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Civil Procedure; Prejudgment Interest, Legal, Interest Rate

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12. Id. §4 (adding to NRS Ch. 17).
13. Id. §6 ¶1 (adding to NRS Ch. 17).
14. Id. §6 ¶ 2 (adding to NRS Ch. 17).
15. Id. §6 ¶ ¶1, 2 (adding to NRS Ch. 17).
16. Compare Ch. 656 §3 (adding to NRS Ch. 17) with UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT §1 (1964 version), 13 U.L.A. (1975).
17. UNIFORM ENFORCEMENT OF FOREIGN JUDGMENT ACT §1 (1964 version), 13 U.L.A. (1975).
18. Compare SB 98 (Jan. 24, 1979 print) with SB 98 (second reprint). See generally, Senate Judiciary Committee Minutes of February 1, 1979.
19. Elsman v. Elsman, 54 Nev. 20, 26 2 P.2d 139, 141 (1931) (dictum: "under the old practice, when actions at law and suits in equity were separate and distinct, the final determination of action at law was called a judgment, while in suits in equity it was designated a decree"); accord Coleman v. County of Los Angeles 180 Cal. 714, 720, 182 P.440, 442 (1919) ("it is accurate to use the word 'judgment' as applied to courts of law and 'decree' to courts of equity, although the former term is now used in a larger sense to include both," quoting Bouvier's Law Dictionary).
20. Id.
21. See Henderson v. Arkansas, 176 P. 751, 753 (Okla. Sup. Ct. 1918).
22. See NRCP 2 (effective 1953).
23. 54 Nev. at 27, 2 P.2d at 141.
24. Id.
25. 70 Nev. 152, 261 P.2d 1013 (1953).
26. Id. at 154, P.2d at 1014.
27. Ch. 656 §5 ¶1 (adding to NRS Ch. 17).
28. Id. §§5 ¶ 3, 6 ¶ ¶1, 2 (adding to NRS Ch. 17).
29. Id. §8 (adding to NRS Ch. 17).

CIVIL PROCEDURE; PREJUDGMENT INTEREST,
LEGAL INTEREST RATE

Amends NRS 17.115, 17.130, 37.175, 99.040, 147.220
AB 255 (Committee on Judiciary); STATS 1979, Ch 448

Under prior law, interest on judgments was at the rate of 7% per annum and commenced at the time judgment was entered.¹ Chapter 448 provides for interest on judgments commencing at the time the summons and complaint is served and raises the legal rate of interest from 7% to 8% per annum.

Prejudgment Interest

A creditor of a judgment resulting from an action or proceeding filed after July 1, 1979² may be entitled to interest at 8% per annum commencing at the time the summons and complaint was filed.³ Prejudgment interest awards are subject to three limitations. Prejudgment interest is not due on the amount of a judgment which represents future damages.⁴ Secondly, it is not due if the judgment-debtor, more than ten days or prior to trial, offered to make a settlement more favorable than the eventual judgment and the judgment-creditor failed to accept the offer within thirty days or prior to trial.⁵ Finally, the statutory rate of interest on judgments applies only when another rate is provided by contract or law or is specified in the judgment.⁶ This third limitation may be subject to an interpretation granting courts the power to limit a judgment-creditor's "right" to pre- and/or post-judgment interest by ordering interest at a lower rate or by specifically precluding interest. Previously, NRS 17.130(2) probably was not subject to such an interpretation because NRS 99.040 provided that the legal interest rate shall be allowed upon judgments.⁷ However, Chapter 448 has amended NRS 99.040 by removing its provision for interest on judgments.⁸

In 1895, the Nevada Supreme Court stated in Vietti v. Nebitt⁹ that prejudgment interest is frequently allowed as damages in actions involving torts to property when the amount of damages is largely a matter of court or jury discretion.¹⁰ Notwithstanding the statement in Vietti, more recent Nevada decisions have only allowed "prejudgment interest" in contract,¹¹ conversion,¹² and corporation merger¹³ cases. The general rule set forth in Paradise Homes v. General Surety¹⁴ was that interest could not be allowed upon liquidated demands because the amount due is not known for certain until a judgment is rendered.¹⁵

Legal Interest Rate

Chapter 448 amends NRS 99.040, raising the legal rate of interest to 8% as applied to express or implied contracts other than books of account or store

accounts, due or demanded wages or salary, and money received for the use and benefit of another.¹⁶ Additionally, the rate of interest applied to judgments in general,¹⁷ to eminent domain judgments,¹⁸ and to probate claim payments,¹⁹ is also increased to 8%.

