Postjudgment Interest in Contract Actions against the Commonwealth of Massachusetts: Wave Good-Bye to the Common Law Waiver of Sovereign Immunity

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POSTJUDGMENT INTEREST IN CONTRACT ACTIONS AGAINST THE COMMONWEALTH OF MASSACHUSETTS: WAVE GOOD-BYE TO THE COMMON LAW WAIVER OF SOVEREIGN IMMUNITY

I. INTRODUCTION

The Commonwealth of Massachusetts is not liable for postjudgment interest in contract actions.¹ The Supreme Judicial Court of Massachusetts resolved this previously unsettled issue in Chapman v. University of Massachusetts Medical Center.² The court declared “a claim for postjudgment interest is noncontractual and must be authorized statutorily.”³ The court explained the Commonwealth is

¹ See Chapman v. University of Mass. Med. Ctr., 423 Mass. 584, 586, 670 N.E. 166, 168 (1996) (holding the Commonwealth not liable for postjudgment interest). Postjudgment interest is the interest that accrues on a judgment for the time period between final judgment and payment. See MASS. GEN. LAWS ch. 235, § 8 (1986) (authorizing interest on a judgment). Chapter 235, section 8 states in part, that “the warrant or execution issued on a judgment... shall require the collection or satisfaction thereof with interest from the day of its entry.” Id.

² See Chapman, 423 Mass. at 586, 670 N.E.2d at 168 (recognizing no decision or statute directly authorizes Chapman’s recovery for postjudgment interest).

³ Id. at 588, 670 N.E.2d at 169. A common law waiver of sovereign immunity exists when the Commonwealth contracts with a private party. See Monadnock Display Fireworks, Inc. v. Andover, 388 Mass. 153, 156-57, 445 N.E.2d 1053, 1056 (1983) (finding the municipality owed a duty to the plaintiff upon entering into a contract).

The Commonwealth submits itself to the courts and the laws as if it were a private citizen at the time it enters into a contract. See Nash v. Commonwealth, 174 Mass. 335, 339, 54 N.E. 865, 867 (1899) (recognizing the Commonwealth’s accountability in its own courts if the claim against it is just). The court in Nash analyzed the affect of the statute that gave the superior court “jurisdiction of all claims against the commonwealth, whether at law or in equity.” Id. at 338, 54 N.E. at 865; 1887 Mass. Acts ch. 246. The court held the statute did not create a new obligation upon the Commonwealth or give rise to a new claim, but rather gave Nash a forum to bring an already recognizable claim. See id. at 338, 54 N.E. at 865 (discussing Nash’s erroneous interpretation of the statute).
not required to pay postjudgment interest, absent a contractual provision or a statute, because the government enjoys the protections of sovereign immunity. The court found no common law waiver or express statutory waiver existed that permitted Chapman to collect postjudgment interest. The statute providing for postjudgment interest on judgments, Massachusetts General Laws chapter 235, section 8, did not apply to an agency of the Commonwealth.

Although the Supreme Judicial Court ruled on the issue of the Commonwealth's liability for interest in contract actions prior to Chapman, the reasoning in previous decisions invited plaintiffs to factually distinguish their claims. The holding in Chapman, however, appears to close the door on all private parties who contract with the Commonwealth and subsequently seek postjudgment interest. The Chapman court's conclusion, however, rests on questionable reasoning because 1) the court's reliance on prior case law cannot be reconciled with the facts in Chapman, and 2) the doctrine of sovereign immunity precludes such a result.

Part II of this note discusses Chapman and presents the current state of the law regarding the Commonwealth's liability for postjudg-

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5 See id. (disagreeing with Chapman's argument that the Commonwealth must pay postjudgment interest because sovereign immunity is waived in contract actions).
8 See Chapman, 423 Mass. at 587, 670 N.E.2d at 169 (concluding Commonwealth not liable for postjudgment interest even when waiver of sovereign immunity exists on underlying contract claim).
9 See id.
ment interest in contract actions. Part III presents the statutes and rules that govern postjudgment interest in contract actions in Massachusetts. Part IV explains the applicability of postjudgment interest in tort actions and discusses the relevant statutory scheme. Part V discusses the judicial and statutory history of postjudgment interest in eminent domain actions. Part VI analyzes the development of the law in Massachusetts regarding the Commonwealth's liability for postjudgment interest in contract actions and contrasts the Commonwealth's liability for interest in a contract action with tort and eminent domain actions.

II. CONTRACT ACTIONS

Chapman v. University of Massachusetts Medical Center is the law in Massachusetts regarding the Commonwealth's liability for postjudgment interest. In Chapman, the plaintiff, Margaret Chapman, brought an action against the University of Massachusetts Medical Center ("UMMC"), an agent of the Commonwealth, for wrongful discharge in breach of an employment contract. The trial court found that UMMC breached Chapman's contract by wrongfully

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10 See infra notes 15-61, and accompanying text.
11 See infra notes 62-104, and accompanying text.
12 See infra notes 105-132, and accompanying text.
13 See infra notes 133-168, and accompanying text.
14 See infra notes 169-231, and accompanying text.
terminating her. The court entered judgment for Chapman on January 10, 1992 for $243,144.25, with interest from the date of commencement of the action, July 20, 1990. The Supreme Judicial Court affirmed the judgment on February 17, 1994.

On April 19, 1994, the court entered an amended judgment after rescript awarding Chapman $243,144.25, with interest from July 6, 1986 to the date of judgment in the sum of $163,149.63. In addition, the court awarded postjudgment interest from January 10, 1992, the date of judgment, to the date of judgment after rescript, April 19, 1994, in the sum of $109,969.97. An assistant clerk entered the amended judgment and UMMC did not appeal or attempt to amend it. The clerk, however, refused to include the postjudgment interest award in the certificate of judgment.

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18 Chapman II, 423 Mass. at 584, 670 N.E.2d at 167.
19 Id.
20 See Chapman I, 417 Mass. at 105, 628 N.E.2d at 9 (affirming superior court’s decision that UMMC violated Chapman’s employment contract).
21 See Chapman II, 423 Mass. at 585, 670 N.E.2d at 168 (noting the original judgment provided for interest from July 20, 1990 but UMMC did not appeal entry of the earlier date).
23 Id.
24 Id.
Chapman moved for an order requiring inclusion of postjudgment interest. The trial court denied the motion, reasoning that an action for interest after judgment is a separate action that is not part of the underlying contract claim. The trial court recognized that post-judgment interest is intended to compensate a party for the loss of use of money, but the Commonwealth was not liable for postjudgment interest because no clear statutory waiver of sovereign immunity existed.

