CHAPTER 31

Money and Interest

**SECTION 34‑31‑10.** Dollars, dimes, cents and mills.

 All accounts in the public offices of this State, the verdicts of juries on all contracts and all accounts of public officers shall be expressed in dollars or units thereof, i.e. dimes or tenths, cents or hundredths and mills or thousandths, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar and a mill the thousandth part of a dollar.

HISTORY: 1962 Code Section 8‑1; 1952 Code Section 8‑1; 1942 Code Section 6735; 1932 Code Section 6735; Civ. C. ‘22 Section 3635; Civ. C. ‘12 Section 2515; Civ. C. ‘02 Section 1659; G. S. 1287; R. S. 1389; 1795 (5) 262.

CROSS REFERENCES

Department of Insurance regulations, see S.C. Code of Regulations R. 69‑1 et seq.

**SECTION 34‑31‑20.** Legal rate of interest.

 (A) In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three‑fourths percent per annum.

 (B) A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

HISTORY: 1962 Code Section 8‑2; 1952 Code Section 8‑2; 1942 Code Section 6736; 1932 Code Section 6736; Civ. C. ‘22 Section 3636; Civ. C. ‘12 Section 2516; Civ. C. ‘02 Section 1660; G. S. 1289; R. S. 1289; R. S. 1392; 1866 (13) 463; 1938 (40) 1534; 1979 Act No. 159 Section 1; 1982 Act No. 445; 2000 Act No. 344, Section 1, eff January 1, 2001; 2005 Act No. 27, Section 7, eff March 21, 2005.

Code Commissioner’s Note

Based on the effective dates of the applicable acts, judgments to which this section apply entered before January 1, 2001, draw interest at the rate of fourteen percent a year (see Act 445 of 1982). Judgments entered January l, 2001, through June 30, 2005, draw interest at the rate of twelve percent a year (see Act 344 of 2000).

Editor’s Note

2000 Act No.344, Section 3, provides as follows:

“The provisions of this act are declared by the General Assembly to be nonseverable, and if any portion of this act is declared by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable, or unlawful, the remaining provisions are declared to be null and void.”

2000 Act No. 344, Section 4, provides as follows:

“This act takes effect January 1, 2001, and applies with respect to interest calculated pursuant to causes of action arising or accruing on or after that date.”

Effect of Amendment

The 2000 amendment, in subsection (B), substituted “is” for “shall be” and “twelve percent a year” for “fourteen percent per annum”.

The 2005 amendment rewrote subsection (B).

CROSS REFERENCES

Applicability of this section to payments for underground storage tank site rehabilitation costs, see Section 44‑2‑130.

Application of this section to claims against a decedent’s estate, see Section 62‑3‑806.

Finance and other charges permitted under the Consumer Finance Law, see Section 34‑29‑140.

Insurance premium service agreements, see Section 38‑39‑70.

Payment of interest on disputed workers’ compensation benefits, see Section 42‑9‑430.

LIBRARY REFERENCES

47 C.J.S., Interest Section 40.

RESEARCH REFERENCES

ALR Library

60 ALR 3rd 487 , Comment Note.‑Allowance of Prejudgment Interest on Builder’s Recovery in Action for Breach of Construction Contract.

Encyclopedias

S.C. Jur. Appeal and Error Section 165, What Types of Questions Can be Certified.

S.C. Jur. Costs Section 42, Interest.

S.C. Jur. Damages Section 8, Interest, Attorney Fees, and Costs.

S.C. Jur. Divorce Section 72, Attorney Fees and Costs.

S.C. Jur. Divorce Section 73, Post‑Judgment Interest on Equitable Distribution Awards.

S.C. Jur. Divorce Section 8.1, Judicial Authority.

S.C. Jur. Divorce Section 45.1, Change in Alimony.

S.C. Jur. Equity Section 23.2, Damages in Equity.

Treatises and Practice Aids

Res. Mort. Lend. State Reg. Man. South Eastern SC Section 2:39, Usury.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law, practice and procedure. 40 S.C. L. Rev. 197 (Autumn 1988).

Attorney General’s Opinions

The prohibition against variable interest rates under Section 8‑3, SC Code (1962), as amended [Code 1976 Section 34‑31‑30] applies to construction loans in excess of $50,000.00 if the loan is secured by a first mortgage on real estate. 1974‑75 Op Atty Gen, No 4128, p 197.

Federal Variable Rate Mortgage Regulation, Regulation No. 79‑303 (12 C.F.R. 545.6‑2, as amended May 30, 1979) preempts Act No. 7 of 1979 by invalidating the restriction on variable rate mortgages, as applicable to federal savings and loan associations. 1979 Op Atty Gen, No 79‑98, p 135.

On loans secured by first mortgages on real estate, no greater rate of interest than that allowed by 1962 Code Section 8‑3 [1976 Code Section 34‑31‑40] may be charged; lending agencies may make second mortgage real estate loans at 7% add‑on charges pursuant to 1962 Code Section 8‑233 [1976 Code Section 34‑13‑120]. 1975‑76 Op Atty Gen, No 4375, p 213.

Payment of $500 per month as interest on a $50,000 loan as long as any portion of the debt remained outstanding was usurious and the debtor was entitled to summary judgment on his usury counterclaim where the creditor had admitted the existence of 13 $500 payments in his verified complaint and had failed to set forth facts to establish the defense of equitable estoppel. Murphy v. Hagan (S.C. 1980) 275 S.C. 334, 271 S.E.2d 311.

A second real estate mortgage of $20,000 with payment due in 90 days at 100 percent interest was usurious and the defense of usury was available to the holder of a third mortgage who was also a guarantor on the second mortgage where, although it had been made through a corporate entity, the second mortgage had actually been a personal loan solicited by the vice president of the corporation, with the corporate formula used to avoid the usury statute; the holder of the second mortgage was entitled to recover only the principal amount of $20,000 without interest, costs or attorneys’ fees. Palmetto Federal Sav. and Loan Ass’n of Aiken v. Mullen (S.C. 1980) 275 S.C. 317, 270 S.E.2d 437.

Contract for work on property which mentioned no time price differential or higher credit price and which called for monthly payments producing interest rate of approximately 14 percent was usurious on its face. Davenport v. Unicapital Corp. (S.C. 1976) 267 S.C. 691, 230 S.E.2d 905.

Under Public Law 93‑501 State usury laws are applicable to State charter banks lending under the Federal Deposit Insurance Act and the National Housing Act. 1974‑75 Op Atty Gen, No 3933, p 15.

Section not applicable to bona fide revolving sales credit charges. Bona fide revolving sales credit charges, like other sales credit charges, constitute time price differential and not interest and are not subject to this section [Code 1962 Section 8‑5]. 1971‑72 Op Atty Gen, No 3260, p 53.

Information concerning whether or not a corporation has a capital stock of $40,000 or more may still be given to prospective lenders pursuant to Section 8‑8 [1976 Code Section 34‑31‑80] of the Code. 1976‑77 Op Atty Gen, No 77‑10, p 22.

NOTES OF DECISIONS

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1. In general

In determining the rate of interest to apply in action on dishonored checks, Section 36‑3‑122(4) refers only to the “judgment rate”, and Section 34‑31‑20(B) provides for interest on judgments at 14 percent per annum, however, Section 34‑31‑20(A) provides for an 8.75 percent per annum interest rate on any sum or sums ascertained and due. Therefore, absent specific use of the words “judgment rate” in Section 36‑3‑122(4), the prejudgment rate expressed in Section 34‑31‑20(A) seems to most logically apply to interest on dishonored checks from the time of demand until final judgment. First Federal Sav. and Loan Ass’n of South Carolina v. Chrysler Credit Corp. (C.A.4 (S.C.) 1992) 981 F.2d 127.

In action brought by bank against drawer of checks on which drawer had stopped payment, prejudgment rate of 8 3/4, percent per annum rather than postjudgment rate, applied to award of interest on dishonored checks from date demand was made to date of judgment, despite reference within applicable statute regarding accrual of cause of action to “judgment rate.” First Federal Sav. and Loan Ass’n of South Carolina v. Chrysler Credit Corp. (C.A.4 (S.C.) 1992) 981 F.2d 127. Interest 31

Insured party who received jury verdict in exact amount of rebates claimed due to it from insured under contract was entitled to prejudgment interest on rebate amount from date refund demand was first made. Defender Industries, Inc. v. Northwestern Mut. Life Ins. Co., 1989, 727 F.Supp. 252, affirmed in part, reversed in part 938 F.2d 502, on remand 809 F.Supp. 400.

Corporate Chapter 7 debtor’s chief financial officer (CFO) was not overpaid, and did not receive “voluntary transfer” recoverable by trustee in exercise of his strong‑arm powers under South Carolina’s Statute of Elizabeth, merely because he received interest upon which his ex‑wife insisted as prerequisite for advancing CFO the funds necessary to make loans to financially distressed corporate debtor, in amount twice the amount of principal borrowed; e‑mails between parties and their performance in accordance with terms of e‑mails was sufficient to establish existence of agreement for payment of interest in twice the amount of principal borrowed. In re Genesis Press, Inc. (Bkrtcy.D.S.C. 2016) 559 B.R. 445. Interest 33; Usury 42

Under South Carolina law, parties are at liberty to contract, within legal limits, relative to the interest to be paid on obligation, and if parties agree that a higher rate of interest than the legal, or statutory, rate is to be paid after maturity, then agreement of the parties controls. In re Genesis Press, Inc. (Bkrtcy.D.S.C. 2016) 559 B.R. 445. Bankruptcy 2646; Bankruptcy 2704

District court award of prejudgment interest in diversity interpleader action at rate of 6%, rather than at 8.75% rate mandated by South Carolina law, was not abuse of discretion, in light of statutory provision allowing interpleader plaintiff to provide non‑interest bearing bond in amount of policy limit. Security Ins. Co. of Hartford v. Arcade Textiles, Inc. (C.A.4 (S.C.) 2002) 40 Fed.Appx. 767, 2002 WL 1473417, Unreported, certiorari denied 123 S.Ct. 852, 537 U.S. 1109, 154 L.Ed.2d 780. Federal Courts 3062

General contractor from whom university had withheld portion of payment for construction project on university’s campus was not entitled to interest from university on unpaid balance due to general contractor under the general interest statute, as the parties had contracted for a different rate of interest. EllisDon Const., Inc. v. Clemson University (S.C. 2011) 391 S.C. 552, 707 S.E.2d 399. Interest 36(1)

