

# MINNESOTA STATUTES 1953 ANNOTATIONS

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## MONEY, RATES OF INTEREST 334.01

333.01 shall be guilty of a misdemeanor. This prohibition only applies where the business carried on is a commercial business there having been no prosecution under section 333.13. OAG Aug. 12, 1948 (920-D).

### 333.06 PLEADING FAILURE TO FILE CERTIFICATE; COSTS

Where the evidence established that plaintiff had negotiated and performed his contract in his individual name distinct from an electrical business which he conducted under a trade name; and where the title of the action incorrectly included such trade name as part of plaintiff's designation therein, the trial court did not err in ordering the trade name deleted therefrom to conform with the proof. *Heyn v Braun*, ..... M ....., 59 NW(2d) 327.

### 333.13 VIOLATIONS; PENALTIES

Section 333.01 prohibits any person or persons from carrying on or conducting a commercial business under a name which does not set forth the full and individual name of every person interested in such business, unless such person or persons filed in the office of the district court of the county in which the business is transacted a certificate setting forth the name under which the business is conducted. This is modified to some extent by section 333.05, while section 333.13 provides that a person carrying on such business should she fail to comply with the provisions of section 333.01 shall be guilty of a misdemeanor. This prohibition only applies where the business carried on is a commercial business there having been no prosecution under section 333.13. OAG Aug. 12, 1948 (920-D).

## REGISTRATION OF INSIGNIA

### 333.17 USE OF CERTAIN TERMS FORBIDDEN

In an action under the Declaratory Judgments Act brought by a corporation organized after the enactment of M.S.A., Section 333.17, which reads in part: "no person, firm, corporation or association, selling or offering for sale, any commodity, shall use, or cause, or permit to be used as the name or designation, or as a part of the name or designation, of any business, any of the following words, \* \* \* : 'Army,' 'Navy,' \* \* \*," to have said statute declared invalid as unconstitutional, held that said Act is valid, having been enacted by the legislature in the proper exercise of the police power. *North Star Army Store v Clark*, 231 M 55, 42 NW(2d) 414.

## CHAPTER 334

## MONEY, RATES OF INTEREST

### 334.01 RATE OF INTEREST

HISTORY. RS 1851 c 35 s 1, 2; PS 1858 c 30 s 1, 2; 1860 c 56 s 1; GS 1866 c 23 s 1; 1877 c 15 s 1; GS 1878 c 73 s 1; 1879 c 66 s 1; 1887 c 66; GS 1878 Vol 2 (1888 Supp) c 23 s 1; GS 1894 s 2212; 1899 c 122; RL 1905 s 2733; GS 1913 s 5805; 1923 c 70 s 1; GS 1923 s 7036; MS 1927 s 7036.

Equity powers of the bankruptcy court; allowability of interest on interest. 32 MLR 174.

Installment plans as usurious. 36 MLR 744.

Even though the contract itself contains no protection governing the payment of interest, equity imposes the obligation. *Lund v Larson*, 222 M 438, 24 NW(2d) 827.

Where the amount of the liability has not been ascertained there is no liability for interest thereon prior to the time of the ascertainment of the liability; and where

there is a liability to pay money but no express promise to pay interest and no statutory obligation to do so, and no default for failure to pay the money when it became due, there is no interest liability. *Lappinen v Union Ore Co.*, 224 M 395, 29 NW(2d) 8.

There can be no usury without a contract. The law does not make a contract when the parties intend none. An additional agreement, signed by the maker of a note at the same time he executed and delivered the note, was not enforceable and did not make the note usurious. *Linne v Ronkainen*, 228 M 316, 37 NW(2d) 237.

Where a mistake had been made in computing interest on installment notes secured by a mortgage and the payments made by the decedent were less than they should have been, a correction may be made. In the absence of agreement to the contrary the debtor has a right to apply payments as he sees fit. A party who seeks to enforce a right because of a mistake is not chargeable with laches until he discovers the mistake. He is chargeable with knowledge of the facts from which in the exercise of due diligence he ought to have discovered the error. An essential element in the doctrine of laches is prejudice to the other party; and where both parties to an action were seeking affirmative relief against the other in reference to the same transaction, neither may assert that the other was guilty of laches. *Steenberg v Kayser*, 229 M 300, 39 NW(2d) 18.

Allowance of interest is proper in cases where the demand is unliquidated, provided the claim is ascertainable by computation or reference to generally recognized values such as market value and does not depend upon any contingency. In an action for value of labor and material furnished in well-drilling operations, the difference between the amount claimed and the amount awarded was not so unreasonable as to justify a complete denial of interest upon the amount found due, where the experts, including those submitted by the defendant, gave opinions of market value at figures higher than those found by the court. *Lacey v Duluth, Missabe & Iron Range*, 236 M 104, 51 NW(2d) 831.