The Supreme Judicial Court agreed with the trial court’s reasoning and affirmed in Chapman II. The issue in Chapman II was Chapman’s entitlement to postjudgment interest. The court concluded that “whether or not a plaintiff’s claim for postjudgment interest is brought in a separate action, a claim for postjudgment interest is noncontractual and must be authorized statutorily.” This statement has the effect of immunizing the Commonwealth from liability for postjudgment interest in contract actions.

In C & M Construction Co., Inc. v. Commonwealth, C & M recovered $343,407.93, including interest of $101,109.94, on July 3, 1975, on a judgment in a contract action against the Common-
wealth. The clerk sent a certificate of judgment to the comptroller on July 9, 1975. An additional budget request was made on July 21, 1975 and the appropriation bill that included this request was approved in 1976. C & M did not receive payment until July 16, 1976.

C & M sought interest from the date of judgment, July 3, 1975, until the date of payment, July 16, 1976. The court issued a money judgment on the contract action, and the claim for postjudgment interest was a second and separate action filed by C & M. The Supreme Judicial Court considered the Commonwealth's liability for interest during the time necessary for the Legislature to appropriate the funds. The court held the Commonwealth not liable for postjudgment interest.

The court recognized a common law waiver of sovereign immunity exists when the Commonwealth enters into a contract with a pri-

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35 See id. at 390-91, 486 N.E.2d at 55. The procedure for payment was lengthy and satisfaction of the judgment took almost one year. See C & M Constr. Co., 396 Mass. at 391-92, 486 N.E.2d at 55 (describing the timeline for payment to C & M). C & M initially received $71,721.61, the balance remaining on the funds already appropriated for the project. Id. The bureau of building construction made an additional budget request to the Legislature on July 21, 1975 for the balance owed to C & M to satisfy the judgment. Id. Payment could not be made until appropriation of the funds. Id.


37 Id.

38 Id.

39 Id.

40 Id. The court phrased the issue as "whether the Commonwealth is accountable for interest on the unsatisfied portion of a judgment during the time required for the appropriation of funds by the Legislature to satisfy the judgment, where there is no express statutory authority authorizing such recovery." Id.

vate party. An action for interest, however, is a separate action that requires statutory authorization because it is not part of the underlying contract claim. C & M argued the authority for postjudgment interest was found by reading Massachusetts General Laws chapter 235, section 8 into chapter 258, sections 1-12, the Massachusetts Tort Claims Act, because chapter 258 is the "primary statutory basis for the waiver of sovereign immunity." The court rejected this argument because the statutes that provide for postjudgment interest in private actions, such as chapter 235, section 8, are not expressly incorporated into statutes that permit damages against the Commonwealth, such as chapter 258.

The court went on to consider issues of statutory construction. The court looked to the eminent domain statute expressly authorizing postjudgment interest, chapter 79, section 37. If the Legislature intended to authorize the Commonwealth's liability for postjudgment interest under chapter 235, section 8, then enactment of a statute authorizing postjudgment interest in eminent domain cases would

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43 Id. at 392, 486 N.E.2d at 56. The court concluded "the present action [for interest] is not founded on the contract between C & M and the Commonwealth, as to which sovereign immunity is waived." Id.

44 Id. Chapter 235, section 8 authorizes postjudgment interest but does not expressly address the Commonwealth's liability. See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of interest until satisfaction of the judgment). The Massachusetts Tort Claims Act is a statutory waiver of sovereign immunity and permits a private party to bring a tort action against the Commonwealth. See MASS. GEN. LAWS ch 258, §§ 1-12 (1985) (delineating the scope of a litigant's rights and obligations in a tort action against the Commonwealth).


46 See id. at 392, 486 N.E.2d at 56 (examining whether an alternate source of waiver exists).

have been unnecessary. The court found the same reasoning disposed of C & M’s claim.

The court makes two assertions to justify the holding in *C & M Construction Co., Inc.* First, an action for postjudgment interest is a separate action from the underlying claim and requires statutory authorization. Second, the Legislature did not intend chapter 235,

[A] statute awarding postjudgment interest in eminent domain cases evinced a legislative intent that [chapter 235, section 8], not be applied to claims against the Commonwealth . . . If that were not so, [chapter 235, section 8] would have made the enactment of a separate statute awarding postjudgment interest in eminent domain cases an unnecessary and redundant legislative gesture. In expressly providing for interest until payment in one type of proceeding, we assume the Legislature meant to “[exclude] by implication other similar matters not mentioned.”

*Id.* (quoting McArthur Bros. Co. v. Commonwealth, 197 Mass. 137, 139, 83 N.E. 334, 335 (1908)).

Chapter 79, section 37, governing interest in eminent domain actions, is the only statute that expressly holds the Commonwealth liable for postjudgment interest. *See C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (stating the Massachusetts Tort Claims Act and chapter 235, section 8 do not authorize postjudgment interest); MASS. GEN. LAWS ch. 79, § 37 (1985) (expressly authorizing postjudgment interest). Prior to enactment of chapter 79, section 37, recovery for postjudgment interest against the Commonwealth was prohibited. *See C & M Constr. Co., Inc.*, 396 Mass. at 392, 486 N.E.2d at 56 (noting alternative theories of recovery for postjudgment interest, namely on constitutional grounds).

*See C & M Constr. Co., Inc.*, 396 Mass. at 393, 486 N.E.2d at 56-57 (finding C & M has no claim).

*See id.* at 391-92, 486 N.E.2d at 55-56 (reasoning the Commonwealth is not liable for postjudgment interest).

*See id.* at 391-92, 486 N.E.2d at 55 (rejecting C & M’s argument that the action for postjudgment interest is part of the underlying contract claim).
section 8 to apply to the Commonwealth. The court in Chapman II considers the two assertions and similarly concludes that the Commonwealth is not liable for postjudgment interest.

Chapman attempted to distinguish the facts in C & M Construction Co., Inc. by noting C & M brought a completely separate action for postjudgment interest, while Chapman's claim was being litigated in an underlying contract action. The Supreme Judicial Court re-

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52 See id. at 393, 486 N.E.2d at 56 (interpreting the Legislature's intent when it authorized postjudgment interest in eminent domain actions).

The court also rejected C & M's argument that failure to pay interest was a wrongful detention of money. See C & M Constr. Co., Inc., 396 Mass. at 394, 486 N.E.2d at 57 (concluding C & M erroneously relied on Perkins Sch. for the Blind v. Rate Setting Comm'n, 383 Mass. 825, 423 N.E.2d 765 (1981)). The Commonwealth is liable for postjudgment interest due to wrongful detention of money if the Commonwealth has not done everything the law requires it to do in the particular case. See Perkins Sch. for the Blind v. Rate Setting Comm'n, 383 Mass. 825, 831, 423 N.E.2d 765, 770 (1981) (stating interest is payable as compensation for non-performance of a contract).

