

#80

12/13/71

Memorandum 72-3

Subject: Study 80 - Prejudgment Interest in Civil Actions

The Board of Governors of the State Bar has sent us the enclosed letter transmitting a copy of a conference resolution of the 1971 Conference of State Bar Delegates.

The conference resolution relates to prejudgment interest, a topic that the 1971 Legislature directed the Law Revision Commission to study.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

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John H. DeMouilly, Esq.  
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Dear Mr. DeMouilly:

This is to advise you that the Board of Governors had before it at its November 1971 meeting for consideration 1971 Conference Resolution 9-8 (Interest; Unliquidated Claims; Tort Actions), copy of which is enclosed.

The Board at that meeting directed that said conference resolution be transmitted to the Law Revision Commission with the suggestion that perhaps the commission might wish to consider the same.

Thank you very much.

Very truly yours,

Mary G. Wailes  
Assistant Secretary

MGW:cl

Enclosure

cc: Messrs. D. Robinson, Kimbrough,  
Malone and Swan

**RESOLUTION PROPOSED BY  
THE LAWYERS' CLUB OF SAN FRANCISCO**

RESOLVED that the Conference of Delegates recommend to the Board of Governors of the State Bar of California that the State Bar sponsor legislation to amend Sec. 3287 of the Civil Code of the State of California to read as follows:

Section 3287. Interest on Awarded Damages.

a. . . . .

b. Every person who is entitled under any judgment to receive damages based upon a cause of action in contract or tort where the claim was unliquidated, may also recover interest thereon from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed.

(Proposed new language underlined)

STATEMENT OF REASONS

I feel that the personal injury claimant should be entitled to interest in the same amount as any other litigant.

If my proposal is adopted, it would seem that section 3288 should be deleted. It reads:

"In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury."

The cases have held that the court may determine interest, but apparently this section has not been used very much since its inception in 1872. I'd like it made clear that interest can be obtained on a personal injury judgment.

Digest: Interest; Unliquidated Claims; Tort Actions

Amends Civil Code, §3287(b) to allow interest to run from a date prior to judgment where the action is in tort and the claim, prior to judgment, was unliquidated. The current subdivision allows prejudgment interest in contract actions only.