

Book IV.
Title XXXII.

Concerning interest.¹
(De usuries.)

Bas. 23.3.50; D. 22.2.

4.32.1. Emperor Pius to Aurelius, a veteran.

If it is shown that a promise to pay interest was rightly made in answer to a previous interrogation,² such interest is justly owing even though not mentioned in the instrument (of indebtedness).

Without day or consul.

Note.

[See full discussion of stipulation, which was entered into by interrogation and answer, at headnote C. 8.37.]

Loans were supposed to be gratuitous, and it was the rule that no loan carried interest unless a separate distinct contract to that effect was made. And not alone that, but the contract was required to be the formal contract of the Roman law—by stipulation. There were exceptions to the rule, however. A simple pact sufficed in maritime loans, loans by cities, loans of corn, barley, and other fungibles, and under Justinian, loans by bankers. D. 22.2.7; D. 22.1.30; C. 4.32.11; Nov. 136, c. 4. Inasmuch as a pact could not be sued on by a plaintiff (C. 2. 13), the interest lawfully contracted thereby necessarily could be recovered only in the suit in which recovery was sought for the principal; if a stipulation was entered into, a separate suit was maintainable. A written instrument in later law subserved the purposes of a stipulation. Law 25 h.t. note; C. 8.37.1 note.

These were the rules applicable to loans. But the law allowed interest on many other transactions as a matter of course. Thus where a sale was made, interest became due from the time of delivery. C. 4.32.2; C. 4.49.5; see C. 4.54.5; D. 19.1.13.20. Interest was due on contract with the fisc, debts due to minors, in some cases of dowry, and on some charitable gifts. D. 22.1.17.5; D. 5.12.31; C. 1.3.45.4; C. 2.40.3; C. 4.49.5; Buckland 546. So interest was due, after default, on all equitable contracts at local rates, not exceeding the legal rate. D. 22.1.1 pr.

4.32.2. Emperor Severus and Antoninus to Lucius.

If the purchaser to whom possession of the property was delivered, shall have failed to offer the purchase price to the seller, he is equitably compelled to pay interest, although he sealed up the money and kept it as a deposit.

Note.

Interest was due from delivery—in the absence of agreement to the contrary. The amount due might be tendered, but an offer to the party to whom the interest was due might be tendered, but an offer to the party to whom the interest was due was required,

¹ Blume penciled in here: Birkmeyer, Exc. 285 ff.

² [Blume] The stipulation by interrogation and answer was thoroughly familiar to the Romans, and it would be strange that the emperor should be asked as to the validity thereof. It is likely, therefore, that the inquiry was made by one not a Roman, perhaps by a Greek. Riccobono, 35 Z.S.S., 278-279. “Rightly” is probably interpolated.

unless he was absent. In the latter event, the president could order the deposit made. Laws 6 and 9 of this title; C. 4.54.5.

4.32.3. The same Emperors to Julianus Serpius.

Although interest cannot be claimed on a loan of money without the binding force of a stipulation, still whatever interest has been paid pursuant to a pact, cannot be reclaimed as money not owing, nor is it to be credited on the principal. Promulgated September 27 (200).

4.32.4. The same Emperors to Apronia Honorata.

It has been justly ordered, and on good ground, that the right to interest which was agreed to be paid, though not by stipulation, may be preserved for the creditor by the detention of a pledge, since pledges may be made liable for interest by a simple pact. 1. But the reason for the rule does not exist in the suit which you are prosecuting, since at the time when the contract (for the pledge) was made, a less amount of interest was agreed upon. Though the debtor afterwards promised to pay greater interest, the detention of the pledge cannot be considered as effective, when at the time when the instruments of indebtedness were executed, no agreement shall have been made that the pledge should also be bound for such addition.

Note.

The foregoing law furnishes another example when it was not necessary to enter into a stipulation as to interest. See note 1 of this title. A simple pact sufficed, if entered into at the time the loan was made, in order that a pledge might be retained till interest was paid. No suit could be brought on such pact; but the right of retention existed. But the agreement was required to be made at the beginning. While it was permissible to make an agreement that a greater rate of interest should be paid than before in case of default, a detention of a pledge for such greater rate of interest was not permitted, unless the agreement to that effect was made at the beginning.