The court in C & M Construction Co., Inc. concluded reliance on Perkins School for the Blind was "misplaced" because a claim for wrongful detention of money requires an evaluation of the contractual obligations between the parties, and C & M's claim for postjudgment interest "has no roots in contract." C & M Constr. Co., Inc., 396 Mass. at 394, 486 N.E.2d at 57. If Perkins School for the Blind were applicable, C & M's claim still fails because the court concludes that the Legislature did everything required to satisfy the judgment. See id. at 394, 486 N.E.2d at 57 (finding C & M cannot succeed on the claim).


54 See Chapman II, 423 Mass. at 587, 670 N.E.2d at 169 (noting Chapman's flawed argument). C & M claimed interest due for the time it took the Legislature to appropriate funds to satisfy the judgment. See C & M Constr. Co., Inc. v. Commonwealth, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985) (setting forth the question presented). The postjudgment interest C & M sought to recover was for the time period between the judgment (there was no appeal in the contract case) and payment. Id. Chapman sought interest from the date of judgment to the date of judgment after rescript. See Chapman II, 423 Mass. at
jected this argument and stated "the distinction is without significance." Liability for postjudgment interest is noncontractual even if the underlying claim is based on contract, therefore no common law waiver of sovereign immunity exists for a claim to interest. Further, the Legislature did not intend to create a statutory waiver of sovereign immunity for postjudgment interest in contract actions.

Chapman II represents Massachusetts law on the issue of the Commonwealth's liability for postjudgment interest in contract actions. The common law waiver of sovereign immunity that exists at the time the government enters into a contract does not encompass liability for postjudgment interest. The general laws do not provide

585, 670 N.E.2d at 168 (explaining the clerk refused to include postjudgment interest in the execution and Chapman filed a motion for interest).


36 See id. (highlighting no statutory authority for postjudgment interest exists).


the necessary waiver to expressly hold the Commonwealth liable in a contract action.\textsuperscript{60} Although the reasoning in \textit{C \& M Construction Co., Inc.} left the door open for Chapman's claim to the extent that C \& M's claim was truly a separate action for postjudgment interest, the Supreme Judicial Court in \textit{Chapman II} closed and bolted the door shut.\textsuperscript{61}

\textbf{III. STATUTES AND RULES}

Interest on judgments is governed by statute.\textsuperscript{62} Private parties to a contract may negotiate a rate of interest in the event of nonpayment, but interest owed in a dispute reduced to judgment is governed by the legislature.\textsuperscript{63} A government's liability for interest on a judgment in a contract action requires: 1) a statute authorizing interest in contract actions; and 2) a statutory or common law waiver of sovereign immunity with respect to interest.\textsuperscript{64} The court in \textit{Chapman II} held the general interest statutes that apply to judgments in favor of private parties do not apply to the Commonwealth because no waiver of sovereign immunity exists.\textsuperscript{65} The court expressly and implicitly relied on

\textsuperscript{60} \textit{See} \textit{C \& M Constr. Co., Inc. v. Commonwealth}, 396 Mass. 390, 392, 486 N.E.2d 54, 56 (highlighting only one Massachusetts statute expressly authorizes postjudgment interest against the Commonwealth).

\textsuperscript{61} \textit{See} \textit{Chapman II}, 423 Mass. at 587, 670 N.E.2d at 169 (stating it is irrelevant whether a claim for postjudgment interest is brought as a motion or as a separate action).

\textsuperscript{62} \textit{See} \textit{Date of Verdict or Date of Entry of Judgment Thereof as Beginning of Interest Period on Judgment, 1 A.L.R. 479 § 1} (1948) (pointing to common law principle that judgments do not accrue interest absent statutory regulation).

\textsuperscript{63} \textit{See} \textit{Morley v. Lake Shore \& Mich. S. Ry. Co.}, 146 U.S. 162, 168 (1892) (concluding the United States Constitution mandates a plaintiff's right to interest be prescribed by the state legislature).

\textsuperscript{64} \textit{See generally} \textit{Date of Verdict or Date of Entry of Judgment Thereof as Beginning of Interest Period on Judgment, 1 A.L.R. 479 §§ 1, 2} (1948) (declaring states differ on the question of whether general interest statutes apply to governmental units absent a statute or a contract).

existing Massachusetts interest statutes and the relationships between these statutes.66

A. Chapter 235, § 8

Massachusetts General Laws chapter 235, section 8 establishes when postjudgment interest begins to accrue and the rate of interest.67 The statute provides in pertinent part that “[e]very judgment for the payment of money shall bear interest from the day of its entry.”68 Postjudgment interest accrual begins at entry of “judgment” and ceases at the time of payment.69 A “judgment” includes a decree and

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66 See id. at 587-88, 670 N.E.2d at 169 (discussing the relevant statutory scheme).
67 See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing for both prejudgment and postjudgment interest). The statute states in full:

When judgment is rendered upon an award of county commissioners, a committee or referees, or upon the report of an auditor or master, or upon the verdict of a jury or the finding of a justice, interest shall be computed upon the amount of the award, report, verdict or finding from the time when made to the time the judgment is entered [prejudgment interest]. Every judgment for the payment of money shall bear interest from the day of its entry at the same rate per annum as provided for prejudgment interest in such award, report, verdict or finding. The warrant or execution issued on a judgment for the payment of money shall specify the day upon which judgment is entered, and shall require the collection or satisfaction thereof with interest from the day of its entry.

Id.

69 See id. (stating the warrant or execution shall require satisfaction of the judgment with interest from the day of entry); see also MASS. R. CIV. P. 54(f) (1998) (requiring every judgment bears interest until the date of payment). Rule 54(f) requires the clerk of the court to compute the interest for two distinct time periods: 1) up to the date of entry of judgment; and 2) from the date of entry of judgment to the date of execution ordering payment. MASS. R. CIV. P. 54(f) (1998). A judgment debtor is also liable for interest during a third time period,
is separate from the award, report, verdict or finding. Massachusetts General Laws chapter 235, section 8, provides that “judgment is rendered [after issuance of] an award of county commissioners, a committee or referees, or upon the report of an auditor or master, or upon the verdict of a jury or the finding of a justice.” A “judgment,” therefore, follows a jury verdict or a master’s report and is a separate act or decree. Chapter 235, section 8 entitles a party to interest on a judgment regardless of the type of action.

B. Rule 54

Massachusetts Rule of Civil Procedure 54 clarifies the procedure outlined in chapter 235, section 8 that prescribes interest to a successful plaintiff. The rule defines “judgment” and “final judgment” from the date of execution to the date of payment. MASS. GEN. LAWS ch. 235, § 8 (1986); MASS. R. CIV. P. 54(f) (1998).

Rule 54(f) does not direct the clerk to compute interest for the latter time period because the clerk cannot know the date of payment at the time the execution is issued. MASS. R. CIV. P. 54(f) (1998). The absence of this formality, however, does not excuse the judgment debtor’s liability for interest up until the date of payment. See MASS. R. CIV. P. 54(f) (1998) (stating “every judgment for the payment of money shall bear interest up to the date of payment of said judgment”).

