CHAPTER 334

MONEY AND RATES OF INTEREST

334.01 RATE OF INTEREST.

1. **Generally**
2. **Usury**

1. Generally

The practical construction which parties have placed upon a contract claimed to be doubtful will be followed by the courts. The presumption that parties intend their contract to be legal and binding operates to make applicable to the contract those provisions of law which render the contract valid. Under section 334. 01 the highest rate of interest permitted after maturity by contract is the rate of interest charged before maturity. Investors Syndicate v Baskerville, 200 M 461, 274 NW 627.

Where in litigation between cotenants a tenure by one of them to cover certain expenditures by the other would have been futile, interest on the amount recoverable dates only from the entry of the judgment. Larkin v McCabe, 211 M 11, 299 NW 649.

Upon recovery of salary after wrongful discharge, interest as damages was properly allowed from the date of the breach of the employment contract. Bang v International Sisal Co. 212 M 135, 4 NW(2d) 113.

Where plaintiff's intestate, while being cared for by his daughter, was in such failing physical condition as to lead to the belief that his early demise was probable, funds left with daughter's husband out of which to pay for nursing and care was not subject to an interest charge as against the husband since the fund was under decedent's control until his death. Droege v Brockmeyer, 214 M 182, 7 NW(2d) 538.

Whether interest will be allowed when a trustee's account is surcharged, and at what rate, is within the discretion of the court and must depend upon the facts and circumstances in each case. In the absence of fraud or flagrant breach of trust, only simple interest should be charged on amounts surcharged to a trustee's account, unless (1) the trustee has received compound interest, or (2) has received a profit which cannot be ascertained but is presumably at least equal to compound interest, or (3) it was his duty to accumulate the income. Comstock's Will, 219 M 325, 17 NW(2d) 656.

Where the amount due under a contract, such as a building contract, is certain and liquidated or capable of ascertainment, but is reduced by an unliquidated set-off, interest is allowable on balance found to be due from time it became due or suit was commenced. Knutson v Lasher, 219 M 594, 18 NW(2d) 689.

Where a bona fide dispute arose between the fee owners and the mortgagee as to the amount necessary to satisfy his mortgage, a tender kept good by the fee owners of the amount actually due would have stopped the running of interest and entitled the fee owners to equitable relief. Gandrud v Bremer, 220 M 10, 18 NW(2d) 687.

Under union-mortgage-loss payable clause, since there is no duty on part of mortgagee to furnish proofs of loss, liability of insurer to such mortgagee accrues as of date of destruction of property securing such mortgage, and amount due mortgagee thereunder bears interest from date of such loss. Shepherdson v Central Fire Ins. Co. 220 M 401, 19 NW(2d) 773.

Workmen's compensation is a liability arising out of the contract of employment and the compensation act becomes a part of every such contract, creating an obligation to commence payment of compensation at the time and in the manner prescribed by the act; and the general statute imposing interest at six per cent for failure to pay a debt when due applies. Bourdeaux v Gilbert Motor Co. 220 M 538, 20 NW(2d) 393.

Where an executory contract for the sale and purchase of real estate, under which the purchaser takes possession, provides that the purchaser shall pay interest on the entire unpaid purchase price during the first three years after its date; that thereafter the purchaser shall pay the purchase price in certain annual instalments without expressly providing whether or not the instalment payments shall bear interest; and that the vendor shall have the right to cancel the contract for default in the payment of the principal or interest due thereunder; the purchaser is not liable for interest upon the instalment payments before default. Liability for interest is contractual and a person is not chargeable with interest unless he has agreed to pay it. Lund v Larsen, 222 M 438, 24 NW(2d) 827.

Upon completion of a contract defendants tendered the amount due to plaintiff, but demanded a release reading "a valid discharge from all claims and demands growing out of, or connected with, the contract." Because of pending litigation this was an unfair demand and plaintiffs deferred signing the release. Upon final settlement plaintiffs were allowed interest from and after the date of the tender, that being the date when the amount became payable. Northern Pacific v Goss, 203 F. 904.

There being divergent ideas between the parties as to the amount due the Reading from the Great Northern, the Reading surrendered the property to the Great Northern and instituted a suit in equity to determine the amount recoverable. Interest was not recoverable during the pending of the suit. It was recoverable only after the amount was liquidated by court decree. Reading v Gt. Northern, 242 F. 799.