Generally, a pledge could be retained for unsecured debts. C. 8.26.1 note. But that rule did not apply to interest, and hence in order that the right of retention might exist, it was necessary that a contract therefor should be made at the time of making the loan. In other words, it was necessary to have an agreement that the pledge should stand good for the interest. 9 Cujacius 311. Similar principles are stated in law 22 of this title.

4.32.5. The same Emperors to Ultimus Sabinus and others.

If against a creditor claiming greater interest on a stipulation it is shown that he subsequently received a lesser rate for a certain number of years, a defense based as on a pact is good. You can accordingly protect your case even against the defenders of the city who claim a greater amount on a due bill if it is shown that the aunt of your wards, who promised greater interest, always paid only five per cent. Given July 7 (205).

Note.

If a man agreed to pay a greater interest, but he afterwards paid a lesser rate and this was accepted, there was an implied pact that only the latter should be paid, and such pact was binding. This is also stated in law 8 of this title. If a man agreed to pay a smaller interest and then paid the greater interest, the situation was not quite the same. The agreement to pay interest was a natural obligation. Buckland 545. And hence interest that had been paid could not be recovered. But the payment of such greater

interest did not rise to the dignity of a pact which could be enforced for the future (law 7 of this title), though the interest already paid could not be recovered. 9 Cujacius 313.

4.32.6. Emperor Antoninus to Antigonus, a soldier.

If you, in the presence of witnesses, offered to your creditor, who holds your property as a pledge, the money with interest, and she refusing to accept it, you sealed and deposited it, you are not compelled to pay any interest from the time that you offered her the money. In the absence of the creditor, you should have gone before the president for that purpose.³

Promulgated February 11 (212).

4.32.7. The same Emperor to Domitius Aristaeus.

The creditor should, if he can, prove by his documents the amount which he claims, and that he has a stipulation for the payment of interest. The fact that interest was at one time paid by consent, does not create an obligation.⁴

Promulgated February 11 (212).

4.32.8. The same Emperor to Claudius Doryphorus.

Although when Bassa received a loan she promised by stipulation to pay to Menophanus a certain (lesser) interest, and that if she should fail to pay it within a certain time, she would pay a greater rate—though within the legal limits—(still) if the creditor accepted the same (lesser) interest after the time fixed in the due bill, and did not demand the larger interest, and it can thus be shown that he continued to adhere to the acceptance of the lesser interest, such interest should be computed at the rate in which the creditor continued to collect.⁵

4.32.9. The same Emperor to Canius Probus.

If it was not our fault that you did not pay the lesser amount of interest (agreed on) within the stipulated time, but that it was the fault of the guardians of the sons of your creditor, who would not receive it, and if you shall prove this fact before the referee, the greater interest cannot be demanded for the time when you were not at fault. And if you also deposited the principal, you cannot be sued for the interest, from the time that this shall appear to have been done.

Note.

In this case the debtor promised to pay a greater amount of interest in case that he failed to pay promptly. But where the non-payment was not due to his fault, but to the fault of the creditor, the greater interest was not payable. It was not necessary, in order to avoid paying the greater interest, to seal and deposit the amount due, although that was necessary to stop interest altogether, if it was not accepted, when offered or if it was due to the fault of the creditor that it was not accepted.

4.32.10. The same Emperor to Cratus Donatus, soldier.

³ [Blume] As to tender see law 19 of this title and note.

⁴ [Blume] See note to law 5 of this title. See 34 Z.S.S. 238 for interpretation of “by his documents” in first sentence. In classical law oral proof was sufficient. See C. 4.20.1 note.

⁵ [Blume] See note to law 5 of this title.

Interest paid from time to time is not counted to make up the double amount paid. For interest above the amount of the principal is not demandable only, if the sum of the interest exceeds this computation at the time payment is made.

Note.

D. 12.6.26.1 states: "Interest, however, whether simple or compound, cannot be the subject of a stipulation nor be demanded to the extent of more than double (the original amount lent), and if paid, can be demanded back just as can interest on future interest." To a similar effect is D. 22.1.9 pr; C. 4.32.27. As stated in the foregoing law, the rule applied only where the payment was made once; if interest was paid from year to year, it might exceed many times that of the principal without violating the rule. Later Justinian amended the law and provided that no matter when the interest was paid, it could not exceed the amount of the principal. Novels 121 and 138. But he refused to apply this modification to loans by cities. Novel 160.