See MASS. R. CIV. P. 54(a) (1998) (describing the terms “judgment” and “final judgment”). A “judgment” or “final judgment” includes judgments entered upon, among other things, verdicts of a jury, or special or general verdicts. MASS. R. CIV. P. 54(a)(2) (1998).


See MASS. R. CIV. P. 54(a) (1998) (setting forth instances when the clerk may enter judgment without direction of the court and where court approval of the form of judgment is required).

See MASS. GEN. LAWS ch. 235, § 8 (1994) (dictating the award of interest on judgments).

See MASS. R. CIV. P. 54 (1998) (defining “judgment” and directing the clerk to compute interest). Rule 54(f) states in full:

Every judgment for the payment of money shall bear interest up to the date of payment of said judgment. Interest accrued up to the date of
to "mean the act of the trial court finally adjudicating the rights of the parties affected by the judgment."\(^{75}\) This definition has a significant impact on the rights of the parties to a suit if one of the parties is not liable for postjudgment interest.\(^{76}\) Rule 54(f) directs the clerk to compute the amount of postjudgment interest and include this amount on the certificate of payment or execution.\(^{77}\) Rule 54(f) also designates the separate time periods for prejudgment and postjudgment interest.\(^{78}\)

Entry of a judgment shall be computed by the clerk according to law. Unless otherwise ordered by the court, interest from the date of entry of a judgment to the date of execution or order directing the payment of said judgment shall also be computed by the clerk, and the amount of such interest shall be stated on the execution or order.

\(\text{Id.}\)

\(^{75}\) MASS. R. CIV. P. 54(a) (1998) (emphasis added). Prior to 1973 amendments, "judgment" meant the final adjudicating act where appellate review had been exhausted. Reporter's Notes, MASS. R. CIV. P. 54 (1998). Prior to the amendments, a case decided by the Supreme Judicial Court went to "judgment" and postjudgment interest would accrue from the date of the Supreme Judicial Court's "judgment" to the date of payment. \(\text{Id.}\) In accordance with the 1973 amendments, "judgment" was issued by the trial court, notwithstanding an appeal. \(\text{Id.}\) This sets the postjudgment interest period as the period between the judgment by the trial court and payment. MASS. R. CIV. P. 54(a) (1998). Redefining "judgment" significantly extends the "postjudgment" period. \(\text{See}\) MASS. GEN. LAWS ch. 235, § 8 (1986) (stating "the warrant or execution issued on a judgment . . . shall require the . . . satisfaction thereof with interest from the day of its [the judgment's] entry); see also Stokosa v. Waltuch, 378 Mass. 617, 619-20, 393 N.E.2d 350, 351 (1979) (noting under the 1973 definition the time period between judgment and payment could be years, while under the prior definition, the time period was much shorter).

\(^{76}\) \(\text{See}\) Stokosa, 378 Mass. at 619-20, 393 N.E.2d at 351 (discussing the practical effect of the 1973 amendment to Rule 54).

\(^{77}\) \(\text{See}\) MASS. R. CIV. P. 54(f) (1998).

\(^{78}\) \(\text{See}\) MASS. R. CIV. P. 54(f) (1998) (designating the time periods without direct reference to the terms "prejudgment" and "postjudgment"). The 1986 Reporter's Notes state "[t]he initial entry of judgment by the trial court should be the sum of the verdict and interest on that verdict to the time of said entry [prejudgment interest]. Postjudgment interest should be computed on that total."
C. Chapter 231, § 6C

Massachusetts General Laws chapter 231, section 6C provides in a contract action, "upon a verdict, finding or order for judgment for pecuniary damages, interest shall be added by the clerk of the court to the amount of damages . . . from the date of breach or demand." The function of section 6C is to provide interest to a successful litigant from the date of breach or filing of the action to the verdict, finding or order. Section 6C expressly addresses the method of calculating interest in actions against the Commonwealth from the time of breach or filing of the action to the verdict, finding or order. The express reference to the Commonwealth in section 6C is not a statutory waiver of sovereign immunity, but rather a recognition of the common law waiver that exists when the Commonwealth enters into a contract.

D. An Example Calculation of Postjudgment Interest

The facts of Chapman II illustrate the relationships between the Massachusetts interest statutes applicable in contract actions.

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79 MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999).
80 See MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (requiring the clerk to add interest to damages at a specified rate). The clerk must compute interest from the date of breach if known. Id. If the date of breach is not known, the clerk computes interest from the date of commencement of the action. Id.
81 See MASS. GEN. LAWS ch. 231, § 6C (West Supp. 1999) (requiring the clerk to calculate interest at the contract rate, if established, or pursuant to the method described in chapter 231, section 61).
Chapman filed her contract claim on July 20, 1990.\textsuperscript{84} For purposes of this example, the judge’s finding for damages was issued on January 3, 1992, in favor of Chapman for $243,144.25.\textsuperscript{85} The trial court entered judgment on January 10, 1992.\textsuperscript{86} On direct appeal, the Supreme Judicial Court entered an amended judgment after rescript on April 19, 1994 in favor of Chapman for damages of $243,144.25.\textsuperscript{87}

The interest statutes applicable in contract actions provide for interest during three time periods.\textsuperscript{88} Chapter 231, section 6C requires the clerk to add interest to damages from the date of the commencement of the action, July 20, 1990, to the date of the trial court’s findings, January 3, 1992.\textsuperscript{89} In accordance with the rate specified in chapter 231, section 6C, Chapman’s interest accrues on $243,144.25 in damages from July 20, 1990 to January 3, 1992, or an amount equal to approximately $42,000.00.\textsuperscript{90} Section 6C requires the clerk

\textsuperscript{84} Id.

\textsuperscript{85} See id. (omitting the date of the court’s findings). Chapman waived her right to a jury trial but the decision by the court in \textit{Chapman II} does not indicate the date the court issued its findings. \textit{Id.} Note also that for purposes of calculation, a verdict, finding or order for judgment for pecuniary damages are treated the same. See \textit{MASS. GEN. LAWS} ch. 231, \S 6C (West Supp. 1999) (providing interest is added by the clerk “upon a verdict, finding or order for judgment for pecuniary damages”).

\textsuperscript{86} See \textit{Chapman II}, 423 Mass. at 584, 670 N.E.2d at 167 (explaining the facts).

\textsuperscript{87} Id. at 585, 670 N.E.2d at 168.

\textsuperscript{88} See generally \textit{MASS. GEN. LAWS} ch. 231, \S 6C (West Supp. 1999) (providing for interest from commencement of action to date of verdict or finding); \textit{MASS. GEN. LAWS} ch. 235, \S 8 (1986) (providing for prejudgment and postjudgment interest).