Interest rate that could be imposed on property owner could not exceed statutory rate in subcontractor’s action to enforce mechanic’s lien, although subcontractor and general contractor contracted for interest rate that was higher than statutory rate; subcontractor and property owner did not contract for interest rate that was higher than statutory rate. Taylor, Cotton & Ridley, Inc. v. Okatie Hotel Group, LLC (S.C.App. 2007) 372 S.C. 89, 641 S.E.2d 459. Interest 36(1)

Mother was entitled to award of simple, post‑judgment interest on award of past‑due child support at 12% per annum, and not compound interest, under post‑judgment interest statute in effect at time of mother’s filing of rule to show cause for past‑due child support and alimony and other claims that did not specifically authorize compound interest. Edwards v. Campbell (S.C. 2006) 369 S.C. 572, 633 S.E.2d 514. Interest 39(3); Interest 60

In reviewing contempt sanction that required former husband to pay interest for seven‑month period in which former husband delayed complying with property settlement agreement’s 30‑day period to pay former wife her share of equity in marital residence after former wife vacated residence, Court of Appeals would modify sanction to reduce duration of interest period; since former wife did not expeditiously sign and return quitclaim deed to former husband, former husband should not be penalized for time period preceding his receipt of deed. Browning v. Browning (S.C.App. 2005) 366 S.C. 255, 621 S.E.2d 389. Divorce 1323(6)

Proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. QHG of Lake City, Inc. v. McCutcheon (S.C.App. 2004) 360 S.C. 196, 600 S.E.2d 105, rehearing denied. Interest 39(2.15)

Mortgagee who foreclosed on mortgage following default was entitled to recover prejudgment interest, even though mortgage agreement itself indicated a zero percent interest rate, since mortgage was for a sum certain and payable on a particular date. BB & T of South Carolina v. Kidwell (S.C.App. 2002) 350 S.C. 382, 565 S.E.2d 316. Interest 39(2.20); Mortgages And Deeds Of Trust 1825

Former husband was not entitled to pre‑judgment interest, where former husband failed to plead request for pre‑judgment interest at trial court. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Interest 66

Former husband was not entitled to post‑judgment interest, where prior to appellate decision, former husband did not receive money judgment which would have provided basis for post‑judgment interest. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Interest 39(3)

Wife was automatically entitled to post‑judgment interest on equitable distribution award without regard to the fact that her motion for reconsideration seeking such interest was untimely or that she failed to seek it in her previous pleadings. Calhoun v. Calhoun (S.C. 2000) 339 S.C. 96, 529 S.E.2d 14. Interest 39(3); Interest 66

Wife, as judgment creditor appealing equitable distribution award on grounds of inadequacy, was entitled to post‑judgment interest on final award decided by the Court of Appeals running from the date of the original judgment, regardless of whether original judgment was modified upward or downward or remained the same. Calhoun v. Calhoun (S.C. 2000) 339 S.C. 96, 529 S.E.2d 14. Interest 39(3)

Interest rate stated in contract between travel agent and resort, rather than statutory postjudgment interest rate, applied to judgment entered on the contract. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc. (S.C.App. 1997) 326 S.C. 460, 483 S.E.2d 796, certiorari granted, reversed 334 S.C. 324, 513 S.E.2d 617. Interest 35

The trial court erred in awarding 18 percent interest on a judgment where the debt involved was a liquidated one, and there was no dispute regarding the amount or the date the debt was due and payable; thus, the appellate court had the authority to reduce the prejudgment interest awarded to 8 3/4 percent. Englert, Inc. v. Netherlands Ins. Co. (S.C.App. 1993) 315 S.C. 300, 433 S.E.2d 871. Interest 31; Interest 39(2.15)

An equitable distribution award is a money decree or judgment, pursuant to Section 34‑31‑20, so that it accrues interest at the statutorily prescribed interest rate, and thus fixed awards of money for equitable distribution shall accrue interest at the post‑judgment rate from the date of the judgment or, in the case of specified periodic payments, from the date each payment becomes due and owing. Casey v. Casey (S.C. 1993) 311 S.C. 243, 428 S.E.2d 714.

A shareholder who paid a corporate note pursuant to his personal guaranty was entitled to an award of prejudgment interest from his fellow shareholder, who also executed the note, since the measure of recovery was fixed by conditions existing at the time the claim arose. Babb v. Rothrock (S.C. 1993) 310 S.C. 350, 426 S.E.2d 789. Interest 47(1)

The trial court erred in assessing compound interest at the rate of 1 1/2 percent per month on the unpaid balance in an action for account stated since Section 34‑31‑20 requires that such interest be computed at the rate of 8 3/4 percent per annum and, although the invoices pertaining to the goods provided for the higher rate, they were not signed by the recipient and thus could not constitute a written agreement. J.C. White Lumber Co., Inc. v. Allen (S.C.App. 1991) 306 S.C. 183, 410 S.E.2d 588. Interest 31; Interest 60

The 14 percent postjudgment interest which is recoverable pursuant to Section 34‑31‑20(B) does not apply to tax refunds. The legislature deliberately set a separate interest statute for tax refunds, thus limiting postjudgment interest to 6 percent interest pursuant to Section 12‑47‑60. Multi‑Cinema, Ltd. v. South Carolina Tax Com’n (S.C. 1989) 300 S.C. 514, 389 S.E.2d 153. Taxation 2763

An order affecting equitable division entered while the award is on appeal is void for lack of jurisdiction to enter it. Thus, a ruling that an equitable division award, which was on appeal, was a properly enrolled money decree and judgment pursuant to Section 34‑31‑20, and that the award should draw interest at the legal rate of 14 percent per annum, was void for lack of jurisdiction. Luthi v. Luthi (S.C.App. 1989) 297 S.C. 306, 376 S.E.2d 782.

A school district was entitled to prejudgment interest on funds withheld by a county since Section 11‑9‑350 provides for interest on the obligations of a county. Charleston County School Dist. v. Charleston County (S.C. 1989) 297 S.C. 300, 376 S.E.2d 778. Education 219

Insured was not entitled to prejudgment interest where judgment against insurance company was not on policy of insurance, but lay in negligence for failure to procure insurance, and claim included lost profits in reduction of net worth as well as value of uninsured property; in action for negligence, claims for lost profits or similar consequential loss are generally regarded as unliquidated damages for which prejudgment interest will not be awarded. Republic Textile Equipment Co. of South Carolina, Inc. v. Aetna Ins. Co. (S.C.App. 1987) 293 S.C. 381, 360 S.E.2d 540.

Interest does not accrue during period in which appeal is pending when appeal is made by judgment creditor on basis of claim of inadequacy and finding is upheld. Barth v. Barth (S.C. 1987) 293 S.C. 305, 360 S.E.2d 309.

Judgment creditor, who unsuccessfully appeals money judgment on ground of inadequacy after having received judgment in his favor, is not entitled to interest under general interest statute during pendency of his appeal, as purpose of post judgment interest is to penalize nonpayment of judgment by judgment debtor. Sears v. Fowler (S.C. 1987) 293 S.C. 43, 358 S.E.2d 574. Interest 54

Judgment creditor who appeals, based on insufficiency of verdict, is not entitled to interest during pendency of appeal when verdict is later upheld, despite mandatory tenor of statutory language. Sears v. Fowler (S.C. 1987) 293 S.C. 43, 358 S.E.2d 574. Interest 54

A party who unsuccessfully appealed from the lower court’s holding that title to land condemned by a county was held by two other persons, and not by him, was not liable for interest on a judgment awarded for the taking, which the county had paid into court, since the obligation to pay interest on the judgment was that of the county, as the judgment debtor, and, moreover, payment of the judgment into court stopped the running of judgment interest. Horry County v. Woodward (S.C.App. 1986) 291 S.C. 1, 351 S.E.2d 877.

Offset for interim interest allowed to vendor at fault for delaying conveyance would be determined by computing the interests on the purchase money due at the closing at the legal rate of interest during the 44 month delay. Windham v. Honeycutt (S.C.App. 1986) 290 S.C. 60, 348 S.E.2d 185.

Postjudgment interest began to accrue on the date of the jury verdict for the insurer where, on appeal, the Supreme Court reversed, holding that a directed verdict should have been awarded to the insurers, and remanded case for entry of judgment. Edens v. South Carolina Farm Bureau Mut. Ins. Co. (S.C.App. 1986) 288 S.C. 435, 343 S.E.2d 49.

Where an insured’s judgment against a fire insurance company was reversed on appeal, the trial court’s award of prejudgment interest would be vacated, since the insured no longer had a judgment “enrolled or entered” under Section 34‑31‑20. Rutledge v. St. Paul Fire and Marine Ins. Co. (S.C.App. 1985) 286 S.C. 360, 334 S.E.2d 131.

Prejudgment interest is allowed on liabilities to pay money from the time when, either by agreement of the parties or operation of law, the payment was demandable, if the sum is certain or capable of being reduced to certainty. Accordingly, where a creditor failed to prove that the debtor expressly or impliedly agreed that the sum of money specified in an account was due, or that the parties had agreed to a contract price, prejudgment interest was properly disallowed. Southern Welding Works, Inc. v. K & S Const. Co. (S.C.App. 1985) 286 S.C. 158, 332 S.E.2d 102.

Where a payment of principal and interest on a note was due January 1, 1982, and the principal only was paid on February 16, 1982, and a judgment in favor of the promisee of the note was filed December 9, 1982, the promisee was entitled to interest on the interest which had not been paid on January 1, 1982, and in addition was entitled to interest at the judgment rate, under Section 34‑31‑20, from December 9, 1982, the date of entry of judgment. Fisher v. Carolina Door Products, Inc. (S.C.App. 1985) 286 S.C. 5, 331 S.E.2d 368.

The statutory interest rate on accounts prescribed by Section 34‑31‑20 is applicable only in the absence of a written agreement between the parties fixing a different rate of interest; accordingly, an invoice stating that a defendant would pay one and one‑half percent per month interest on all past due accounts owed by him to plaintiff was a written agreement within the meaning of the statute and the interest rate of the written agreement within the meaning of the statute and the interest rate of the written agreement would apply. Burnett Dubose Co., Inc. v. Starnes (S.C.App. 1984) 284 S.C. 196, 324 S.E.2d 651.

