateral security, so long as no hazard exists. *Id.* at 485; *accord*, Brintz v. Kinsvater, 351 P.2d 986, 990-91 (Ariz. 1960). *But see* Tyson v. Rickard, 5 Am. Dec. 424, 426 (Md. Ct. App. 1810).

40. Rubenstein v. Small, 75 N.Y.S.2d 483, 485 (Sup. Ct. 1947).

41. *See* Montgomery Fed. Sav. & Loan Ass'n v. Baer, 308 A.2d 768, 770, 772 (D.C. 1973); Atlantic Life Ins. Co. v. Wolf, 54 A.2d 641, 643 (D.C. Mun. Ct. App. 1947); Cooper v. United Security Life Ins. & Trust Co., 33 App. D.C. 205 (1909).

42. Cooper v. United Security Life Ins. & Trust Co., 33 App. D.C. 205 (1909).

43. *Id.* at 206-207.

44. 54 A.2d 641 (D.C. Mun. Ct. App. 1947).

45. *Id.* at 643.

46. 82 F. Supp. 270 (D.D.C. 1974).

47. *Id.* at 271-72. But the court was acting as a quasi-state court unique to the District of Columbia, and in this respect, there was no federal question.

48. *Id.* at 281.

between secured and unsecured loans under usury law.[49] Prior cases decided in the District of Columbia are consistent in their reasoning with cases outside of that jurisdiction which have held that the declining balance of principal must be accounted for when calculating interest at the maximum legal rate on secured and unsecured installment loans.[50] In addition, there are instances outside of the District of Columbia in which courts have held the same rule applicable to unsecured installment loans.[51] For example, in *Vee Bee Service Co. v. Household Finance Co.*[52] the New York Supreme Court held that calculating interest at the maximum legal rate on an unsecured installment loan must account for the declining balance of principal, reasoning that usury would result if the amount of interest on the loan for the entire term exceeded the interest computed on the decreasing unpaid balance for the time that such balance was outstanding.[53] The court in *Cohen* gave two reasons for following the holdings of those other jurisdictions.[54] First, the jurisdictions have been consistent in applying declining balance to calculate interest on secured loans.[55] Second, there is no reason to treat unsecured loans differently because there is no instance in which any differentiation has been made between secured and unsecured loans under usury law.[56]

As a result of *Cohen* District of Columbia banks may no longer calculate interest on personal, unsecured installment loans without regard to the declining principal balance.[57] The probable outcome is that future unsecured

49. *Id.* at 281.

50. *Compare* Montgomery Fed. Sav. & Loan Ass'n v. Baer, 308 A.2d 768 (D.C. 1973); Atlantic Life Ins. Co. v. Wolf, 54 A.2d 641 (D.C. Mun. Ct. App. 1947) *with* Union Sav. Bank & Trust Co. v. Dottenheim, 34 S.E. 217 (Ga. 1899); Friend v. Bank, 146 S.E.2d 110 (Ga. Ct. App. 1965).

51. *E.g.*, Vee Bee Serv. Co. v. Household Fin. Corp., 51 N.Y.S.2d 590, 606-607 (Sup. Ct. 1944). The court had to deal with interest on personal, unsecured installment loans which was discounted in advance and where monthly payments were thereafter required to repay the principal. *Id.* at 606-607. Galveston & Houston Inv. Co. v. Grymes, 50 S.W. 467, 468 (Tex. Civ. App. 1899), *aff'd*, 94 Tex. 609, 63 S.W. 860 (1901) dealt with an unsecured installment loan with interest thereon in alleged violation of usury law. In determining the correct method of calculating interest on the loan, the court reasoned that the declining balance of principal must be accounted for:

> The debtor was required to pay parts of the principal every month, and, by adding into the notes the whole amount of the interest calculated as due as for annual payments, was required to pay interest on part of the principal which would already have been paid. Since this had the effect of exacting more than ten per cent. [sic] interest on the debt forborne, the contract was clearly illegal.

Id. at 468; *accord*, Hollamon v. First State Bank, 389 P.2d 352, 355 (Okla. 1963); *cf.* Friend v. Bank, 146 S.E.2d 110, 111 (Ga. 1965).

52. 51 N.Y.S.2d 590 (Sup. Ct. 1944).

53. *Id.* at 606-607.

54. Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270, 281 (D.D.C. 1974).

55. *Id.* at 281.

56. *Id.* at 281.

57. It has been the long standing practice of District of Columbia banks to calculate interest on personal, unsecured installment loans without regard to the declining princi-

loans will be fewer in number because the banks will feel forced to compensate for the extent of risk for which they previously charged usurious rates. "To banks, security is their chief friend:"[58] it is incumbent on banks to insure that loans are secure, consequently, the demand for security collateral on future loans should increase following the ruling in *Cohen*. The protection extended in *Cohen* will benefit the unsecured borrower by limiting the interest rate on unsecured installment loans, and will result in additional economic well-being for bank shareholders since inadequate securities which were previously taken under the influence of high interest rates will now be avoided.[59] Persons with no bank credit who need small loans have always had difficulty obtaining money unless they paid very high interest rates.[60] This has often resulted in serious hardship, but such individuals have often been forced by their circumstances to accept whatever terms the lender required.[61] *Cohen* will protect these persons by policing the amount the lender may require for interest. A possible result, however, is that these persons may be unable to obtain any loan whatsoever because the legal interest will not be large enough to offset the risk involved.

The usury laws of some states, including Texas, are as yet not fully developed.[62] *Cohen*'s analysis of the application of declining balance should therefore be useful authority in such jurisdictions in future litigation involving that issue. The opinion is somewhat deficient, however, in its analysis of the relationship between secured and unsecured loans. The court recognized that courts throughout the country have applied the declining balance principle to secured and unsecured loans alike[63] and concluded that District of Columbia usury law should apply without distinction to secured and unsecured installment loans. The only justification given for this conclusion, however, was that the court could not find any instance in which such a distinction had been made.[64] Although *Cohen* is in agreement with the weight of authority, resolution of future litigation would have been made easier if the court had supported its conclusions by use of some of the underlying principles in usury law such as the theoretical distinctions between loan and collateral or the effect of the hazard concept on secured and unsecured loans.

Richard Meyer

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pal balance. *Id.* at 272. The court in *Cohen* recognized that the case would have broad ramifications. *Id.* at 271.

58. Address by Devereaux F. McClatchey at the Institute of Law & Govt. of the Univ. of Ga. Law School, Seminar on Banking Law (1958).

59. 8 C. ZOLLMAN, BANKS AND BANKING § 5171, at 45 (1936).

60. 14 S. WILLISTON, CONTRACTS § 1683A, at 717 (3d ed. 1972).

61. *Id.* § 1683A, at 717.

62. *See* P. Loiseaux, *Some Usury Problems in Commercial Lending*, 49 TEXAS L. REV. 419, 420 (1971) (referring to statutory and case law).

63. Cohen v. District of Columbia Nat'l Bank, 382 F. Supp. 270, 281 (D.D.C. 1974).

64. *Id.* at 281.