\textsuperscript{89} See \textit{MASS. GEN. LAWS} ch. 231, \S 6C (West Supp. 1999) (stating that “\textit{upon a ... finding, ... interest shall be added by the clerk ... to the amount of damages ... from the date of the breach or demand}”).

\textsuperscript{90} See \textit{MASS. GEN. LAWS} ch. 231, \S 6C (West Supp. 1999) (delineating the interest rate as the contract rate if specified or 12\% per year). The court in \textit{Chapman II} presented an interest figure of $42,995.48 and this included interest from the date of commencement of the action to the date of judgment. See Chapman v. University of Mass. Med. Ctr., 423 Mass. 584, 584-85, 670 N.E.2d
to include interest from the date of breach or the date of commencement of the action to the finding or verdict.\footnote{166, 167-68 (1996) (describing the nature of Chapman's action). This figure reflects the interest calculated pursuant to both chapter 231, section 6C and chapter 235, section 8, because interest is calculated up to entry of judgment. \textit{Id.}}

The first provision of chapter 235, section 8 authorizes interest from the time of the finding of the trial court, January 3, 1992, to the entry of judgment on January 10, 1992.\footnote{\textit{See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing for payment of prejudgment interest).}} Interest is calculated based on the amount of the finding plus interest accrued pursuant to chapter 231, section 6C, or $285,144.25 ($243,144.25 + $42,000.00).\footnote{\textit{See R.H. White Realty Co., Inc. v. Boston Redev. Auth., 371 Mass. 452, 454, 358 N.E.2d 440, 441 (1976) (clarifying the procedure for adding interest to a verdict). The Supreme Judicial Court stated that chapter 235, section 8 was necessary for the \textit{calculation} of interest because other interest statutes only "provided for the addition of interest to the amount of a verdict." \textit{R.H. White Realty Co., Inc.}, 371 Mass. at 454, 358 N.E.2d at 441. The interest from the date of breach, or date of commencement of the action, is added to the verdict and this amount accrues interest to the date of judgment. \textit{See id.} (quoting \textit{Nugent v. Boston Consol. Gas Co.}, 238 Mass. 221, 238, 130 N.E. 488, 494 (1921)).}} The interest that accrues from January 3, 1992 to January 10, 1992 at 12\% per year on $285,144.25 is approximately $900.00.\footnote{\textit{See MASS. GEN. LAWS ch. 235, § 8 (1986) (providing interest from the verdict or finding to the entry of judgment, although not designated as "prejudgment" interest).}} The interest that accrues during the period between the finding or verdict and entry of judgment shall be referred to as "prejudgment" interest for the remainder of this note and is governed by chapter 235, section 8.\footnote{\textit{See 1986 Reporter's Notes, MASS. R. CIV. P. 54(f) (1998) (stating judgment by the trial court should include the sum of the verdict and interest on}}

The court enters judgment upon the finding for $286,044.25.\footnote{\textit{See 1986 Reporter's Notes, MASS. R. CIV. P. 54(f) (1998) (stating judgment by the trial court should include the sum of the verdict and interest on}}
from the date of entry of judgment, January 10, 1992, to the date of payment. For purposes of this illustration, the date of payment is May 1, 1994, a date after the date of entry of judgment after rescript. The court issues a writ of execution to enforce the payment of the judgment after rescript. Chapter 235, section 8 requires the execution to specify the date of entry of judgment and that the judgment debtor pay interest from the date of entry until satisfaction of the judgment. The interest that accrues from the date of entry of judgment to the date of payment is postjudgment interest. Disregarding the holding in Chapman II for purposes of this illustration, UMMC is liable for postjudgment interest on $286,044.25, from the date of judgment, January 10, 1992, to May 1, 1994, the date of payment.

the verdict to the time of entry of judgment). The amount entered on the judgment includes the sum of a) the amount of the finding ($243,144.25); plus b) interest from the date of commencement of the action to the finding in accordance with chapter 231, section 6C ($42,000.00); plus c) interest that accrues on the amount of (a) plus (b) ($285,144.25), from the date of the finding to the entry of judgment, in accordance with chapter 235, section 8 ($900.00).

97 See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of interest from the date of entry of judgment until satisfaction of the judgment).

98 See MASS. R. CIV. P. 54 (1998) (stating court enters judgment after the verdict or finding).


100 See MASS. GEN. LAWS ch. 235, § 8 (1986).


102 See 1986 Reporter's Notes, MASS. R. CIV. P. 54(f) (1998) (stating postjudgment interest is calculated on the sum of the finding and interest on the finding to the time of entry of the finding).
A private party must pay the interest that accrues during this twenty-nine month period. Applying the holding in *Chapman II*, however, UMMC as a government entity is not liable for postjudgment interest.

IV. TORT ACTIONS

The Massachusetts Tort Claims Act ("MTCA") governs the issue of postjudgment interest against the Commonwealth in tort actions. The MTCA provides for the rights of a private party in an action against the Commonwealth but limits the state's liability. Prior to 1978, private parties could not bring a tort action against public entities without the Commonwealth's consent. A general rule of law exists "that the Commonwealth 'cannot be impleaded in its own courts except with its consent, and, when that consent is granted, it can be impleaded only in the manner and to the extent expressed . . . [by] statute.'" The doctrine of sovereign immunity protects the Commonwealth from suit therefore the government's consent is necessary.

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103 See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring payment of prejudgment and postjudgment interest).
104 See *Chapman II*, 423 Mass. at 586, 670 N.E.2d at 168 (holding Commonwealth not accountable for postjudgment interest).
105 See MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the MTCA); Onofrio v. Department of Mental Health, 411 Mass. 657, 584 N.E.2d 619, 619 (1992) (deciding whether postjudgment interest is recoverable under the MTCA).
106 See MASS. GEN. LAWS ch. 258, § 2 (1985) (limiting damages to $100,000 and precluding recovery of punitive damages and prejudgment interest).
109 See *Onofrio*, 411 Mass. at 658, 584 N.E.2d at 620 (holding sovereign immunity prevents recovery of postjudgment interest in tort actions).
A. Sovereign Immunity

The doctrine of sovereign immunity in the United States has its roots in English common law and was justified by "[t]he inherent nature of sovereignty" with the protection of the king as its primary purpose.\(^\text{110}\) The concept, however, came under disfavor with the judiciary and the public.\(^\text{111}\) In *Morash & Sons, Inc. v. Commonwealth*,\(^\text{112}\) the Supreme Judicial Court concluded the doctrine of sovereign immunity was "logically indefensible" and noted that some jurisdictions have completely abolished the concept.\(^\text{113}\)


\(^{111}\) *See* *Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 618, 296 N.E.2d 461, 465 (1973) (discussing the origins of the doctrine of sovereign immunity). The Court recognized the continued existence of the concept of sovereign immunity but noted that "[s]cholarly treatises have suggested that the doctrine is an anachronism in American law, but despite its tautological justification, the doctrine continues to enjoy current vitality." *Id.*


\(^{113}\) *See Morash & Sons, Inc.*, 363 Mass. at 618, 296 N.E.2d at 465 (discussing the erosion of the concept of sovereign immunity in all jurisdictions through statutory or judge made exceptions). The judiciary has the authority to abrogate the doctrine of sovereign immunity without the consent or approval of the Legislature because the concept is judicially created. *See* Whitney v. Worcester, 373 Mass. 208, 212, 366 N.E.2d 1210, 1213 (1977) (stating "we have no doubt as to our power to abrogate the doctrine of governmental immunity"). Legislative action, however, will almost always follow judicial action regarding governmental immunity, therefore the court prefers the Legislature reach finality. *See id.* at 210, 366 N.E.2d at 1212 (recognizing the overlapping legislative and judicial powers regarding immunity and the Legislature "will have the final word").