The statutory interest rate on money judgments or decrees is applicable only in the absence of a written agreement between the parties fixing a different rate of interest; thus, if a contract specifies a lawful rate of interest to be paid after maturity, the same rate will apply on the judgment entered on the contract. Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc. (S.C. 1979) 272 S.C. 289, 251 S.E.2d 738. Interest 31; Interest 38(1)

Under section Section 34‑31‑20(A), prejudgment interest is allowed on obligation to pay money from time when, either by agreement of parties or operation of law, payment is demandable, which assumes that sum of payment is “certain and capable of being reduced to certainty”; thus, where arbitration award obligated plaintiff to pay defendant specific sum, defendant was entitled under Section 34‑31‑20(A) to prejudgment interest on arbitration award from date of award, rather than from date arbitration commenced, since sum of award was certain and was demandable by operation of law on date of award. Fitigues, Inc. v. Varat Enterprises, Inc., N.D. Ill.1992, 813 F.Supp. 1336.

2. Interest on child support

Former husband was not entitled to pre‑judgment interest, where former husband failed to plead request for pre‑judgment interest at trial court. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Interest 66

Former husband was not entitled to post‑judgment interest, where prior to appellate decision, former husband did not receive money judgment which would have provided basis for post‑judgment interest. Hopkins v. Hopkins (S.C. 2000) 343 S.C. 301, 540 S.E.2d 454. Interest 39(3)

3. Prejudgment interest

Under South Carolina law, when otherwise unliquidated claim is capable of being reduced to certainty by simple mathematical calculation, it can be considered liquidated for purpose of awarding prejudgment interest. GTR Rental, LLC v. DalCanton, 2008, 547 F.Supp.2d 510, entered. Interest 39(2.15)

Under South Carolina law, proper test for determining whether prejudgment interest may be awarded is whether measure of recovery, not necessarily amount of damages, is fixed by conditions existing at time that claim arose. GTR Rental, LLC v. DalCanton, 2008, 547 F.Supp.2d 510, entered. Interest 39(2.15)

Under South Carolina law, fact that sum due is disputed does not render claim unliquidated for purposes of award of prejudgment interest. GTR Rental, LLC v. DalCanton, 2008, 547 F.Supp.2d 510, entered. Interest 39(2.15)

South Carolina law allows prejudgment interest on obligations to pay money from time when, either by parties’ agreement or operation of law, payment is demandable, if sum due is certain or capable of being reduced to certainty. GTR Rental, LLC v. DalCanton, 2008, 547 F.Supp.2d 510, entered. Interest 39(2.15)

Prejudgment interest would be awarded to insurer for insured’s violations of South Carolina Unfair Trade Practices Act (SCUTPA) since amount of premium due and owing to insurer was capable of being reduced to certainty. Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 2001, 176 F.Supp.2d 510. Interest 39(2.35)

As a general rule, prejudgment interest is not appropriate under South Carolina law when a plaintiff seeks to recover unliquidated damages; however, the fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest. Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 2001, 176 F.Supp.2d 510. Interest 39(2.15)

When an otherwise unliquidated claim is capable of being reduced to certainty by a simple mathematical calculation, it can be considered liquidated for the purpose of awarding prejudgment interest under South Carolina law. Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 2001, 176 F.Supp.2d 510. Interest 39(2.15)

Defendant’s unconditional $25,000 tender that was required by settlement agreement and was refused by plaintiff stopped running of statutory prejudgment interest until deadline for full payment. Vista Antiques and Persian Rugs, Inc. v. Noaha, LLC (S.C.App. 2009) 2008 WL 5479587, rehearing granted. Interest 50

Remand was required for determination of point at which a sum certain accrued for purposes of subcontractor’s claim for prejudgment interest in its action for breach of contract against general contractor. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Interest 39(2.15)

Subcontractor was entitled to prejudgment interest in its action for breach of contract against general contractor, where subcontractor proved the essential elements of an account stated, alleging that it was owed $53,695.08 under subcontract, and contractor’s project manager admitted that the balance on the subcontract was $51,270.08. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Interest 39(2.15)

A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor’s money beyond the date payment was due. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Interest 39(2.15)

Right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party; it is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Interest 39(2.15); Interest 44

Fact that an amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest; rather, the proper test is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Interest 39(2.15)

Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Statutes 1123

Law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. Miller Construction Company, LLC v. PC Construction of Greenwood, Inc. (S.C.App. 2016) 418 S.C. 186, 791 S.E.2d 321. Statutes 1308

Car purchaser was not entitled to prejudgment interest on award of actual damages, in action on behalf of herself and similarly situated customers against car dealer for damages under South Carolina Regulation of Manufacturers, Distributors, and Dealers Act for based on charging of allegedly improper closing fees; purchaser’s damages were not liquidated or ascertainable at time class action claim arose, and because purchaser’s theory of the case was that she paid closing fee that was not equal to actual closing costs, her actual damages could have been portion of fee that exceeded the actual closing costs. Freeman v. J.L.H. Investments, LP (S.C. 2015) 414 S.C. 362, 778 S.E.2d 902. Interest 39(2.20)

Electrical contractor was entitled to prejudgment interest on quantum meruit claim against building tenant despite tenant’s disagreement with contractor over the amount due for the work; the amount owed to contractor was capable of being reduced to a sum certain, and the measure of recovery was fixed by conditions existing at the time contractor’s claim arose as the costs incurred by contractor at the time of the work were established by contractor’s invoices. Boykin Contracting, Inc. v. Kirby (S.C.App. 2013) 405 S.C. 631, 748 S.E.2d 795. Interest 39(2.20)

Caregiver’s claim for $100,000 bequest had not yet arisen, and thus, did not fall within the statutory provision that authorized prejudgment interest, in action by caretaker seeking a specific bequest, where, because of caregiver’s action, estate representative was forced to delay closing estate, additional expenses for the estate’s administration were created, and the rights of creditors, taxing authorities, and the final expenses of administration had not yet been finally determined. Church v. McGee (S.C.App. 2011) 391 S.C. 334, 705 S.E.2d 481, rehearing denied. Interest 39(2.20)

Used pickup truck buyer’s damages from purchase from vehicle of truck with prior accident damage were not liquidated at the time his tort and statutory claims arose as required for award of prejudgment interest, as damages could not have been ascertained without evidence of the retail value of the truck. Austin v. Stokes‑Craven Holding Corp. (S.C. 2010) 387 S.C. 22, 691 S.E.2d 135, rehearing denied. Interest 39(2.30)

The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. Austin v. Stokes‑Craven Holding Corp. (S.C. 2010) 387 S.C. 22, 691 S.E.2d 135, rehearing denied. Interest 39(2.15); Interest 46(1)

Generally, prejudgment interest may not be recovered on an unliquidated claim in the absence of agreement or statute. Austin v. Stokes‑Craven Holding Corp. (S.C. 2010) 387 S.C. 22, 691 S.E.2d 135, rehearing denied. Interest 39(2.15)

The fact that the amount due is disputed does not render the claim unliquidated for purposes of awarding prejudgment interest; rather, the proper test is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. Austin v. Stokes‑Craven Holding Corp. (S.C. 2010) 387 S.C. 22, 691 S.E.2d 135, rehearing denied. Interest 39(2.15)

Tax sale purchaser of real property that was later redeemed by the delinquent taxpayer was not entitled to statutory prejudgment interest on its bid amount for the period of time in which the county held the purchaser’s bid money while awaiting return of the tax sale receipt from the purchaser; purchaser was required to return the tax sale receipt as a condition precedent to return of the bid. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Interest 39(2.20)

Taxpayer was not required to pay statutory prejudgment interest on bid interest due to tax sale purchaser after taxpayer redeemed property, as sum due to purchaser was the bid interest under redemption statute; although bid interest ultimately would be paid to purchaser, redemption statute required money first pass from taxpayer through county, and according to county, the bid interest was no longer due and owing. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Interest 39(2.20)

Investor’s claim for breach of contract against land development limited liability company and its principals in regards to the purchase price of investor’s interest in company was unliquidated, and thus, investor was not entitled to prejudgment interest pursuant to statute; there was no agreement between the parties as to a sum certain, the claim could not be reduced to a sum certain by computation or formula, the purchase price was not contractually stipulated, it was not reduced to a sum certain by operation of law or a controlling statute, and it could only be reduced to certainty by a jury determination. Dixie Bell, Inc. v. Redd (S.C.App. 2007) 376 S.C. 361, 656 S.E.2d 765, rehearing denied, certiorari denied. Interest 39(2.20)

An award of prejudgment interest is not proper if the measure of recovery is not fixed by conditions existing at the time the claim arose. Keane v. Lowcountry Pediatrics, P.A. (S.C.App. 2007) 372 S.C. 136, 641 S.E.2d 53. Interest 39(2.15)

Prejudgment interest is allowed on an obligation to pay money from the time when, either by agreement of the parties or operation of the law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. Keane v. Lowcountry Pediatrics, P.A. (S.C.App. 2007) 372 S.C. 136, 641 S.E.2d 53. Interest 39(2.15)

In hospital’s quantum meruit action that sought recovery of loans made to doctor regarding medical education, prejudgment interest on installments not evidenced by promissory notes would accrue at statutory rate from date when doctor breached agreement to practice medicine in local area, not from date of each installment. QHG of Lake City, Inc. v. McCutcheon (S.C.App. 2004) 360 S.C. 196, 600 S.E.2d 105, rehearing denied. Interest 31; Interest 39(2.20)

In hospital’s quantum meruit action that sought recovery of loans made to doctor regarding medical education, prejudgment interest on installments evidenced by promissory notes would be calculated in accordance with each note’s terms from their respective dates of execution. QHG of Lake City, Inc. v. McCutcheon (S.C.App. 2004) 360 S.C. 196, 600 S.E.2d 105, rehearing denied. Interest 39(2.20)

Hospital was entitled to recover prejudgment interest in its quantum meruit action against doctor, who failed to comply with agreement whereby doctor would practice medicine in local area in return for financial assistance with medical education; litigation related to specific sums of money advanced by one party to another, and thus measure of recovery was capable of being reduced to a certainty. QHG of Lake City, Inc. v. McCutcheon (S.C.App. 2004) 360 S.C. 196, 600 S.E.2d 105, rehearing denied. Interest 39(2.20)

An award of attorney’s fees may be considered part of a monetary judgment and draw interest accordingly. Parker v. Shecut (S.C. 2004) 359 S.C. 143, 597 S.E.2d 793. Interest 22(9)

A party need not plead for statutory interest; it is due as a matter of course. Parker v. Shecut (S.C. 2004) 359 S.C. 143, 597 S.E.2d 793. Interest 66