National bank in Minnesota would be required to pay Minnesota legal rate of six per cent interest on railroad company's checking account which was improperly offset against bank's unmatured bonds of railroad company undergoing reorganization, notwithstanding an agreement alleged to be in force where offset was made whereby bank would pay on one-fourth per cent interest on money deposited in railroad company's checking account, since agreement was intended to relate solely to money in checking account and did not include moneys deducted therefrom. Lowden v Northwestern Nat'l, 86 F(2d) 376.

"Compound interest" is the interest paid when the unpaid interest due upon the principal is added to the principal and the resulting sum is the basis for the next payment upon which interest is computed. Under the New York law an agreement to pay compound interest on obligations is not enforceable. Re Wisconsin Central, 63 F. Supp. 151.

Option to pay a lower rate of interest as affecting negotiability. 2 MLR 385.

When does interest begin to run on legacies? 16 MLR 226.

Small loan companies; regulation of. 24 MLR 255.

Rates of interest after maturity. Where a conflict of laws, which law governs. 30 MLR 690.

2. Usury

A sale of personal property is not a loan or forbearance of money and is not within the usury law unless the sale is a mere form or device to evade such law and, in the instant case, evidence sustains the finding that a certain conditional sales contract was in fact usurious. Under our statute and decision law, usurious contracts are non-enforceable, and any amount taken or received as interest above the permissible rate is fatal; and since a usurious contract is void, no right or remedy except as given by the usury law is available to either party. Seebold v Eustermann, 216 M 566, 13 NW(2d) 739.

Courts will look beyond the form of the transaction to its substance in determining whether there is usury. State court decisions, based on state statutes, are binding on federal courts. A transaction whereby a borrower was required to give notes bearing seven per cent interest on a loan of $500,000, to purchase $80,000 of worthless stock, and also purchase a house for $128,000 more than its value, was usurious, making notes void. Warner v Foshay, 57 F(2d) 656.

Sale on credit for more than cash price. 10 MLR 550.

When discounted notes deemed usurious. 10 MLR 550.

Usury in the contract; conflict of laws. 12 MLR 72; 13 MLR 538 to 555.

What is usury in Minnesota. 21 MLR 585.

Contract rendered usurious by addition of charges for services and expenses. 22 MLR 1071.

Junior mortgagee setting up usury in the senior mortgage. 24 MLR 124.

Choice of law as to usurious character of contract. 30 MLR 410.

334.02 USURIOUS INTEREST; RECOVERY.

Usury may be proved by a fair preponderance of the evidence. The transaction in the instant case was usurious and the contract was between plaintiff's decedent and the defendant bank. Dege v Produce Exch. Bank, 212 M 44, 2 NW(2d) 423.

Usury is the receiving, securing, or taking of a greater sum or value for the loan or forbearance of money, goods, or things in action than is allowed by law. The test to be applied in any given case is whether the contract, if performed, would result in producing to the lender a rate of interest greater than is allowed by law, and that such rate is intended. Whether a particular transaction is usurious is ordinarily a question of fact. Seebold v Eustermann, 216 M 573, 13 NW(2d) 739.

Agreement to pay interest on interest due and unpaid when agreement is made before interest becomes due. 8 MLR 547.

Admissibility of parol evidence to show usurious oral agreement. 21 MLR 470.

What is usury in Minnesota. 21 MLR 585.

334.021 CORPORATION PROHIBITED FROM INTERPOSING DEFENSE OF USURY.

HISTORY. 1947 c. 282 s. 1.

334.03 USURIOUS CONTRACTS INVALID; EXCEPTIONS.

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24. **Real estate mortgages held not usurious**

1. Generally

Defendant was a distributor of Cord cars and plaintiff engaged in the automobile finance business. The finance company's action in violating the usury statutes was a wrongdoing which barred recovery by the finance company from the automobile dealer under the usual indemnity clause when conditional sales contracts were assigned by the dealer to the indemnity company. Distinguishing, Dunn v Midland, 206 M 550, 289 NW 411, and Midland Loan v Lorentz, 209 M 278, 296 NW 911. Midland Loan Finance Co. v Madsen, 217 M 267, 14 NW(2d) 475.

Admissibility of parol evidence to show usurious oral agreement. 21 MLR 370.