4.32.11 (12). Emperor Alexander to Aurelius Tyrannus.

If grain or barley are loaned, an increase amount agreed to be returned is to be furnished pursuant to a simple pact.

Note.

This was one of the exceptions to the rule that interest on a loan was not payable unless a stipulation to that effect had been made. A simple pact sufficed, though that was enforceable only when the original debt was sued on. See also C. 4.32.23.

4.32.12. The same Emperor to Popilius.

It is certain that a creditor who receives fruits from a farm which is pledged to him must, after he has failed to accept money lawfully tendered him, apply such fruits toward to exoneration of the principal.⁶

4.32.13. The same Emperor to Eustathia and others.

It is certain that account is taken of interest in equitable actions (*bonae fidei*), to which belongs that on volunteer agency (*negotiorum gestorum*). But if the case is closed by (final) decision, then although the condemnation is for less than it should be, by reason of the non-allowance of interest and no appeal was taken, the case finished cannot be reopened. Nor can interest be demanded for the time elapsed since the judgment was rendered, except by reason of the judgment.

Note.

An unauthorized agency existed when a man without previous authorization (see C. 2.18) acted as the other's agent. An action brought by such agent was an equitable action in which the court took account of all equities between the parties, including interest on more advanced by the unauthorized agent; but the claim for such interest had to be made timely. See C. 4.34.4. As to creditor's course of action see headnote C. 7.52.

4.32.14. The same Emperor to Aurelius Arasianes.

If your wife loaned out money under an agreement that in return for interest she should have the right of habitation, and the pact is carried out as agreed, and she did not receive any rent by leasing out the house, it is not a subject for inquiry whether the house would have returned more, if leased out, than the amount of legal interest. For though a

⁶ [Blume] See C. 4.24, laws 1-3.

lease could have been made for greater amount, the contract for interest should not for that reason be considered as illegal, but the rent of the habitation as low.
Given Aril 21 (234).

Note.

The claim was made in this case that more was charged than the legal interest, because the value of the habitation was worth more than such interest; and that the taking of the habitation in lieu of interest was in evasion of the law. But it was construed not to be so. If the habitation had, however, been rented out to someone else, and the rent had been collected which would have amounted to more than legal interest, the situation would have been different, provided that it was palpably in evasion of the law. Ordinarily, at least, such arrangement was not considered violative of law. See law 17 of this title.

4.32.15. Emperor Gordian to Claudius Portorius.

If, as you say, your wife borrowed a thousand gold pieces upon condition that if she should not repay the amount within a fixed time, she should return fourfold the amount received, the rule of law does not permit that agreement to be enforced beyond the penalty of lawful interest.
Given (242).

4.32.16. The same Emperor to Flavius Sulpicious.

Since you allege that you did not receive grain but money at interest (upon condition) that a certain measure of wheat should be returned, and that if such amount should not be returned on the day fixed, you should return an additional amount, in fraud, as you contend, of the limitation of legal interest, you can use the proper defense against the dishonest claim.
Promulgated—

4.32.17. Emperor Philip and Caesar Philip to Aurelius Euxenus.

If your mother gave a lien on the property to her creditor upon condition that he should have the fruits in place of interest, the agreement, because of the uncertainty of the receipt of fruits, cannot be rescinded under the pretense that the creditor is receiving large returns.

Note.

In this case a pledge was given to secure a loan, and the property was delivered to the creditor. It was further agreed that in place of interest the creditor should have the income from the place. Such an arrangement was called antechresis. Headnote (1) C. 8.13. Under such arrangement the creditor could occupy the place himself or lease it out. D. 20.1.11.1. The arrangement was not violative of the laws relating to interest. See law 14 of this title.

4.32.18. Emperors Diocletian and Maximian and the Caesars to Aurelius Castor.

After due deliberation, abolishing the differences in the law, it is unquestioned that interest not owing can be recovered, though it was not paid before the principal, and could not, therefore, have diminished it, and though it was paid to the creditor after the payment of the principal.

Note.

The rule had been that interest paid in excess of the amount allowed by law was credited on the principal. In the foregoing case the interest was not paid until after the principal was paid, and hence the rule could not be strictly applied. In such case the excess paid was recoverable by action (*conditio*).