Award of post‑judgment interest on brother’s award of attorney fees was proper, even though attorney fee award was to be paid from sister’s portion of sale of beach house; sister could have expedited the sale of beach house, and sister failed to take any action to abate the running of interest. Parker v. Shecut (S.C. 2004) 359 S.C. 143, 597 S.E.2d 793. Interest 39(3)

When a plea for prejudgment interest is made, such interest may be recovered on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. Durlach v. Durlach (S.C. 2004) 359 S.C. 64, 596 S.E.2d 908. Interest 39(2.6); Interest 39(2.15); Interest 41.1

Motion to correct omission was appropriate vehicle for awarding prejudgment interest to sales representative on his successful breach of contract claim against former employer, as prejudgment interest was statutorily mandated and parties were not given notice of entry of the order in the usual manner. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Judgment 307

Prejudgment interest is allowed on liabilities to pay money from the time when, either by agreement of the parties or operation of law, the payment was demandable, if the sum is certain or capable of being reduced to certainty. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Interest 39(2.6); Interest 39(2.15)

The right of a party to prejudgment interest is not affected by rights of discount or setoff claimed by the opposing party. Lee v. Thermal Engineering Corp. (S.C.App. 2002) 352 S.C. 81, 572 S.E.2d 298. Interest 39(2.15)

Secondary lender for residential development project was not entitled to prejudgment interest in action against lead lender for fraud and breach of contract, since prejudgment interest of $231,467.22 was included in the stipulated amount that secondary lender had advanced for the project, which was awarded to secondary lender at trial, and any award of additional prejudgment interest would amount to a windfall. First South Bank v. Fifth Third Bank NA (C.A.4 (S.C.) 2015) 631 Fed.Appx. 121, 2015 WL 7351751. Interest 39(2.30); Interest 39(2.50)

4. Post‑judgment interest

Statutory amendment decreasing from 14 percent to 12 percent the post‑judgment interest rate did not change the post‑judgment interest rate of 14 percent on a judgment relating to a cause of action which arose before the January 1, 2001 effective date of the statutory amendment, and post‑judgment interest therefore continued to accrue at 14 percent after the effective date, though final judgment was not rendered until after the effective date; statutory amendment stated that it applied with respect to interest calculated pursuant to causes of action arising or accruing on or after effective date. Collins Music Co., Inc. v. IGT (S.C.App. 2005) 365 S.C. 544, 619 S.E.2d 1, rehearing denied, certiorari denied. Interest 30(3)

A claimant is entitled to interest from the date of the rendition of the verdict, or post‑judgment interest, as a matter of course. Hunting v. Elders (S.C.App. 2004) 359 S.C. 217, 597 S.E.2d 803, rehearing denied, certiorari granted, certiorari dismissed. Interest 39(3)

Former wife was entitled to award post‑judgment interest on the alimony arrearage from the date of original order, where former husband made only 18 alimony payments, although 32 months had elapsed. Jenkins v. Jenkins (S.C.App. 2004) 357 S.C. 354, 592 S.E.2d 637. Divorce 1063

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1. In general

Cited in Ex parte Graham, 54 SC 163, 32 SE 67 (1899). Gwathney v Burgiss, 98 SC 152, 82 SE 394 (1914). Karres v Pappas, 194 SC 512, 10 SE2d 15 (1940). Orgeron v Cheramie, 310 F2d 1, 135 USPQ 289 (1962, CA5 La), later app (CA5 La) 434 F2d 721, 167 USPQ 579, 14 FR Serv 2d 862.

Agreement for interest higher than legal rate must be in writing. Loan & Exch. Bank v Miller, 39 SC 175, 17 SE 592 (1893). Carolina Sav. Bank v Parrott, 30 SC 61, 8 SE 199 (1888).

A higher rate after maturity was held contracted for in Mobley v Davega, 16 SC 73 (1881). Watkins v Lang, 17 SC 13 (1882). Bowen v Barksdale, 33 SC 142, 11 SE 640 (1890). Miller v Hall, 18 SC 141 (1882).

Interest as element of damages for breach of contract. Where interest is awarded in a judgment as a means of arriving at the fair compensation to which plaintiff is entitled under a contract for amounts which defendant has unjustly withheld, the interest should be computed not at the legal rate fixed by statute but at the rate plaintiff would have had to pay upon a loan of a similar amount, considering the state of the money market and the rate charged by banks for the use of money. E. I. Du Pont De Nemours & Co. v Lyles & Lang Constr. Co., 219 F2d 328 (1955, CA4 SC), cert den 349 US 956, 99 L Ed 1280, 75 S Ct 882 and cert den 349 US 956, 99 L Ed 1280, 75 S Ct 884. E. I. Du Pont De Nemours & Co. v Lyles & Lang Constr. Co., 227 F2d 517 (1955, CA4 SC).

If the contract be, by express stipulation or by reasonable implication, to pay interest annually beyond the time fixed for the payment of the principal, if forbearance should extend beyond that time, annual interest is recoverable after the maturity of the obligation as well as before. O’Neall v Bookman, 43 SCL 80 (1855). Wright v Eaves, 31 SC Eq 582 (1858).

Compound interest. Where a party contracts to pay a sum of money, with interest thereon, at a given day, when the day arrives the interest becomes principal, and if the debt be not paid the aggregate of principal and interest then bears interest, for the future. Doig v Barkley, 37 SCL 125 (1846). Singleton v Allen, 21 SC Eq 166 (1848). Carolina Sav. Bank v Parrott, 30 SC 61, 8 SE 199 (1888). Bowen v Barksdale, 33 SC 142, 11 SE 640 (1890).

On a bond due at twelve months, or at a shorter time than twelve months, with annual interest from its date, the interest accrues annually, as well after as before the debt falls due. Singleton v Lewis, 20 SCL 408 (1884). O’Neall v Bookman, 43 SCL 80 (1855). Sharpe v Lee, 14 SC 341 (1880). Westfield v Westfield, 19 SC 85 (1883).

The contract being for the payment of a sum of money, at a longer time than twelve months, with annual interest from its date, annual interest is to be computed up to the day the debt falls due, and simple interest afterwards, until the debt is paid off. Gibbes v Chisolm, 11 SCL 38 (1819). O’Neal v Sims, 32 SCL 115 (1846). DeBruhl v Neuffer, 32 SCL 426 (1846). Westfield v Westfield, 19 SC 85 (1883). Wilson v Kelly, 19 SC 160 (1883). Ehrhardt v Varn, 51 SC 550, 29 SE 225 (1898).

Interest attaching after maturity of debt. The rate of interest prescribed by law attaches to a debt after it becomes due, unless by the terms of the contract, expressed or necessarily implied, the rate fixed on is face is to continue after the maturity of the contract. Henderson v Laurens, 2 SC Eq 170 (1803). Gaillard v Ball, 10 SCL 67 (1818). Langston v South Carolina R. Co., 2 SC 248 (1871). Bell v Bell, 25 SC 149 (1886). Briggs v Winsmith, 10 SC 133 (1878). Maner v Wilson, 16 SC 469 (1882). Carolina Sav. Bank v Parrott, 30 SC 61, 8 SE 199 (1888). Smith v Smith, 33 SC 210, 11 SE 761 (1890). Sharpe v Lee, 14 SC 341 (1880). Kennedy v Boykin, 35 SC 61, 14 SE 809 (1892). Loan & Exch. Bank v Miller, 39 SC 175, 17 SE 592 (1893). Thatcher & Co. v Massey, 20 SC 542 (1884). Kinard v Glenn, 29 SC 590, 8 SE 203 (1888).

As to annuities, see Stephenson v Axson, 8 SC Eq 274 (1831). Irby v M’Crae, 4 SC Eq 422 (1813).

The repeal of usury laws, absent a savings clause, operates retrospectively to cut off the defense of usury, even in actions upon contracts entered into before the effective date of the repeal. Vaughan v. Kalyvas (S.C.App. 1986) 288 S.C. 358, 342 S.E.2d 617. Usury 7

Stated in Crook v. State Farm Mut. Auto. Ins. Co. (S.C. 1960) 235 S.C. 452, 112 S.E.2d 241.

Cited in Smith v. Bulman (S.C. 1941) 197 S.C. 357, 15 S.E.2d 635.

Applied in Duncan v. Record Pub. Co. (S.C. 1927) 145 S.C. 196, 143 S.E. 31.

As to interest on value of property considered as an element of damages, see Walker v. Southern Ry. Co. (S.C. 1907) 76 S.C. 308, 56 S.E. 952.

Mortgage may be referred to, to ascertain interest on bond. Ex Parte Powell (S.C. 1906) 74 S.C. 193, 54 S.E. 236.

As to rate recoverable against surety, see Sloan v. Gibbes (S.C. 1900) 56 S.C. 480, 35 S.E. 408, 76 Am.St.Rep. 559.

As to interest on surety bonds, see Murray v. Aiken Mining & Porcelain Mfg. Co. (S.C. 1893) 39 S.C. 457, 18 S.E. 5.

Interest in absence of agreement. Seven per cent (now six per cent) is the applicable interest rate in the absence of special agreement. Reid v. Stevens (S.C. 1893) 38 S.C. 519, 17 S.E. 358.

The same principle where monthly interest was reserved was applied in Smith v. Smith (S.C. 1890) 33 S.C. 210, 11 S.E. 761.

Where a higher than legal rate is to be paid after maturity, but no time is stipulated within which such rate is to be paid, it continues until payment in full. Ellis v. Sanders (S.C. 1890) 32 S.C. 584, 10 S.E. 824.

The same principle applied where monthly interest was reserved in Piester v. Piester (S.C. 1885) 22 S.C. 139, 53 Am.Rep. 711.

As to interest on money paid, see Thompson v. Stevens (S.C. 1820).

As to replevin, see Hart v. Tobias (S.C. 1802).

2. Interest on decrees and judgments

For additional related cases concerning interest on decrees and judgments, see Lampkin v Nance, 4 SCL 99 (1806). Administrators of Norwood v Manning, 11 SCL 395 (1820). Sims v Campbell, 6 SC Eq 53 (1825). Winslow v Assignees of Ancrum, 6 SC Eq 100 (1825). Thomas v Wilson, 14 SCL 166 (1825). Williamson v Broughton, 15 SCL 212 (1827). Harrington v Glenn, 19 SCL 79 (1833). Administrators of Kirk v Executors of Richbourg, 20 SCL 352 (1834). Crowther v Sawyer & Steel, 29 SCL 573 (1844). Daub v Martin, 2 SCL 193 (1798). Administrator of Pinckney v Singleton, 20 SCL 343 (1834). Phinizy v Augusta & K. R. Co., 63 F 922 (1894, CC SC). Meyer Rubber Co. v Georgetown & W. R. Co., 174 F 731 (1909, CC SC), affd (CA4 SC) 177 F 870.

