

## HOW JUDGEMENTS DRAW INTEREST

Today's businessmen and women take it for granted that they will be paid a percentage as compensation on money lent or past due on an account. This percentage has come to be known as interest, and today it is an accepted cost of doing business. However, this was not always the case.

This was explained in an early 1931 Kentucky Opinion:

"Originally, at common law, interest and usury were synonymous. The taking of interest originally was usury at common law, and a punishable offense. This was the condition of the law of interest until England adopted a statute giving creditors the right to collect a limited percentage of interest. A taking of a greater percentage than that permitted by the statute still left the taking of a rate in excess of that fixed by statute a punishable offense. Under the ancient common law of England, one accepting interest was disciplined by the church and at death forfeited all of his goods and land to the king. It regarded all contracts for interest, however small, as void." Coleman v. Reamer's Ex'r, Ky., 365 S.W.2d 22 (1931).

In more recent times, however, the Kentucky legislature has seen fit to regulate the rate of interest that can be charged for the lending of money in this Commonwealth. Thus, the right to collect interest in Kentucky is granted by virtue of statute.

KRS 360.010 provides that the legal rate of interest is 8% per annum. This means that if the parties to a contract fail to stipulate the in-

terest on a loan or money due, but not paid, interest by law will accrue at 8% per annum. Subject to the statutory regulations of KRS 360.010, however, parties to contracts may make their own stipulations as to the rate of interest a loan will bear, either higher or lower than the statutory rate of 8%.

KRS 360.010 provides that any party or parties may agree, in writing, for payment of interest in excess of the legal rate of interest at 8% per annum as follows:

- (a) At a per annum rate not to exceed 4% in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District where the transaction is consummated, or nineteen percent (19%), whichever is less, on money due or to become due under any contract or other obligation in writing where the original principal amount is fifteen thousand dollars (\$15,000.00) or less, and
- (b) At any rate on money due or to become due upon any contract or other obligation in writing where the original principal amount is in excess of fifteen thousand dollars (\$15,000.00).

Now suppose you have a written contract on an obligation of \$15,000.00 or more with interest at a rate of 24% per annum, the obligor has refused to pay the amount due and owing on the account, and you are forced to pursue collection on the account through the judicial system. You receive a Judgement in your favor. Will you be able to continue to collect interest at the contract rate of 24% until the Judgement has been paid in full? There has been some contro-

versy in Kentucky regarding this question. KRS 360.040 states in part that a Judgement shall bear 12% interest compounded annually from its date. Does this mean that once a party has obtained a Judgement in his favor, the rate of interest on the money due and owing will be reduced from the contract rate to 12%?

The Court of Appeals resolved this controversy in Union Trust v. Brown, Ky., 757 S.W.2d 218 (1988). In this case, a bank filed three separate lawsuits against parties who were delinquent on their payments under promissory notes. The Bank sought Judgement for the balance of the principal due under the promissory notes and interest thereon at a rate which was considerably higher than the 12% interest declared in KRS 360.040. In each of the three cases, the trial court entered a Judgement in favor of the Bank, but reduced the interest rate on the Judgements from the higher rates on the notes to the 12% per annum declared in KRS 360.040. The Bank appealed these decisions, alleging that the higher amount declared in the Note was to remain intact until the entire balance was paid under the promissory notes.

The Court of Appeals overturned the Trial Court's computation of the interest on the Notes and held that the rate declared in the contract applied under KRS 360.040 until the entire amount was paid in full. In reaching this decision, the Court reviewed the entire statute, which also provides that "A Judgement may be for the principal and accrued interest; but if rendered for accruing interest on a written obligation, it shall bear interest in accordance with the instrument reporting

said accruals, whether higher or lower than 12%."

In reaching its decisions the Court also took notice of sections of both the United States and Kentucky Constitutions which prohibit the state legislature from enacting any law impairing obligations of contracts and expressly held KRS 360.040 constitutional.

The Court concluded that when parties agree to an interest rate within the contract, then the stated rate of interest remains intact until the entire amount is paid. In so holding, the Court pointed out the downside to creditors in this situation: when the written obligation's rate of interest is lower than the statutory 12% per annum, then the creditor must live with that interest rate and cannot ask for the interest rate to be increased to the 12% per annum declared in KRS 360.040. □

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