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FOOTNOTES

1. NCL §8827 (NRS 17.130(2)), amended by 1979 Nev. Stats. ch. 448 (hereinafter "Ch. 448") §2).
2. Ch. 448 §6.
3. Id. §2 (amending NRS 17.130(2)).
4. Id.
5. Id. §1 (amending NRS 17.115).
6. NRS 17.130(2) (as amended by Ch. 448 §2).
7. See Kaufman v. Kaufman Ad'r, 292 Ky. 351, 364, 166 S.W.2d 860, 867 (1942) (court held to have no authority to award lower rate of interest where statute clearly states that a judgment shall bear interest at a given rate).
8. Ch. 448 §4 (amending NRS 99.040).
9. 22 Nev. 390, 41 P.151 (1895).
10. Id. at 399, 41 P. at 154; cited in Paradise Homes v. Central Surety, 84 Nev. 109, 113, 437 P.2d 78, 81 (1968). If the court intends to award prejudgment interest, the jury should be instructed not to consider interest when determining damages, otherwise a double recovery may result.
11. Jones v. Jones, 86 Nev. 879, 884, 478 P.2d 148, 151 (1970) (applying NRS 99.040(1)).
12. Carter v. Barbash, 82 Nev. 289, 292, 417 P.2d 154, 155 (1966) (applying NRS 99.040).
13. Southdown, Inc. v. McGinnis, 89 Nev. 184, 194, 510 P.2d 636, 642 (1973) (applying NRS 99.040(1)).
14. 84 Nev. 109, 437 P.2d 78 (1968).
15. Id. at 114, 437 P.2d at 83 (referring to 33 C.J.S. §211 (1924)).
16. Ch. 448 §4 (amending NRS 99.040).

17. Id. §2 (amending NRS 17.130(2)).
18. Id. §3 (amending NRS 37.175(1)).
19. Id. §5 (amending NRS 147.220)).

CIVIL PROCEDURE; JUSTICE AND MUNICIPAL COURTS

Amends NRS 4.060, 4.370, 18.020, 18.050, 73.010,
73.020, 266.555, 361.540
Repeals NRS 40.410
AB 28 (Robinson, Bremner, Mello); STATS 1979, Ch 676
(Effective July 1, 1979)
Adds to NRS Chapters 4, 189
Amends NRS 1.020, 189.030, 189.050, 266.565
Repeals NRS 189.040, 189.080
SB 267 (Committee on Judiciary); STATS 1979; Ch 659
(Effective January 1, 1980)
Cross-reference: Criminal Procedure; justice courts
as courts of record

Chapters 659 and 676 amend many provisions relating to justice and municipal courts. To be consistent with these new provisions, several other laws are amended or repealed.

Justice courts have been transformed into courts of record.¹ Whereas previous law provided that an appeal transferred the case to the district court for a new trial,² Chapter 659 provides that an appeal transfers the case to the district court for a trial on the record.³ As a result of this amendment, NRS 189.040 and 189.080, relating to trial de novo on appeal, are repealed.⁴ Justice court proceedings must now be recorded by sound recording equipment or certified shorthand reporter.⁵ The sound recording must be preserved for thirty days after the time limit for filing an appeal.⁶ Upon appeal, if the district court finds that the sound recording is materially defective, the case must be returned to the justice court for retrial unless all parties stipulate to be bound by the transcript.⁷

Additionally, Chapter 676 raises the justice courts' jurisdictional limit from a maximum of \$300⁸ to a maximum of \$750.⁹