A judgment against a Federal receiver bears interest at the rate specified in this section [Code 1962 Section 8‑2]. Willcox v. Jones, 1910, 177 F. 870, 101 C.C.A. 84.

Landowner not entitled to interest in verdict in highway condemnation. South Carolina State Highway Dept. v. Sharpe (S.C. 1963) 242 S.C. 397, 131 S.E.2d 257.

Owner not entitled to interest in highway condemnation. South Carolina State Highway Dept. v. Schrimpf (S.C. 1963) 242 S.C. 357, 131 S.E.2d 44.

Interest on award in condemnation proceedings. In condemnation proceedings before the condemnor elects to take the property, an award is not “due” within this section [Code 1962 Section 8‑2], providing that where any sum of money shall be ascertained and due it shall draw interest. Haig v. Wateree Power Co. (S.C. 1922) 119 S.C. 319, 112 S.E. 55. Eminent Domain 247(2)

Interest runs from date of first decree. The amount fixed by a decree bears interest from the date of the first decree where a succeeding circuit judge changes the first decree in correcting an error. Brown v. Rogers (S.C. 1908) 80 S.C. 289, 61 S.E. 440.

Interest on amount fixed by referee’s report. Interest allowed only from date of judgment confirming report of referee and not from date of report showing amount then ascertained to be due. Brown v. Rogers (S.C. 1907) 76 S.C. 180, 56 S.E. 680.

As to interest decreed on sum assessed for equality of partition, see Craig v. Craig (S.C. 1830). Partition 84

3. Interest on accounts stated, sums ascertained to be due and unliquidated demands

As to balances on accounts of trustees, etc., see Tucker v Richards, 58 SC 22, 36 SE 3 (1900). Gee v Humphries, 49 SC 253, 27 SE 101 (1897). Cunningham v Cauthen, 44 SC 95, 21 SE 800 (1895). Nicholson v Whitlock, 57 SC 36, 35 SE 412 (1900). Black v Blakely, 7 SC Eq 1 (1827). Wright v Wright, 7 SC Eq 185 (1827). McCaw v Blewit, 7 SC Eq 90 (1827). Myers v Myers, 7 SC Eq 214 (1827). Rowland v Best, 7 SC Eq 317 (1827). Howard v Schmidt, 9 SC Eq 452 (1831). Dixon v Distributees of Hunter, 21 SCL 204 (1836). Pettus v Clawson, 25 SC Eq 92 (1851). Baker v Lafitte, 25 SC Eq 392 (1852). Crosby v Crosby, 1 SC 337 (1870). Livingston v Wells, 8 SC 347 (1877). Johnson v Henagan, 11 SC 93 (1878). Koon v Munro, 11 SC 139 (1878). Davis v Wright, 20 SCL 560 (1835).

As to interest on sums ascertained and due, see Grimke v Grimke, 1 SC Eq 366 (1794). Bowles v Drayton, 1 SC Eq 489 (1796). Executors of Holmes v Bigelow, 3 SC Eq 497 (1812). Harrison v Long, 4 SC Eq 110 (1810). Goddard v Bulow, 10 SCL 45 (1818). Barelli, Torre & Co. v Brown & Moses, 12 SCL 449 (1821). Elliott v Minott, 13 SCL 125 (1822). Ryan v Baldrick, 14 SCL 498 (1826). Adm’r of Conyers v Magrath, 15 SCL 392 (1827). Wistar Siter & Price v Robinson, 18 SCL 274 (1831). Wardlaw v Adm’rs & Heirs of Gray, 13 SC Eq 85 (1837). Marvin v McRae, 25 SCL 61 (1840). Ancrum v Slone, 29 SCL 594 (1844). Smith v Godbold, 23 SC Eq 186 (1850). Kennedy v Barnwell, 41 SCL 124 (1854). Kimbrel v Glover, 47 SCL 191 (1861). Arnold v House, 12 SC 600 (1880). Witte Bros. v Clarke, 17 SC 313 (1882). Sullivan v Susong & Co., 30 SC 305, 9 SE 156 (1889). Garlington v Copeland, 32 SC 57, 10 SE 616 (1890) reh dismd (SC) 11 SE 634. Southern R. Co. v City Council of Greenville, 49 SC 449, 27 SE 652 (1897). Greer v Latimer, 47 SC 176, 25 SE 136 (1896).

For additional related cases concerning interest on accounts stated, see Dickinson v Legare, 1 SC Eq 537 (1797). Knight v Mitchell, 5 SCL 506 (1814). Farrand v Bouchell, 16 SCL 83 (1823). Neyle v Chisholm 16 SCL 274 (1824). Furman & Smith v Peay, 18 SCL 394 (1831). Smetz v Kennedy, 22 SCL 218 (1837). T. J. Heyward & Co. v Searson, 28 SCL 249 (1843). Trenholm v Bumpfield, 37 SCL 376 (1832). St. Paul’s Church v Washington, 37 SCL 380 (1832). Bennett v Johnson, 28 SCL 209 (1843).

Interest on open or book accounts and unliquidated demands. Interest is not recoverable on open or book accounts, without special agreement, or on any unliquidated demand previous to finding of jury. Skirving v Executors of Stobo, 2 SCL 233 (1799). Edwards v Dargan, 30 SC 177, 8 SE 858 (1889). Survivor of Andrew Holmes & Co. v Misroon, 6 SCL 21 (1812). Schermerhorn v Admx. of Perman, 18 SCL 173 (1831). Ordinary of Fairfield v Bonner, 20 SCL 468 (1834).

Interest on unliquidated damages for breach of contract. It is error to allow interest at the legal rate prior to judgment in computing damages for breach of contract, when such damages are unliquidated. E.I. Du Pont De Nemours & Co. v. Lyles & Lang Const. Co. (C.A.4 (S.C.) 1955) 227 F.2d 517.

The repeal of usury laws, absent a savings clause, operates retrospectively to cut off the defense of usury, even in actions upon contracts entered into before the effective date of the repeal. Vaughan v. Kalyvas (S.C.App. 1986) 288 S.C. 358, 342 S.E.2d 617. Usury 7

Under this section [Code 1962 Section 8‑2] interest is recoverable on purchase price of shoes, wrongfully returned by buyer, where the correctness of the account was not disputed, notwithstanding voluntary credit given by the seller because of change in prices before delivery. Griggs‑Paxton Shoe Co. v. A. Friedheim & Bro. (S.C. 1926) 133 S.C. 458, 131 S.E. 620.

Creditor estate entitled to interest from date when account was stated. Under the provisions of this section [Code 1962 Section 8‑2] allowing interest in cases of accounts stated, and in cases wherein any sum shall be ascertained to be due, where there was no settlement or account stated between a creditor and a debtor estate during the year in which a balance was due, the creditor estate was entitled to interest only from the date when the account was stated and not from the date of the transaction giving rise to the indebtedness. Burriss v. Burriss (S.C. 1920) 113 S.C. 370, 101 S.E. 863. Interest 39(5)

Interest on purchase price of goods. Under the provisions of this section [Code 1962 Section 8‑2] allowing interest in cases of account stated, and in cases wherein any sum shall be ascertained to be due, a seller suing for the price of goods cannot recover interest where the goods were sold at different times, payments made on separate days, and the buyer never acknowledged any statement of account to be true or due. Wakefield v. Spoon (S.C. 1915) 100 S.C. 100, 84 S.E. 418.

The essence of an account stated is that the account be actually stated and that the parties thereto shall agree expressly or impliedly that it is a true statement, and is due to be paid, then or at some other specified time. Wakefield v. Spoon (S.C. 1915) 100 S.C. 100, 84 S.E. 418.

4. Liability of lender for money paid by borrower to other persons

This section [Code 1962 Section 8‑6] does not operate retrospectively. Citizens’ Bank v. Heyward (S.C. 1925) 135 S.C. 190, 133 S.E. 709, rehearing denied 144 S.C. 365, 142 S.E. 651.

It does not repeal Code 1962 Section 8‑5. This section [Code 1962 Section 8‑6] was held not to repeal the penalty for usury under Code 1962 Section 8‑5. Citizens’ Bank v. Heyward (S.C. 1925) 135 S.C. 190, 133 S.E. 709, rehearing denied 144 S.C. 365, 142 S.E. 651.

As respects imputation of president’s knowledge of usury to bank, the bank was held benefited by the fraudulent act of the president in taking 2 per cent additional interest, in that a borrower was secured for the bank, making the bank liable under Code 1962 Section 8‑5 for usury. Citizens’ Bank v. Heyward (S.C. 1925) 135 S.C. 190, 133 S.E. 709, rehearing denied 144 S.C. 365, 142 S.E. 651. Banks And Banking 116(1)

5. Who may plead usury

In Barringer v Jefferson Standard Life Ins. Co., 9 F Supp 493 (1935, DC SC). Turner v Interstate Bldg. Loan Asso. 47 SC 397, 25 SE 278 (1896). Allen v Petty, 58 SC 240, 36 SE 586 (1900). Butler v Butler, 62 SC 165, 40 SE 138 (1901).

A second real estate mortgage of $20,000 with payment due in 90 days at 100 percent interest was usurious and the defense of usury was available to the holder of a third mortgage who was also a guarantor on the second mortgage where, although it had been made through a corporate entity, the second mortgage had actually been a personal loan solicited by the vice president of the corporation, with the corporate formula used to avoid the usury statute; the holder of the second mortgage was entitled to recover only the principal amount of Sections 20,000 without interest, costs or attorneys’ fees. Palmetto Federal Sav. and Loan Ass’n of Aiken v. Mullen (S.C. 1980) 275 S.C. 317, 270 S.E.2d 437.

Defense of usury is not available to purchaser of mortgaged property who assumes payment of mortgage debt because purchaser is not in privity with lender and such purchaser is precluded from asserting claim of usury where she expressly assumes usurious mortgage as part of consideration for purchase of real estate. Maners v. Lexington County Sav. and Loan Ass’n (S.C. 1980) 275 S.C. 31, 267 S.E.2d 422.

Holder of equitable title to land may set up usury in foreclosure of mortgage given by one holding legal title. Cunningham v. Cunningham (S.C. 1908) 81 S.C. 506, 62 S.E. 845.