2. Intent

The law to be applied in determining the validity of a chattel mortgage on the ground that the note secured is usurious is that intended by the parties. Absent evidence of express intent, it is presumed that the parties intended to be applied either the law of the place of performance of the note or the law of that one of the states having contacts vital to the transaction, which would make the contract enforceable. Here it appears that the parties intended the issue of usury to be governed by the law of Wisconsin, the place where the note was payable and where the chattel mortgage is valid. State v Rivers, 206 M 85, 287 NW 790.

The question of usury is generally one of fact. Each case depends upon its own particular facts and circumstances. The test to determine whether there is usury in a given case is whether the contract when performed will result in producing to the lender interest at a greater rate than that permitted by law, and whether the result was intended by the lender. Midland Loan v Lorentz, 209 M 278, 296 NW 911.

Usury is not to be presumed but must be proved and cannot be found on mere suspicion, however strong. "Proof" is merely that quantity of evidence which produces a reasonable assurance of the existence of the ultimate fact. The devices resorted to to cover usury are so many and various that direct and positive evidence is often not attainable; but the courts have never hesitated to pronounce a contract usurious whenever the circumstances and evidence, intrinsic or extrinsic, reasonably satisfy them that there was usury in fact. Dege v Produce Exch. Bank, 212 M 44, 2 NW(2d) 423.

Plaintiff's actions in violating the usury statutes constituted a conscious and wilful wrongdoing barring its recovery under the indemnity clause in the assignment of the conditional sales contracts in the instant case. Violations of usury statutes are presumed to be intentional. Midland Loan Finance Co. v Madsen, 217 M 267, 14 NW(2d) 475.

Necessity for the existence of a corrupt agreement to taint a transaction with usury. 11 MLR 70.

7. Cover for usury

Since courts look to the substance and effect of transactions claiming to be usurious, there is no shift or device on the part of the lender to evade the law under or behind which the court will not look to ascertain the real nature and object of the transaction. Violations of usury statutes are presumed to be intentional. Midland Loan Finance Co. v Lorentz, 209 M 278, 296 NW 911.

In an action in St. Louis county to recover on promissory notes given for loans made under the Morris Plan, where the defense was usury, defendants contending that L. 1933, c. 246, was unconstitutional, the court held the act unconstitutional; while on a similar case in Hennepin county judgment on the pleadings was given in favor of the plaintiff. The appellate court held that the taking by an industrial loan and thrift company, operating under L. 1933, c. 246 (ss. 53.01 to 53.09), of an instalment certificate calling for payments thereon while the loan is maturing does not render the loan usurious. Mesaba Loan v Sher, 203 M 589, 282 NW 823.

In an action to cancel and set aside as void a conditional sales contract on the ground that it was usurious, the trial court found that the finance company loaned $316 and the borrower agreed to repay that amount in 18 months, plus $104, and

properly found the transaction usurious and denied recovery on the instrument. Bangs v Midland Loan, 200 M 310, 274 NW 184.

Usurious loans where interest is deducted in advance. 1 MLR 468.

Assignment of conditional sale contract contemporaneous with usurious loan. 22 MLR 447.

8. Inclusion of more than received

The evidence supports the finding that plaintiff borrowed $200 of defendant upon the security of his truck, and agreed to repay the loan in 12 monthly payments of $21.10 each; and that in order to evade the usury law of this state a note and chattel mortgage were signed in blank and afterward defendant filled in the blanks so as to show no usury on the face of the note or mortgage. The trial court properly authorized the cancelation of the usurious contract. Beral v Edison Finance Co. 206 M 479, 288 NW 844.

Where the borrower obtained a loan of $500,000 and gave notes bearing seven per cent interest and as part of the agreement agreed to purchase $80,000 of worthless stock and to purchase real estate at $128,000 above its actual value, the transaction was usurious and the notes void. Warner v Foshay, 57 F(2d) 656.

Absent a contract to sell at cash price, vendors increase of credit price over cash price of an article sold by a greater percentage than is permitted by the usury law, does not make the transaction usurious, for the reason that the transaction is a sale of property and not a loan of money; and the sale of an existing conditional sales contract at a discount is not a loan and hence is not subject to the usury law. Dunn v Midland Loan, 206 M 550, 289 NW 411.