4.32.19. The same Emperors and the Caesars to Aurelia Irenaea.

Tender to your creditor, in the presence of witnesses, the principal received as a loan together with the lawful interest, and if he does not accept it, seal and deposit it in a public place, so that the legal interest may stop running.

1. By “public” place in such case must be understood sacred edifices or places where a competent judge, upon request, shall have ordered the money to be deposited.

2. This done, the debtor is released from the risk, and the right in property pledged ceases, since also under the Servian action the right of following up a pledge ceases when either the money is paid or its non-payment is due to the fault of the creditor.

3. This provision also shall apply in case of maritime loans.

4. The creditor has an analogous action for the recovery of the deposit, not against the debtor—unless perchance the money shall have been returned to him—but against the depositary, or against the money itself.

Note.

Tender. A simple tender consisted of a simple offer to pay. A formal tender was made by offering the money and then keeping the offer good by sealing the money and depositing it in a public place. It was necessary that the offer be made in the proper place and at a proper time. C. 8.42.9; 8 Donellus, 437. If the creditor could not be reached, it was sufficient to go before the proper president and offer the money to him to be deposited in the place where directed by the latter. C. 4.32.6; See C. 4.54.7.

The Servian action here referred to was the hypothecary action enabling a creditor to follow up his pledge. Headnote C. 8.13.

4.32.20. The same Emperors and the Caesars to Aelius Nicopolitanus.

By the imperial constitutions, which prohibit interest beyond a certain amount, persons giving a mandate and sureties by stipulation are also aided. You can rely upon them if you are sued as one giving a mandate or surety by stipulation.

4.32.21. The same Emperors and the Caesars to Chresimones.

If it had been agreed when a pledge was given that interest was to be paid, and you did not immediately, either afterwards or before, designate the debt on which you had made the payment, the creditor has the right to credit the amount so paid on the interest.

Note.

The debtor had a right to designate on what the payment should be applied. If nothing was said by either the creditor or the debtor, the presumption was that it was first applied on interest and next on the principal. C. 8.42.1.

4.32.22. The same Emperors and the Caesars to Cominius Carinus.

If pledges are given, the payment of interest, which (ordinarily) could not have been claimed without a stipulation, may be enforced by detention of the pledges, though such interest was agreed to be paid only by a simple pact. While this is true, if no pact of this kind was made, but you say that only a penalty of a certain sum of money was agreed

to be paid, you can see that nothing more can be claimed or retained, that the rule of law compels you to release the pledge.⁷

Promulgated July 15 ().

4.32.23. The same Emperors and the Caesars to Jasonas.

If oil or any fruits are given as a loan, the reason of the uncertainty of price is persuasion that addition (as) interest of the same property, should be allowed.⁸

Given September 29 (294) at Viminacium.

4.32.24. he same Emperors and the Caesars to Culcia.

If your mother, over age, shall have managed your business for you, then, since she was compelled to exercise the highest care, she can be compelled to pay interest on the money which it shall have been proven she handled.⁹

Given November 18 (294).

4.32.25. Emperor Constantine to the people.

We have ordered that interest may be paid or promised in a due bill (chirographum), for a loan of gold, silver or vestments.

Note.

In this case the property loaned was valued, and interest was chargeable, at the legal rate, on the valuation so fixed. See C. 4.2.8 note. Note that no stipulation was any longer necessary in this case. In fact that appears to have been the general rule in late law. D. 2.1.4.1 (itp); 43 Z.S.S. 321.

4.32.26. Emperor Justinian to Mena, Praetorian Prefect.

Persons who have been defeated in an action in personam or on a mortgage to recover the principal, by the defense of (the statute of limitations) of thirty or forty years, cannot come into court to recover interest or fruits which accrued in the past, by saying that they seek to recover those which are not referable to the period of thirty and forty years, and by asserting that their causes of action accrued in each different year; for if the action for the principal is barred, it is useless for a judge to investigate the question as to interest or fruits.

1. We have also thought it necessary to enact a general law concerning the amount of interest so as to give relief from its harsh and heavy burden and make it moderate.