May be pleaded by one of several joint contractors. People’s Bank v. Jackson (S.C. 1895) 43 S.C. 86, 20 S.E. 786, 49 Am.St.Rep. 823.

Widow precluded from pleading usury. Where a widow elects to take dower and homestead in the lands of deceased husband, she is precluded from interposing defense of usury as to her husband’s debt since she does not occupy any position towards the debtor as would entitle her to rely on that defense. Jeffries v. Allen (S.C. 1888) 29 S.C. 501, 7 S.E. 828.

6. Availability of usury to corporations

Application of section. This section [Code 1962 Section 8‑8], withdrawing the defense of usury from a corporation applies also to individual guarantors, sureties, and endorsers on corporate obligations, so that they, as well as the corporation, are precluded from imposing usury as a defense. Robert L. Huffines, Jr., Foundation, Inc. v. Rockie Realty, Inc. (D.C.S.C. 1972) 347 F.Supp. 1256.

Where challenging validity of corporate obligation on grounds of usury precluded. Where the defense of usury is forbidden the corporate borrower, the endorsers, guarantors, and sureties are also precluded from challenging the validity of a corporate obligation governed by the laws of the state on the ground of usury. Robert L. Huffines, Jr., Foundation, Inc. v. Rockie Realty, Inc. (D.C.S.C. 1972) 347 F.Supp. 1256. Usury 82

Defense of usury not available to defeat payment of interest agreed upon. A domestic corporation, organized under the laws of the State of South Carolina to engage in business which falls squarely within the provisions of this section [Code 1962 Section 8‑8] may not avail itself of the defense of usury to defeat the payment of interest agreed upon under the terms of a note. Robert L. Huffines, Jr., Foundation, Inc. v. Rockie Realty, Inc. (D.C.S.C. 1972) 347 F.Supp. 1256. Usury 83

7. Criminal penalties

Section constitutional. This section [Code 1962 Section 8‑9], when considered in connection with Code 1962 Section 30‑203, includes corporations as well as persons and is not in conflict with the equal protection clauses of the State and Federal Constitutions. State v. Riddle (S.C. 1931) 160 S.C. 477, 158 S.E. 833.

8. Maximum interest rates

Applied in Hardin v Trimmier, 27 SC 110, 3 SE 46 (1887). McLaurin v Hodges, 43 SC 187, 20 SE 991 (1895). Ryan v Southern Bldg. & Loan Ass’n, 50 SC 185, 27 SE 618 (1897). Zeigler v Maner, 53 SC 115, 30 SE 829 (1898). Allen v Petty, 58 SC 240, 36 SE 586 (1900). People’s Bank v Perritt, 114 SC 362, 103 SE 711 (1920). Citizens’ Bank v Heyward, 135 SC 190, 133 SE 709 (1925), reh den 144 SC 365, 142 SE 651. Anderson v Purvis, 220 SC 259, 67 SE2d 80 (1951). Atlantic Discount Corp. v Driskell, 239 SC 500, 123 SE2d 832 (1962).

Miscellaneous illustrations. As to excessive rate of interest for deferred payments on contract for sale of land, see People’s Bank v Jackson, 43 SC 86, 20 SE 786 (1895). Thompson v Nesbit, 31 SCL 73 (1845). Sumter Bldg. & Loan Ass’n v Winn, 45 SC 381, 23 SE 29 (1895). Mechanics’ & Farmers’ Bldg. & Loan Asso. v Dorsey, 15 SC 462 (1881). Columbia Bldg. & Loan Asso. v Bollinger, 33 SC Eq 124 (1860). Executors of Mortimer v Pritchard, 8 SC Eq 505 (1831). Carroll County Sav. Bank v Strother, 28 SC 504, 6 SE 313 (1888). Atkinson v Executors of Scott, 1 SCL 307 (1793). Harp v Chandler, 32 SCL 461 (1847). O’Neall v Sims, 32 SCL 115 (1846). Caughman v Drafts, 18 SC Eq 414 (1843); Cleveland v Dare, 16 SCL 407 (1824). Anonymous, 2 SC Eq 333 (1806). Brown v Fausset, 16 SCL 81 (1823). Stock v Parker, 7 SC Eq 376 (1827). Cantey v Blair, 18 SC Eq) 41 (1843). Langford v Woodruff, 30 SCL 1 (1844). Edwards v Skirving, 3 SCL 548 (1805). Motte v Dorrell, 12 SCL 350 (1821). Quarles v Brannon, 36 SCL 151 (1850). Clark v Hunter, 29 SCL 83 (1843). Flemming v Mulligan, 13 SCL 173 (1822). King & Jones v Johnson, 14 SCL 365 (1825). Harick v Jones, 15 SCL 402 (1827). Utley v Cavender, 31 SC 282, 9 SE 957 (1889). Witte v Weinberg, 37 SC 579, 17 SE 681 (1893). Norwood & Co. v Faulkner, 22 SC 367 (1885). Wheeler v Marchbanks, 10 SE 1011 (1890, SC). Levy v Hampton, 12 SCL 145 (1821). Dickson v Surginer, 5 SCL 417 (1814). Gibbes v Chisolm, 11 SCL 38 (1819). Bartlett v Thynes, 11 SC Eq 171 (1835). Brock v Thomas, 17 SCL 322 (1829). Heyward v Williams, 63 SC 470, 41 SE 550 (1902). Banov v Bank of Charleston, 79 SC 404, 60 SE 942 (1908). Earle v Owings, 72 SC 362, 51 SE 980 (1905).

Generally as to contracts at 8 per cent (as allowed by prior statute), see Thompson v Gillison, 28 SC 534, 6 SE 333 (1888). Interstate Bldg. & Loan Asso. v Powell, 55 SC 316, 33 SE 355 (1899). Turner v Interstate Bldg. & Loan Asso., 47 SC 397, 25 SE 278 (1896). Buist v Bryan, 44 SC 121, 21 SE 537 (1895).

Code 1962 Section 8‑3 [Code 1976 Section 34‑31‑30] continued the rule first enacted in Code 1962 Section 8‑8.1 [repealed] that there is no maximum interest rate limit to loans in excess of $500,000. Demas v. Convention Motor Inns (S.C. 1977) 268 S.C. 186, 232 S.E.2d 724.

The collection of interest in advance is lawful provided the written obligation contains a provision permitting collection of interest in advance, but in absence of such provision, collection of interest in advance is not lawful and may violate the usury law. Johnson v. Groce (S.C. 1935) 175 S.C. 312, 179 S.E. 39. Usury 45

But not to calculation of interest to maturity upon discounting notes. Under this section [Code 1962 Section 8‑3] and Code 1962 Section 8‑5 it is not usurious for the holder of notes bearing a legal rate of interest, upon discounting the notes at the maker’s request, to calculate interest to maturity, since it is only the performance of a lawful contract tendered and accepted in advance of the stipulated time. Cooke v. Young (S.C. 1911) 89 S.C. 173, 71 S.E. 837. Usury 46

Not usurious to consider 30 days as a month. It is not usurious on short loans involving a calculation of interest for months as aliquot portions of a year, or days as aliquot portions of a month, to consider thirty days as a month, or the twelfth of one year. Merchants’ & Planters’ Bank v. Sarratt (S.C. 1907) 77 S.C. 141, 57 S.E. 621, 122 Am.St.Rep. 562.

Lender must show written agreement to avoid usury. Whenever eight per cent (now seven per cent) interest is taken, the lender to avoid usury must show an agreement to that effect in some writing. Merchants’ & Planters’ Bank v. Sarratt (S.C. 1907) 77 S.C. 141, 57 S.E. 621, 122 Am.St.Rep. 562.

And note given to close account constitutes such agreement. When an account of a bank charging a customer with overdrafts and eight per cent interest thereon is closed by giving a note embracing the interest charged, the note constitutes an agreement in writing to pay such interest in the sense of the statute against usury. Merchants’ & Planters’ Bank v. Sarratt (S.C. 1907) 77 S.C. 141, 57 S.E. 621, 122 Am.St.Rep. 562.

Cited in Carpenter v. Lewis (S.C. 1903) 65 S.C. 400, 43 S.E. 881.

The collection of interest notes with interest after maturity at legal rate, and of the interest in advance on the principal note after maturity at legal rate is not usurious. Heyward v. Williams (S.C. 1902) 63 S.C. 470, 41 S.E. 550.

Interest on interest is not usurious. Where a note provides for interest in advance at the rate of 8 per cent (now 7 per cent) per annum, and that unpaid interest shall draw interest at the same rate, the agreement is not usurious under this section [Code 1962 Section 8‑3]. Newton v. Woodley (S.C. 1899) 55 S.C. 132, 32 S.E. 531, rehearing denied 55 S.C. 132, 33 S.E. 1. Usury 49

Section applies to note taken for price of land. Under this section [Code 1962 Section 8‑3] a charge of a greater rate in a note taken for the price of land is illegal. People’s Bank v. Jackson (S.C. 1895) 43 S.C. 86, 20 S.E. 786, 49 Am.St.Rep. 823.

But the “taking” in advance of a discount at a rate over 7 per cent upon the interest of a note sued on is more than the law allows, and therefore, being usurious, it is error to give the plaintiff judgment for more than the principal sum lent. Carolina Sav. Bank v. Parrott (S.C. 1888) 30 S.C. 61, 8 S.E. 199.

9. Transactions deemed usurious

Commission by lender’s agent with former’s knowledge. Where agent of lender with knowledge of his principal, exacts from borrower a commission for his services, which with the interest charged, exceeds the highest legal rate, the loan is rendered usurious. Brown v Brown, 38 SC 173, 17 SE 452 (1893). Land Mortg. Invest. & Agency Co. v Gillam, 49 SC 345, 26 SE 990 (1897), reh dismd 49 SC 372, 29 SE 203. New England Mortg. Secur. Co. v Baxley, 44 SC 81, 21 SE 444 (1895), reh dismd 44 SC 94, 21 SE 885.

As to usurious contract of foreign building and loan association, see Galletley v Strickland, 74 SC 394, 54 SE 576 (1906). Columbian Bldg. & Loan Asso. v Rice, 68 SC 236, 47 SE 63 (1904).

Contract providing for 10 per cent interest after maturity until paid. Union Mortgage Banking & Trust Co. v. Hagood, 1899, 97 F. 360.