Note the court in *Whitney* decided a question of municipal immunity and not state immunity. *See id.* at 210, 366 N.E.2d at 1212 (announcing its intention to abrogate the doctrine of municipal immunity in the first appropriate case). At common law, municipalities, unlike state entities, were subject to liability for tort actions involving commercial functions. *See* Bolster v. Lawrence, 225 Mass. 387, 390, 114 N.E. 722, 724 (1939) (stating municipal liability may exist if the
In 1977, the Supreme Judicial Court demanded the Legislature abrogate the doctrine of sovereign immunity in tort actions. The court stated the doctrine of sovereign immunity is a "convoluted scheme of rules and exceptions which have developed over the years [and is] unjust and indefensible as a matter of logic and sound public policy." The court observed that no legislation existed that addressed its concerns regarding the abrogation of the concept. As a result of the Legislature's inaction, the court stated its intention to abrogate the doctrine of sovereign immunity in the next appropriate case unless the Legislature took action. The Legislature acted

tortious act included an element of corporate benefit or pecuniary profit such as operating a public bath house or swimming pool). The differences between municipal and state immunity do not affect the analysis of this note because the MTCA eliminates the distinction between government activities and commercial activities. See Joseph W. Glannon, The Massachusetts Tort Claims Act: Analysis and Update, 75 MASS. L. REV. 52, 58 (1990) (discussing the MTCA's affect on common law principles of immunity).

See Whitney v. Worcester, 373 Mass. 208, 210, 366 N.E.2d 1210, 1212 (1977) (highlighting the Legislature's inability to abrogate the doctrine of sovereign immunity for the four years since Morash & Sons, Inc. was decided).


See id. at 210, 366 N.E.2d at 1212 (noting the Legislature's inability to create a "workable solution").

See id. at 210, 366 N.E.2d at 1212 (discussing the court's intention to act definitively and swiftly). The court stated:

[W]e state our intention to abrogate the doctrine of municipal immunity in the first appropriate case decided by this court after the conclusion of the next (1978) session of the Legislature, provided that the Legislature at that time has not itself acted definitively as to the doctrine. Thereafter, when appropriate cases concerning State and county immunity are presented, it is our intention to take similar action to abrogate immunity.

Id. at 210, 366 N.E.2d at 1210.

At the time Whitney was decided, only five states in the nation retained the common law protection of sovereign immunity at the state and local levels in tort actions. See Whitney, 373 Mass. at 212, 366 N.E.2d at 1213 (summarizing the
quickly and passed the Massachusetts Tort Claims Act. The MTCA provides a limited statutory waiver of sovereign immunity but does not encompass a waiver for the payment of postjudgment interest.

B. Massachusetts Tort Claims Act

The Supreme Judicial Court settled the question of postjudgment interest in tort actions in a 1992 decision interpreting the MTCA. The MTCA expressly provides that public employers are not liable for prejudgment interest, but contains no language regarding liability for postjudgment interest. The plaintiff in Onofrio v. Department of Mental Health argued that by expressly barring recovery of prejudgment interest, the Legislature's silence regarding postjudgment interest implied that no bar existed for recovery of interest after judgment. The court agreed that Onofrio's argument might succeed if the MTCA were not a statute waiving sovereign immunity.

viability of the concept of sovereign immunity in the fifty states). The court recognized its power to change the law in Massachusetts, particularly since "the time for change [was] long overdue." Id.

See MASS. GEN. LAWS ch. 258, §§ 1-12 (1978) (providing limited liability against the Commonwealth).

See Onofrio v. Department of Mental Health, 411 Mass. 657, 658, 584 N.E.2d 619, 620 (1992) (holding MTCA does not provide a limited statutory waiver of sovereign immunity for postjudgment interest).

See Onofrio, 411 Mass. at 658, 584 N.E.2d at 620 (holding government entities are not liable for postjudgment interest in tort actions).

See MASS. GEN. LAWS ch. 258, § 2 (1978) (stating public employers "shall not be liable for interest prior to judgment").


See id. at 659, 584 N.E.2d at 620 (rejecting Onofrio's argument that the court should apply "expressio unius est exclusio alterius" as a rule of statutory construction in these circumstances).

See id. at 659, 584 N.E.2d at 620 (noting the rules of construction regarding statutes waiving sovereign immunity require special analysis).
Statutes governing waivers of sovereign immunity are strictly construed and the rules of statutory construction are stringent. Massachusetts courts require complete or partial waivers of sovereign immunity be expressed in a provision of a statute or by necessary implication from a statute. Although the Supreme Judicial Court has expressed disdain for the doctrine of sovereign immunity, the court preserves the viability of the concept in instances where the Legislature has not expressly and clearly waived its application.

The Legislature recognized a right of action for tort claims but did not include within a private party's rights the authorization to recover postjudgment interest. At common law, sovereign immunity

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128 See MASS. GEN. LAWS ch. 258, § 2 (1985) (excluding recovery of prejudgment interest but remaining silent regarding postjudgment interest).
protects the Commonwealth from tort liability. The MTCA provides a limited waiver of sovereign immunity and defines the scope of the government’s consent to suit in tort. A private party litigant instituting a tort claim against the Commonwealth must look to the statute, the MTCA, to determine his rights because the common law principle of immunity protects the government from tort claims. In Massachusetts, a private party may not recover postjudgment interest in a tort action against the Commonwealth because such a claim for interest is beyond the scope of the limited waiver of sovereign immunity.

V. EMINENT DOMAIN ACTIONS

The issue of postjudgment interest against the Commonwealth in eminent domain actions is governed by chapter 79 of the Massachusetts General Laws. Chapter 79 delineates the rights of a private

129 See Morash & Sons, Inc. v. Commonwealth, 363 Mass. 612, 621, 296 N.E.2d 461, 467 (1973) (criticizing the rule that the Commonwealth is protected by immunity and stating that government liability is the exception to the rule).

