

## Legal Alert – January 2011 – Interest Charged In Simple Contracts

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### Legal News

The Workmen Compensation Act, 2004 has now been repealed by the Employees Compensation Act, 2010 which new statute was signed into Law in January 2011. The Employees Compensation Act, which applies to employees and employers in the public and private sectors of the Nigerian economy, seeks to provide a more open and fair system “ ... of guaranteed and adequate compensation to all employees or their dependants for any death, disease or disability arising out of or in the course of employment.”

## Legal Alert - January 2011 – Interest Charged in Simple Contracts Claims

### Introduction

Interest has been generally described as the sum payable in respect of the use of another party's money or asset which is called the principal. Interest has also been described as connoting a compensation allowed by law or fixed by the parties for the use or forbearance of an asset or money or such other consideration that the parties have agreed upon. Interest rate on the other hand refers to the percentage of an amount of money which is paid for its use for a specific period of time. See the decision in *Veepee Industries Limited v. Cocoa Industries Limited* (2008) 4-5 SC (part 1) 116 @ 129-130 for these legal definitions.

A reoccurring area in many disputes in simple contract claims, especially where the party claiming interest is not a licensed financial institution, is the question of whether interest is payable on an ascertainable business debt? Many business people, unaware of the correct position of the law, always contend that once a debt is owed to them and such a debt is not paid or liquidated within the period that the debt is contracted or expected to be paid or liquidated, or where there is no contracted period for payment then within a reasonable time, such a debt must attract interest. Is this however the correct position of the law?

### Legal Basis to Charge Interest

At common law, the general rule is that a debtor is not allowed to charge or claim interest on a debt except there is an express contract to justify such a claim or charge and particularly where it was not within the contemplation of the parties at the time they were entering into the contract to envisage that the defaulting party will be required to pay interest on an outstanding liquidated contracted amount.

However, to every rule, there is usually an exception, and the following are some of the exceptions to the above mentioned common law rule.

The first exception is that where there is an express agreement to charge and pay interest, then interest can and must be paid on the claimed principal amount. Parties to a contract could expressly or impliedly contract to pay interest, at a prior agreed percentage, on any sum that remains due and outstanding under their contract after an agreed period of time has elapsed.

The second exception is mercantile custom. The Law recognises that certain trades or industries have their peculiar but acknowledged customs which though not written down have remained binding for many years. For equity and to avoid fraud, the Law is always willingly to enforce these customs including the ones that recognise that interest will be paid on a debt if such a debt is not settled within a certain period of time.

A third and further exception to the common law general rule which bars the payment of interest on ordinary contracts is the rule of implicit agreement. Parties under a fiduciary arrangement can as a matter of equity be deemed to have contracted to implicitly pay interest on a claimed ascertainable amount particularly if there exist evidence of previous instances when such interest was paid.

See the decision in *Ekwunife v. Wayne (W.A.) Limited* (1989) 12 SC 92 @ 111-112 for the general judicial position on the payment of interest in Nigeria.

### Conclusion

Contracting parties will be guided to ensure that they keep in contemplation every possibility that could arise in their contract, negotiate and reach agreements on these possibilities which must then be transcribed into their written agreements. This is in the light of the harsh reality that litigation in Nigeria takes an average of about a decade and if no provision is made for interest to be paid in the event of a breach and subsequent award, the sum awarded would have being grossly eroded by inflation, etc.

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