Collection of interest semiannually and quarter‑annually in advance after maturity was violation of usury law where the note provided only for the collection of interest annually in advance after maturity. Johnson v. Groce (S.C. 1935) 175 S.C. 312, 179 S.E. 39. Usury 45

Collection of interest in advance. Under a note providing for “discount before and interest at the rate of 8 per cent per annum after maturity, payable annually,” collection of interest in advance after the first year constitutes usury, since, under this section [Code 1962 Section 8‑3], the law only allows 8 per cent (now 7 per cent) interest by special written contract. Schlosburg v. Bluestein (S.C. 1929) 150 S.C. 311, 148 S.E. 60.

10. Transactions deemed not usurious

Agreement to terminate contract before maturity. Agreement to terminate a contract before maturity, upon payment of the principal and interest then due and the further payment of 2 per cent of the principal, was not a violation of the usury statutes. Barringer v. Jefferson Standard Life Ins. Co., 1935, 9 F.Supp. 493. Usury 23

In Cooke v Young, 89 SC 173, 71 SE 837 (1911), the court held that where a debtor, for his own convenience, voluntarily chooses, before maturity, to pay the amount of the principal with interest to maturity, according to the terms of the instrument, it is, although tendered and accepted in advance of the time fixed, nothing more than the performance of the lawful contract, and cannot operate to taint the transaction with usury. Barringer v. Jefferson Standard Life Ins. Co., 1935, 9 F.Supp. 493.

Payment of $500 per month as interest on a $50,000 loan as long as any portion of the debt remained outstanding was usurious and the debtor was entitled to summary judgment on his usury counterclaim where the creditor had admitted the existence of 13 $500 payments in his verified complaint and had failed to set forth facts to establish the defense of equitable estoppel. Murphy v. Hagan (S.C. 1980) 275 S.C. 334, 271 S.E.2d 311.

Defense of usury is not available to purchaser of mortgaged property who assumes payment of mortgage debt because purchaser is not in privity with lender and such purchaser is precluded from asserting claim of usury where she expressly assumes usurious mortgage as part of consideration for purchase of real estate. Maners v. Lexington County Sav. and Loan Ass’n (S.C. 1980) 275 S.C. 31, 267 S.E.2d 422.

A loan in an amount in excess of $500,000 made while Code 1962 Section 8‑8.1 which was repealed and reenacted in Code 1962 Section 8‑3 [Code 1976 Section 34‑31‑30], was effective, was not subject to usury limitation. Demas v. Convention Motor Inns (S.C. 1977) 268 S.C. 186, 232 S.E.2d 724.

State usury laws did not apply to payments made as consideration for assignment of lease, even though assignor used payments to liquidate loan for the improvement of the leased premises. Langston v. Niles (S.C. 1975) 265 S.C. 445, 219 S.E.2d 829.

Mortgagee held entitled to foreclosure of mortgage and sale of mortgaged premises, as against defendant’s claim of usury on ground that original mortgagee received part of brokerage fee or commission paid to loan broker and that interest notes contained provision that if any note was not paid when due all notes should become immediately due at option of holder. Long Realty Co. v. Breedin (S.C. 1935) 175 S.C. 233, 179 S.E. 47. Usury 34

Where mortgagee bid in mortgaged land for himself, not mortgagor, an assignment of bid at higher price was actual sale, not cloak for usurious charge on money lent mortgagor to comply with bid made in mortgagor’s behalf by mortgagee. Cohen v. Williams (S.C. 1932) 164 S.C. 499, 162 S.E. 758. Usury 117

Purchase of undesirable certificates as condition to loan. Where a borrower, as a condition of loan, was required to purchase at par certificates of deposit in bank then in course of liquidation, which were later sold at substantial loss, the transaction was not usurious under this section [Code 1962 Section 8‑3] and Code 1962 Section 8‑5, the lender not having intended to exact unlawful interest, but only to unload an undesirable holding. Keese v. Parnell (S.C. 1925) 134 S.C. 207, 132 S.E. 620.

Higher interest rate on deferred payments in foreclosure decree. A foreclosure decree providing for sale of mortgaged property and that deferred payments should bear 8 per cent interest, was not tainted with usury, within this section [Code 1962 Section 8‑3] as it then read, as the purchaser could be required to stipulate for 8 per cent (now 7 per cent). Interstate Building & Loan Ass’n v. Powell (S.C. 1899) 55 S.C. 316, 33 S.E. 355. Usury 32

Agreement in consideration of extending time of payment. An agreement in writing, made by a debtor with his creditor, eight months after maturity of a note on which 7 per cent interest was reserved, in consideration of extension of the time of payment of the note, to pay 10 per cent interest from its maturity, was valid under this section [Code 1962 Section 8‑3] which formerly provided that the legal rate of interest shall be 7 per cent in the absence of a written agreement for a higher sum, but the parties might stipulate in writing for any rate not exceeding 10 per cent. Utley v. Cavender (S.C. 1889) 31 S.C. 282, 9 S.E. 957. Interest 34

11. Forfeiture of interest

And provides two penalties. Under this section [Code 1962 Section 8‑5] upon contracting for illegal interest, the usurer forfeits all interest, that which he may have contracted legally to receive and the excess as well; and should he actually receive usurious interest he is made to forfeit (pay back) double the total amount received. Jones v Godwin, 187 SC 510, 198 SE 36 (1938). Frick Co. v Tuten, 204 SC 226, 29 SE2d 260 (1944).

Applied in Strait v British & American Mortg. Co., 77 SC 367, 57 SE 1100 (1907). Savannah Bank & Trust Co. v Shuman, 250 SC 344, 157 SE2d 864 (1967). Robert L. Huffines, Jr., Foundation, Inc. v Rockie Realty, Inc., 347 F Supp 1256 (1972, DC SC).

Section not applicable to executed transactions. This section [Code 1962 Section 8‑5] does not purport to disturb an executed transaction, but simply provides that when the power of the court is invoked for the enforcement of a contract which was either usurious in its inception or has since become so by the subsequent payment of usurious interest, or by any other means, the creditor shall not be allowed to recover any more than the principal sum loaned, without interest or costs. For example, if A executes his note whereby he promises to pay to B a specified sum of money at a designated time, with interest from the date of the note at lawful rate of interest, and the contract subsequently becomes tainted with usury by the payment of interest at a rate in excess of the lawful rate, this section [Code 1962 Section 8‑5] does not purport to disturb such payment by declaring that it shall operate as a credit on the principal of the note, but simply declares that, if the payee undertakes to enforce the payment of such contract by any proceeding at law, he will not be allowed to recover anything more than the principal sum loaned, without any interest or cost; but this cannot affect interest already paid and credited as such. Milford v Milford, 67 SC 553, 46 SE 479 (1903). Meares v Finlayson, 63 SC 537, 41 SE 779 (1902). Meares v Finlayson, 55 SC 105, 32 SE 986 (1899).

Cited in Milford v Milford, 67 SC 553, 46 SE 479 (1903). Schlosburg v Bluestein, 150 SC 311, 148 SE 60 (1929). Cox v Harrison, 171 SC 445, 172 SE 417 (1934). Globe Indem. Co. v Cooper Motor Lines, Inc., 206 SC 154, 33 SE2d 405 (1945).

Effect of receipt of usurious interest. Receipt of usurious interest on contract prevents lender from collecting more than principal sum lent without interest or costs; but debtor is not entitlted to have all payments of interest applied to principal. Butler v Butler, 62 SC 165, 40 SE 138 (1901). Bird v Kendall, 62 SC 178, 40 SE 142 (1901).

This section [Code 1962 Section 8‑5] being highly penal must be strictly construed and the case must be clearly shown to come within its terms. Turner v Interstate Bldg. & Loan Asso., 47 SC 397, 25 SE 278 (1896). Jones v Godwin, 187 SC 510, 198 SE 36 (1938).

Usury can only be interposed in an action for the recovery of the principal debt. Witte v Weinberg, 37 SC 579, 17 SE 681 (1893). Porter v Jefferies, 40 SC 92, 18 SE 229 (1893). Lewis v Dunlap, 112 SC 544, 100 SE 170 (1919). Perry v Mabus, 135 SC 292, 126 SE 487 (1925).

Prior to act of 1830, usurious contracts were void. For decisions concerning contracts entered into before that date, see Payne v Trezevant, 2 SCL 23 (1796). Solomons & Co. v Jones, 5 SCL 54 (1812). Saul Solomons & Co. v Jones, 6 SCL 144 (1812). Moncure v Dermott, 38 US 345, 10 L Ed 193 (1839). Magwood v Duggan, 19 SCL 182 (1833). Gaillard v Le Seigneur, 26 SCL 225 (1841). Brummer v Wilks, 13 SCL 178 (1822). Flemming v Mulligan, 13 SCL 173 (1822). Miller v Kerr, 17 SCL 4 (1828). Foltz v Mey, 1 SCL 486 (1795). King & Jones v Johnson, 14 SCL 365 (1825). Odell v Cook, 18 SCL 59 (1830).

Equitable relief. Equity will not relieve against usury unless the borrower offers to pay amount actually due. Anonymous, 2 SC Eq 333 (1806). Jones v Kilgore, 19 SC Eq 63 (1845).

Double forfeiture applies only to interest received. That part of this section [Code 1962 Section 8‑5] providing for forfeiture of double the amount received applies only to interest paid and received, and does not entitle a borrower to recover the penalty for usurious interest charged, but not paid. Union Mortgage Banking & Trust Co. v. Hagood, 1899, 97 F. 360. Usury 137

Two distinct penalties are provided by this section [Code 1962 Section 8‑5]: One, the forfeiture of all interest and costs, is incurred by the very making of the usurious contract; the other, liability to the borrower for double the amount of usurious interest, is incurred only when the lender has “actually received” such interest, and only with respect to interest so received Atlantic Discount Corp. v. Driskell (S.C. 1962) 239 S.C. 500, 123 S.E.2d 832.

The courts will not hesitate to pierce the veil of any plan designed to evade the usury law and in doing so will disregard the form and consider the substance of the transaction. Brown v. Crandall (S.C. 1950) 218 S.C. 124, 61 S.E.2d 761.

Section covers two cases. This section [Code 1962 Section 8‑5] plainly covers the two cases of (1) contracting for usurious interest and (2) receipt of such interest. Frick Co. v. Tuten (S.C. 1944) 204 S.C. 226, 29 S.E.2d 260.

Quoted in Cohen v. Williams (S.C. 1932) 164 S.C. 499, 162 S.E. 758.