2. We, therefore, order that persons of illustrious or higher rank shall not be permitted to stipulate for more than four per cent in any contract, small or great; managers of shops and persons who carry on any lawful business must be satisfied to stipulate for eight per cent; on maritime contracts, or loans of property in species, stipulations cannot be exacted for more than twelve per cent, though contracts in excess of this were permitted in former laws; all other persons, moreover, can stipulate for only six per cent; and this rate cannot be exceeded in any other cases in which interest may be demanded without a stipulation. Nor shall an judge increase such rate by reason of any custom in any region.

⁷ [Blume] Law 4 of this title and note.

⁸ [Blume] See law 11 of this title.

⁹ [Blume] C. 2.18.20 note.

4. If anyone does anything in violation of the limit fixed by this constitution, he shall have no right of action for the excess, and if he shall have received it, he will be compelled to credit it on the principal, and no permission is given creditors, in loaning money on interest, to withhold or retain anything as a commission,¹⁰ fee or for any other purpose. And if anything of that kind shall be done, the principal shall be reduced by that amount from the beginning, and such deduction (from the principal) as well as the interest thereon, shall be forbidden to be collected.

5. And in order to cut our trickeries of creditors, who are by this law forbidden to exact by stipulation one of the higher rates as figureheads, we order, that if anything of that kind is attempted, the interest shall be computed, as would have had to be done, had the person who uses another as a figurehead, been himself the promisee of a stipulation. In such case a (decisory) oath may be tendered.¹¹

Note.

By the law of the twelve tables, interest was limited to twelve per cent per annum. In B. C. 345 or 347, this rate was reduced to one-half; and in 340 B.C., it was altogether prohibited. But this law was ineffective and under the late republic and the empire, the legal rate was twelve per cent per annum, or rather one per cent per month. This was expressed by the word “centesima,” up to the time of Constantine, but the word stands 12 1/2 per cont after his time. Bank interest in the third century after Christ was six per cent per annum. In Egypt, in the time of the Ptolomies, the rate was 24 per cent per annum; in Babylon it was then twenty per cent per annum. Justinian’s legislation, as expressed in the foregoing law, had no influence of Egypt and the rate remained at 12 per cent per annum, and generally even higher. Interest was frequently paid in products. Hunter 652-653; article “fenus” in Smith’s Dictionary of Greek and Roman Antiquities; 46 Z.S.S. 329 (1926).

By Novel 135, c. 4, interest on bankers’ loans was limited to eight per cent per annum. By Novels 32, 33, and 34, interest on loans to farmers was limited to about four per cent if the loan was of cash, and to 12 1/2 per cent (payable in products) if the loan consisted of grain. Interest on maritime loans was, by the foregoing law, limited to 12 per cent per annum.

4.32.27. The same Emperor to Mena, Praetorian Prefect.

In order to entirely meet the wrong interpretation, which some persons have put upon our provisions concerning interest, shoes limit we have heretofore fixed, we order that also persons who had a stipulation made before the enactment of that law, for the payment of greater interest than that fixed must limit their right of action to the amount fixed by that law from the time of such enactment, but may exact the amount accrued before that time, according to the tenor of the stipulation. 1. We further do not permit the interest to exceed the amount of the principal, even if pledges for the debt have been given to the creditor, in which case some ancient laws permitted the interest to be more than the amount of the principal. We direct that this provision must be compiled within equitable actions as well as all other actions in which interest is demanded. Given at Constantinople April 1 (529).

4.32.28. The same Emperor to Demosthenes, Praetorian Prefect.

¹⁰ [Blume] *Siliquarum causa*. A siliqua was 1/24th of a solidus.

¹¹ [Blume] See C. 4.1.

That no interest on interest might be demanded of debtors had indeed been provided in former laws, but not fully guarded. For if it were allowed to reduce interest to principal and then to exact a stipulation for interest for the whole amount, what difference would it make to debtors, from whom interest would in fact be demanded on interest? A law to that effect would be simply verbiage, and not strike at the root. 1. We, therefore, by this plainest of laws, direct, that no one shall be permitted to reduce interest accrued in past or future time to principal, and then again exact a stipulation (for the interest on the whole), and if this is done, interest shall indeed always remain interest, and shall not be increased by itself drawing interest, and only the former principal can be increased by interest.

Promulgated at Chalcedon, October 1 (529).