130 See Jonathan P. Feltner & Mary M. Logalbo, Claims Against Governmental Defendants: Chapter 258 Entities, the MBTA and Other Public Bodies, MASS. CONT. L. EDUC. 5-1 (Motor Vehicle Torts) (1996) (explaining the MTCA does not provide a complete waiver of immunity and limits the government’s liability).


132 See Onofrio, 411 Mass. at 659, 584 N.E.2d at 620 (finding no provision in the MTCA permitting postjudgment interest expressly or by implication).

133 See MASS. GEN. LAWS ch. 79, § 37 (1993) (outlining procedures for awarding interest on damages in eminent domain actions). Section 37 states in pertinent part:

A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate of ten per cent per annum from the date of the entry of such judgment to an including the last day of the month prior to the month in which such judgment is
party when the government seizes land by eminent domain.\textsuperscript{134} Sovereign immunity does not protect the Commonwealth from an eminent domain action because the Fifth Amendment of the United States Constitution requires that a private party be given just compensation for a taking.\textsuperscript{135} At common law, however, interest on a taking was not an absolute right.\textsuperscript{136} Similar to a common law tort action, the Commonwealth is not liable for interest unless a waiver of immunity exists.\textsuperscript{137} Chapter 79 provides a limited waiver of immunity and expressly authorizes postjudgment interest against the Commonwealth in eminent domain actions.\textsuperscript{138}

**A. Historical Paradigm**

Chapter 79 authorizes recovery of interest from the time of the taking to the time of satisfaction of the judgment.\textsuperscript{139} Chapter 79, however, did not always contemplate the state would be liable for postjudgment interest.\textsuperscript{140} In *General Electric Co. v. Commonwealth* satisfied, except that a judgment against the commonwealth shall not bear interest if it is satisfied within thirty days of such entry.

\textit{Id.}


\textsuperscript{135} See U.S. Const. amend. V (requiring just compensation for a taking).

The Fifth Amendment states, “nor shall private property be taken for public use, without just compensation.” \textit{Id.}

\textsuperscript{136} See Norcross v. Cambridge, 166 Mass. 508, 512, 44 N.E. 615, 616 (1896) (finding interest on damages at common law was not allowed).

\textsuperscript{137} See General Elec. Co. v. Commonwealth, 329 Mass. 661, 664, 110 N.E.2d 101, 102 (1953) (explaining the Commonwealth can only be impleaded in its courts to the extent it consents to suit).


\textsuperscript{139} See Mass. Gen. Laws ch. 79, § 37 (1993) (stating a judgment against the Commonwealth or other body politic bears interest until satisfied).

\textsuperscript{140} See General Elec. Co., 329 Mass. at 663, 110 N.E.2d at 102 (holding chapter 79 does not require the Commonwealth to pay postjudgment interest).
wealth. The court denied interest based on qualification language contained in chapter 79, section 37. At the time of the decision, section 37 stated that damages bore interest from the time of judgment until paid, "except as herein otherwise provided." This qualification language led the court to examine other statutory provisions relating to damages to determine if an exception for interest existed for the Commonwealth. The court concluded that application of section 37 required the use of chapter 258, section 3. Section 3 did not address the issue


See id. at 663, 110 N.E.2d at 102 (maintaining the qualification language in section 37 prohibits recovery of postjudgment interest).

MASS. GEN. LAWS ch. 79, § 37 (1953). Section 37, as it read in 1953, stated in pertinent part, "[d]amages under this chapter shall bear interest at the rate of four per cent per annum from the date as of which they are assessed until paid, except as herein otherwise provided." Id. (emphasis added).


See id. (maintaining the qualification language of section 37 required the court to examine other statutes). The qualification language led the court to first examine other provisions in chapter 79 regarding damages and the court concluded that section 22 applied. See id. (demonstrating section 22 applied because the provision addressed the issue of damages against the Commonwealth). Section 22 states "[j]udgment shall be entered and execution issue as in actions at law; and when the commonwealth is liable for the damages the amount found due shall be certified and paid under section three of chapter two hundred and fifty eight." MASS. GEN. LAWS ch. 79, § 22 (1953) (emphasis added).

Section 22 directed the court to examine chapter 258, section 3, found at 1932 Mass. Acts ch. 180. See General Elec. Co., 329 Mass. at 663, 110 N.E.2d at 102 (quoting the relevant statutory authority). At the time of judgment, chapter 258, section 3 stated:
of interest and only provided for costs.\textsuperscript{147} The court concluded that the exclusion of interest from section 3 fell directly within the qualification language of section 37, "except as herein otherwise provided."\textsuperscript{148} Chapter 79, section 22 and chapter 258, section 3 were necessary for the application of chapter 79, section 37 and these statutes did not expressly authorize postjudgment interest against the Commonwealth.\textsuperscript{149} The court concluded absent express statutory authorization, the Commonwealth need not pay postjudgment interest in an eminent domain action.\textsuperscript{150}

\textbf{B. The Legislature Takes Action}

The common law protection of sovereign immunity relied on in \textit{General Electric Co. v. Commonwealth} regarding postjudgment interest in eminent domain actions has been waived through legislative

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If the final decision is in favor of the petitioner, the chief justice of the superior court shall certify the amount found due, with the legal costs, to the comptroller who shall notify the governor, and the governor shall draw his warrant for such amount on the state treasurer, who shall pay the same from any appropriations made for the purpose by the general court.


\textsuperscript{147} See 1932 Mass. Acts ch. 180, § 41 (stating the superior court shall include costs when calculating the amount found due).


\textsuperscript{149} See id. at 664, 110 N.E.2d at 102 (applying general principles and rules of statutory construction).

\textsuperscript{150} See id. (noting the Commonwealth may only be impleaded in its courts to the extent the government consents).
action. The Legislature amended chapter 79, sections 22 and 37, and added section 3A to chapter 258 in 1964. The amendments, functioning together, provided express statutory authorization for postjudgment interest against the Commonwealth in eminent domain actions. Today, authorization for postjudgment interest against the


152 See id. (noting the change in the law regarding postjudgment interest since General Elec. Co. v. Commonwealth).


The 1964 amendment to section 22 stated damages against the Commonwealth “shall be certified and paid under section 3A of chapter two hundred and fifty-eight.” 1964 Mass. Acts ch. 548, § 1 (emphasis added).

Section 3A of chapter 258 required interest against the Commonwealth be determined in accordance with section 37 of chapter 79. See 1964 Mass. Acts ch. 548, § 4 (requiring payment of interest as authorized by section 37). Section 3A read in pertinent part:

The governor shall draw his warrant for such amount on the state treasurer, who shall pay the same, with such interest as is authorized by the third sentence of section thirty-seven of chapter seventy-nine, from any appropriation made for the purpose by the general court.