In a replevin action to recover possession of an automobile because of a default in payments under a conditional sales contract, defendants failed to establish a defense of usury in making of the contract by proof that the consideration agreed upon between the parties at the time the contract was entered into was less than that provided for in the contract, it conclusively appearing from the evidence that the amount contended for by the defendants to be the correct sales price did not include an exclusive sum as interest. Mpls. Disc. Co. v Croff, 201 M 111, 275 NW 511.

9. Liability of principal for acts of agent

Successive purchases by an automobile finance company of paper from an automobile dealer do not require an inference that their relationship is that of principal and agent where the transactions between them show the relationship to be that of vendor and vendee; and in the instant case the sale of an existing sales contract at a discount is not a loan and not subject to the usury law. Dunn v Midland Loan, 206 M 550, 289 NW 411.

12. Interest, paid in advance

Where interest is paid in advance, if the maturity is accelerated by the payee, he must refund or give credit for unearned interest payments, and, where a note is prepaid at the instance of the maker, in the absence of some agreement to the contrary, he is not entitled to a refund. 1944 OAG 24, Feb. 29, 1944 (29-A-18).

20. Conflict of laws

The law to be applied in determining the validity of a chattel mortgage on the ground that the note secured is usurious is that intended by the parties. Absent evidence of express intent, it is presumed that the parties intended to be applied either the law of the place of performance of the note or the law of that one of the states having contacts vital to the transaction, which would make the contract enforceable. Here it appears that the parties intended the issue of usury to be governed by the law of Wisconsin, the place where the note was payable and where the chattel mortgage is valid. State v Rivers, 206 M 85, 287 NW 790.

21. Pleading

A decision of the supreme court that a conditional sales contract for the sale of an automobile was usurious and that the assignees could not recover thereon from the automobile purchaser was not res judicata in the assignee's action against the automobile dealer as to who was responsible for such usury. Midland Finance v Madsen, 217 M 267, 14 NW(2d) 475.

When a small loan business catering to the large class of poor and necessitous wage-earners is so conducted that in every loan made the usury statute is flagrantly and intentionally violated, and there is no adequate or effective remedy which the borrowers are willing or able to use to obtain redress for violation, it constitutes a public nuisance; and the court did not err in enjoining the further prosecution of defendant's business and in appointing a receiver to liquidate defendant's assets. State ex rel v O'Neil, 205 M 366, 286 NW 316.

Defense of usury. 17 MLR 205.

Usury as a nuisance; allowance of injunction and appointment of a receiver. 23 MLR 843.

334.05 USURIOUS CONTRACTS; CANCELATION.

Under the circumstances in the instant case where the conduct of the defendant, who conducted a small loan business, clearly constituted a nuisance, the trial court did not exceed its jurisdiction in declaring the business a public nuisance and enjoining the future conduct of the business and in appointing a receiver to take custody of the evidence, notes, and documents pertaining to defendant's usury business. State ex rel v O'Neil, 205 M 366, 286 NW 316.

Where the transaction was clearly usurious but a device was resorted to by having the defendant sign a note and mortgage in blank which was later filled in so that in form the documents were legal, the trial court did not err in admitting oral testimony, and holding the transaction usurious and the contract void. Bearl v Edison Finance, 206 M 479, 288 NW 844.

While usury laws are enacted to protect the weak from oppression, they should not be converted from shields of protection into swords of offense; and since they are penal in nature, they should be construed with reasonable strictness. Such contracts are nonenforceable, and any amount taken or received as interest above the permissible rate is fatal. Seebold v Eustermann, 216 M 567, 13 NW(2d) 739.

Where the borrower obtained a loan of $500,000 and executed a note bearing seven per cent interest and as part of the transaction paid $80,000 for some worthless stock and $128,000 more for a piece of real estate than it was worth, the transaction was clearly usurious and the note void. The right of the state to regulate interest charges and to enact usury laws is the exercise by the state of its police power. Warner v Foshay, 57 F(2d) 656.

Disregard of corporate entity to allow pleading of usury. 15 MLR 112.

Usury in Minnesota. 21 MLR 586.

Regulation of business and trades; small loan business. 24 MLR 255.

334.12 INSTRUMENT OBTAINED BY FRAUD.

Waiver. 11 MLR 428.
Law of misrepresentation. 22 MLR 939, 1007.