Section provides only remedy to recover usurious interest. To recover usurious interest, a defendant has only two remedies: To collect the forfeit in a separate action, or to interpose a counterclaim in an action brought to recover the principal sum, in view of this section [Code 1962 Section 8‑5]. Weaver Piano Co. v. Curtis (S.C. 1930) 158 S.C. 117, 155 S.E. 291.

And burden of proof is on plaintiff in action to recover double amount paid. In an action to recover the penalty prescribed by this section [Code 1962 Section 8‑5] for contracting for and receiving usurious interest, the burden is on plaintiff to prove the payments made. Tate v. Lenhardt (S.C. 1918) 110 S.C. 569, 96 S.E. 720. Usury 142(4)

For proper venue of action brought under this section [Code 1962 Section 8‑5], see All v. British & American Mortgage Co. (S.C. 1916) 104 S.C. 239, 88 S.E. 529.

As to compound interest as usury, see Earle v. Owings (S.C. 1905) 72 S.C. 362, 51 S.E. 980.

Unless a foreign contract usurious under foreign law. Where plaintiff exacted interest under a Tennessee contract that was usurious under Tennessee law, it was entitled, on foreclosing the security in South Carolina, to recover only the principal sum loaned, without interest or costs. Carpenter v. Lewis (S.C. 1901) 60 S.C. 23, 38 S.E. 244.

A plaintiff, suing on a contract not usurious in its inception, may yet incur the penalty of forfeiture of all interest and costs by subsequently charging and receiving interst thereon at a greater rate than allowed by law. Ehrhardt v. Varn (S.C. 1898) 51 S.C. 550, 29 S.E. 225.

Nor to foreign contract. This section [Code 1962 Section 8‑5] is not applicable to a contract made with a Georgia building association, enforceable according to the law of Georgia, which provides “that no fines, interest, or premiums paid on loans in any building and loan association shall be deemed usurious.” Turner v. Interstate Building & Loan Ass’n (S.C. 1897) 51 S.C. 33, 27 S.E. 947.

As to payments on contracts prior to 1882, see McGown v. McSween (S.C. 1888) 29 S.C. 130, 7 S.E. 45.

As to when right of action for penalty accrues, see Stewart v. Fowler (S.C. 1824).

12. Definitions

Meaning of word “usury.” ‑ “Usury” is the taking of more for the use of money than is allowed by law. Barringer v. Jefferson Standard Life Ins. Co., 1935, 9 F.Supp. 493. Usury 1

Meaning of “forfeit.” ‑ The proper construction of this section [Code 1962 Section 8‑5] and use of the word “forfeit” is that the first “forfeit” was used as meaning the loss of a right, or a prohibition against recovery; while the second “forfeit” was used in the sense of incurring a penalty, or to disburse funds as payment for an offense. Frick Co. v. Tuten (S.C. 1944) 204 S.C. 226, 29 S.E.2d 260. Usury 136

Meaning of “all interest.” ‑ “All interest” in this section [Code 1962 Section 8‑5] means the total of the interest at a legal rate and the illegal overplus. Frick Co. v. Tuten (S.C. 1944) 204 S.C. 226, 29 S.E.2d 260.

The first use of the word “receive” in this section [Code 1962 Section 8‑5] is related to the second use of it, where reference is made to actual receipt of illegal interest. Frick Co. v. Tuten (S.C. 1944) 204 S.C. 226, 29 S.E.2d 260.

13. Pleading and evidence

Usury is an affirmative defense, and must be pleaded, thus placing the burden of proof on the defendant. Cohen v Williams, 164 SC 499, 162 SE 758 (1932). Pelzer v Morris, 56 SC 88, 34 SE 22 (1899). Campbell v Linder, 50 SC 169, 27 SE 648 (1897). Loan & Exch. Bank v Miller, 39 SC 175, 17 SE 592 (1893). Ex parte Monteith, 1 SC 227 (1869). Bird v Kendall, 62 SC 178, 40 SE 142 (1901). Butler v Butler, 62 SC 165, 40 SE 138 (1901). Solomons & Co. v Jones, 5 SCL 54 (1826). Moffat v M’Dowall, 6 SC Eq 434 (1826).

As to requirement of strict proof, see Moffat v M’Dowall, 6 SC Eq 434 (1826). Stock v Parker, 7 SC Eq 376 (1827).

Where one of two contracting parties upon completion of work on property signed completion certificate stating parties were offered cash price and higher time price and agreed to accept higher time price, the effect of such certificate upon question of whether amount payable was higher time price or represented usurious interest, as contract showed on its face, was a question of fact. Davenport v. Unicapital Corp. (S.C. 1976) 267 S.C. 691, 230 S.E.2d 905.

Parol evidence to prove abandonment of suit under section. Parol evidence was held admissible to show that the abandonment of suit under this section [Code 1962 Section 8‑5] was a part of the consideration for the execution of a deed. Knighton v. Des Portes Mercantile Co. (S.C. 1922) 119 S.C. 340, 112 S.E. 343.

Answer was held sufficient to raise plea of usury in Harrell v. Parrott (S.C. 1896) 45 S.C. 611, 23 S.E. 946.

Counterclaim can only be made in action for principal debt. This section [Code 1962 Section 8‑5], being a penalty imposed only by a special statutory provision, can be enforced only in the mode prescribed, and as it is therein declared “allowed as a counterclaim to any action brought to recover the principal sum,” a counterclaim in an action to recover damages for the breach of a covenant of warranty is properly excluded. Porter v. Jefferies (S.C. 1893) 40 S.C. 92, 18 S.E. 229.

As to circumstantial evidence, see Fulmer v. Hays (S.C. 1825).

14. Particular applications

Overpayment by mistake does not warrant penalty. A small overpayment by way of interest, partly due to miscalculation does not warrant a judgment for a statutory penalty for usury. Rushton v Woodham, 68 SC 110, 46 SE 943 (1904). Tate v Lenhardt, 110 SC 569, 96 SE 720 (1918). Graydon v Standard Bldg. & Loan Ass’n, 145 SC 551, 143 SE 259 (1928).

Attorney’s fees cannot be recovered where mortgage usurious. Where a mortgage is tainted with usury by reason of a 20 per cent cash commission charged by the lender’s agent with the lender’s knowledge, the mortgagee cannot on foreclosure recover attorney’s fees provided for in the mortgage, since under this section [Code 1962 Section 8‑5], the lender in such case is allowed to recover only the sum actually advanced. Land Mortg. Invest. & Agency Co. v Gillam, 49 SC 345, 26 SE 990 (1897), reh dismd 49 SC 372, 29 SE 203. American Mortg. Co. v Woodward, 83 SC 521, 65 SE 739 (1909). American Mortg. Co. v Woodward, 83 SC 521, 65 SE 739 (1909).

Judgment defendant is estopped to affirm usury. A suit cannot be maintained under this section [Code 1962 Section 8‑5] for double the sum of interest received in excess of lawful interest (as the section formerly provided), where the only evidence of the receipt of usurious interest was the receipt of the proceeds of a judgment and sale in foreclosure, in a suit on a contract to which the defense of usury might have been interposed. Ryan v Southern Bldg. & Loan Ass’n, 50 SC 185, 27 SE 618 (1897). Pickett v Pickett, 11 SC Eq 470 (1836). Fowler v Henry, 18 SCL 54 (1830). Strait v British & American Mortg. Co., 77 SC 367, 57 SE 1100 (1907).

And lender was not relieved of the legal consequences of usury on the ground of mistake, absence of knowledge or intent in Gilliland v Phillips, 1 SC 152 (1869). Thompson v Nesbit, 31 SCL 73 (1845). Carolina Sav. Bank v Parrott, 30 SC 61, 8 SE 199 (1888). Mitchell v Bailey, 57 SC 341, 35 SE 581 (1900). Plyler v McGee, 76 SC 450, 57 SE 180 (1907).

Application of statute of limitations. The statute of limitations has no application where, under this section [Code 1962 Section 8‑5], recovery is sought as a counterclaim. Land Mortg. Invest. & Agency Co. v Gillam, 49 SC 345, 26 SE 990 (1897), reh dismd 49 SC 372, 29 SE 203. Allen v Petty, 58 SC 240, 36 SE 586 (1900). Earle v Owings, 72 SC 362, 51 SE 980 (1905).

Usury cannot be predicated upon the fact that property is sold on credit at a higher price than would be charged if sold for cash, so long as it appears that the price charged is in fact fixed for the purchase of goods on credit with no intention or purpose of defeating the usury laws, although the difference between the cash price and the credit price, if considered as interest, amounts to more than the legal rate. But when the sale is in fact at an agreed cash price, and the form of sale on credit is resorted to for the purpose of evading the statute against usury, the transaction will be deemed usurious. Brown v. Crandall (S.C. 1950) 218 S.C. 124, 61 S.E.2d 761. Usury 32

The collection of interest in advance is lawful provided the written obligation contains a provision permitting it, but in absence of such provision, collection of interest in advance is not lawful and may violate the usury law. Johnson v. Groce (S.C. 1935) 175 S.C. 312, 179 S.E. 39. Usury 45

But collection of interest semiannually and quarter‑annually in advance after maturity violates usury law where note provides only for collection of interest annually in advance after maturity. Johnson v. Groce (S.C. 1935) 175 S.C. 312, 179 S.E. 39. Usury 45

A conservator‑receiver of a bank is liable in respect of usurious interest collected by him, but not in respect of usurious interest collected by the bank before his appointment. Johnson v. Groce (S.C. 1935) 175 S.C. 312, 179 S.E. 39. Banks And Banking 77(2)

But belief in right to collect compound interest is no defense. Honest belief by defendant in his legal right to collect compound interest under the terms of a note cannot avail him as a defense against usury. Plyler v. McGee (S.C. 1907) 76 S.C. 450, 57 S.E. 180, 121 Am.St.Rep. 950.

Liability under agreement to keep mortgaged property insured. Where a mortgagee agrees to keep the property insured in an amount equal to one third of the principal of the loan, and makes default, and the property is destroyed, and on foreclosure it appears that the mortgage was usurious, and that the recovery is limited by this section [Code 1962 Section 8‑5] to the sum actually advanced, the mortgagee’s liability under the insurance agreement is one third of that amount. Land Mortgage Investment & Agency Co. of America v. Gillam (S.C. 1897) 49 S.C. 345, 26 S.E. 990, reargument dismissed 49 S.C. 345, 29 S.E. 203. Mortgages And Deeds Of Trust 1122

**SECTION 34‑31‑110.** Variable rate [En 1981 Act No. 178, Part II, Section 29; Repealed by implication by 1982 Act No. 385, Section 57(1).