Evidence that general contractor agreed to pay to subcontractor partial payments made to general contractor except that 10 percent would be retained until completion of all work covered by contract, and that general contractor failed to make such payment when received and that subcontractor submitted final statement to contractor including \$222.93 for interest at 6 percent on 90 percent of payments withheld, supported determination that plaintiff was entitled to additional interest on 90 percent of payments due subcontractor from 30 days after presentation of statements up to date of completion of entire contract amounting to \$222.93, in absence of evidence to refute subcontractor's computation or to establish that oral agreement governing payments was inaccurate or not in accordance with contractor's understanding thereof. *Sagl v Hirt*, 236 M 281, 52 NW(2d) 721.

### 334.02 USURIOUS INTEREST; RECOVERY

In an action by a borrower to recover usurious interest paid, it is in the discretion of the court whether defendant should be asked on cross-examination whether he had not made usurious loans to other persons at other times. *Murphy v Backer*, 67 M 510, 70 NW 799.

Where a borrower did not disclose to the prospective lender that a prior loan transaction pursuant to which the borrower had executed a conveyance of realty and contract for deed was usurious, and the borrower requested the lender to advance money for the payment of the obligation evidenced by the prior transaction, and agreed that the lender accept as security therefor a conveyance of the title and assignment of the contract from the title holder under previous transactions, the borrower was estopped from asserting the invalidity of the prior action as against the lender. *Nelson v Dorr*, ..... M ....., 58 NW(2d) 876.

Where in a prior action an issue covered by the pleadings is withheld from determination by stipulation of the parties, by action of the court, or otherwise, it cannot be said to have been adjudicated, and the judgment in such action will not constitute a bar to the determination of the issue thus withheld in a subsequent action between the parties. This is an exception to the general rule that a judgment on the merits constitutes a bar in a subsequent action between the same parties as to the

issues. A statement in the findings of the court that in a prior action it "has found it necessary to determine the rights" under a described mortgage clearly manifests that the issue with respect thereto was withdrawn from determination. *Nelson v Dorr*, ..... M ....., 58 NW(2d) 876.

### **334.021 CORPORATION PROHIBITED FROM INTERPOSING DEFENSE OF USURY**

Defense of usury not available to corporations. 33 MLR 37.

Are installment loans usurious? 36 MLR 744.

Installment finance charge under the general usury laws. 36 MLR 747.

Existing Installment Sales Act. 36 MLR 753.

### **334.03 USURIOUS CONTRACTS INVALID; EXCEPTIONS**

HISTORY. 1877 c 15 s 3; 1879 c 66 s 3; GS 1878 Vol 2 (1888 Supp) c 23 s 4; 1879 c 66 s 3; GS 1894 s 2214; RL 1905 s 2735; GS 1913 s 5807; 1923 c 283 s 1; GS 1923 s 7038; MS 1927 s 7038.

There can be no usury without a contract. The law does not make a contract when the parties intend none. An additional agreement, signed by the maker of a note at the same time he executed and delivered the note, was not enforceable and did not make the note usurious. *Linne v Ronkainen*, 228 M 316, 37 NW(2d) 327.

### **334.05 USURIOUS CONTRACTS; CANCELATION**

HISTORY. 1877 c 15 s 6; GS 1878 c 23 s 7; 1879 c 66 s 6; GS 1878 Vol 2 (1888 Supp) c 23 s 7; GS 1894 s 2217; RL 1905 s 2737; GS 1913 s 5809; GS 1923 s 7040; MS 1927 s 7040.

### **334.08 FOLLOWING DAY DEEMED HOLIDAY**

HISTORY. 1903 c 261 s 1; 1905 c 345 s 1; GS 1913 s 6011; GS 1923 s 7243; MS 1927 s 7243.

Section 334.08 provides that when an instrument matures on Sunday, the following day shall be considered a holiday. This section refers to negotiable instruments only and does not in any way affect the holidays defined in chapter 645.44. Consequently, Monday, Oct. 13, 1947, following Columbus Day, which occurred on Sunday, is not a legal holiday. OAG Oct. 7, 1947 (276-C).

Designation of legal holidays is applicable only as to negotiable instruments. OAG Oct. 29, 1952 (276-C).

When Columbus Day comes on a Sunday, Oct. 13 is not a holiday for any purpose except in relation to maturity of negotiable instruments. OAG Oct. 7, 1947 (276-E).

### **334.12 INSTRUMENT OBTAINED BY FRAUD**

Purchaser for value and discharge of unknown existent debt; restitution; negotiable instruments. 33 MLR 435.

A person relying on section 334.12 to escape liability on a note must prove that the signature was obtained by fraudulent representation, trick, or artifice or to the nature or terms of the contract signed, and that he did not know the instrument was a note, and that he was not negligent. *U. S. v Katz*, 74 F. Supp. 89.