Id.

The third sentence of section 37 read:

A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate of six per cent per annum from the date of the entry of such judgment to and including the last day of the month prior to the month in which satisfaction thereof is paid.
Commonwealth is found exclusively in section 37.\textsuperscript{154} Section 37 provides a \textit{statutory} waiver of sovereign immunity regarding postjudgment interest in eminent domain actions.\textsuperscript{155}

\textbf{C. Constitutional Issues}

The Commonwealth's liability for postjudgment interest in eminent domain actions has also been justified on constitutional grounds.\textsuperscript{156} In \textit{Woodworth v. Commonwealth},\textsuperscript{157} the court recognized the federal and Massachusetts constitutions require compensation for property taken by eminent domain and decided whether compensation includes interest when the property owner does not receive

\begin{quote}
A judgment, whether against the commonwealth or any other body politic or corporate, shall bear interest at the rate calculated pursuant to the provisions of this section from the date of entry of such judgment to and including the last day of the month prior to the month in which such judgment is satisfied.
\end{quote}


Although section 22 references section 37, section 22 does not expressly authorize postjudgment interest. \textit{See MASS. GEN. LAWS} ch. 79, § 22 (1993) (stating the treasurer shall satisfy a judgment and include interest \textit{authorized} by section 37).

\textsuperscript{155} \textbf{See C \& M Constr. Co., Inc.,} 396 Mass. at 392, 486 N.E.2d at 56 (recognizing section 37 unilaterally authorizes postjudgment interest in eminent domain actions).


\textsuperscript{157} 353 Mass. 229, 230 N.E.2d 814 (1967).
payment at the time of the taking.\textsuperscript{158} Woodworth argued that failure to pay interest violated the Fifth Amendment of the United States Constitution and Article 10 of the Massachusetts Declaration of Rights.\textsuperscript{159} The court agreed and asserted that just and reasonable compensation for a taking required \textit{full} compensation.\textsuperscript{160} The court concluded that full compensation for a public taking includes interest even if the property owner fails to make a specific demand for interest.\textsuperscript{161} The court asserted future questions regarding postjudgment

\textsuperscript{158} See Woodworth, 353 Mass. at 231-32, 230 N.E.2d at 816 (stating the government is required to pay consideration for a public taking). Woodworth could not rely on the statutes authorizing postjudgment interest because Woodworth's judgment was entered prior to the effective date of the statutory amendments. See \textit{id.} at 231, 230 N.E.2d at 815 (observing the statutes do not authorize postjudgment interest because the statutes were not in effect at the time of judgment).


The Fifth Amendment states in pertinent part, "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V (emphasis added).

Article 10 of the Massachusetts Declaration of Rights states: "[W]henever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor." MASS. GEN. LAWS CONST. Pt. 1, Art. 10 (emphasis added).

\textsuperscript{160} See Woodworth, 353 Mass. at 231, 230 N.E.2d at 816 (stating an award of damages without interest in an eminent domain action is not just).

\textsuperscript{161} See Woodworth v. Commonwealth, 353 Mass. 229, 232, 230 N.E.2d 814, 816 (1967) (quoting Jacobs v. United States, 290 U.S. 13, 16-17 (1933)). In \textit{Jacobs}, the United States Supreme Court stated:

The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive, and
interest should be determined pursuant to the existing statutory authority, but the Commonwealth could not escape its constitutional obligations to pay just and reasonable compensation.\textsuperscript{162}

The government must pay just and reasonable compensation when it takes an individual's land for public use.\textsuperscript{163} Compensation cannot be "just" if interest up until the date of payment is denied.\textsuperscript{164} Although the federal and Massachusetts constitutions function to provide a property owner with postjudgment interest, Massachusetts courts look to and rely on the statutory interest provisions of chapter 79.\textsuperscript{165} Section 37 of chapter 79 provides a statutory waiver of sovereign immunity regarding postjudgment interest in eminent domain ac-

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includes all elements, "and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation." The owner is not limited to the value of the property at the time of the taking; "he is entitled to such addition as will produce the equivalent of that value paid contemporaneously with the taking." Interest at a proper rate "is a good measure by which to ascertain the amount so to be added" . . . [T]he right to just compensation could not be taken away by statute or be qualified by the omission of a provision for interest where such an allowance was appropriate in order to make the compensation adequate.


\textsuperscript{162} See Woodworth, 353 Mass. at 233, 230 N.E.2d at 817 (reversing the lower court and finding the Commonwealth liable for postjudgment interest on constitutional grounds).

\textsuperscript{163} See U.S. CONST. amend. V (requiring just compensation for a taking); MASS. GEN. LAWS CONST. Pt. 1, Art. 10 (requiring reasonable compensation for a taking).


The Legislature clearly defined the scope of the Commonwealth's consent to suit in eminent domain actions by expressly authorizing recovery of interest. In Massachusetts, a property owner may recover postjudgment interest in an eminent domain action because such a claim for interest is within the scope of the Commonwealth's waiver of sovereign immunity.

VI. ANALYSIS

The Commonwealth of Massachusetts is not liable for postjudgment interest in a contract action. The court in Chapman II relied almost exclusively on its prior decision in C & M Construction Co., Inc. v. Commonwealth. The court's reliance on C & M Construction Co., Inc. does not sufficiently support the result in Chapman II because 1) the facts of C & M Construction Co., Inc. differ significantly from the facts of Chapman II, and 2) the court did not adequately address the application of the doctrine of sovereign immunity in contract actions.

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168 See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing a statutory waiver of sovereign immunity regarding postjudgment interest).


170 See id. at 586-87, 670 N.E.2d at 169 (relying on the reasoning in C & M Constr. Co., Inc. v. Commonwealth, 396 Mass. 390, 486 N.E.2d 54 (1985)).

171 See infra notes 172-231 and accompanying text.
A. The Contract Becomes a Noncontract

The court in Chapman II concludes Chapman's claim for post-judgment interest is noncontractual. A claim against the Commonwealth not based on contract cannot stand absent an express statutory waiver. Chapman's claim is noncontractual because the court in C & M Construction Co., Inc. concluded C & M's claim for postjudgment interest was noncontractual. The circumstances of Chapman's claim significantly differ from C & M's claim but the court in Chapman II did not address why the two claims should be treated the same.

C & M claimed interest for the time period required by the Legislature to appropriate funds to satisfy the judgment. Chapman claimed interest from the date of judgment to the date of judgment after rescript. C & M's contract action ended at the time judgment

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175 See Chapman II, 423 Mass. at 587, 670 N.E.2d at 169 (asserting the distinction between the two claims is irrelevant).

176 See C & M Constr. Co., Inc., 396 Mass. at 391, 486 N.E.2d at 55 (stating the issue presented to the court). Judgment was entered for C & M on July 3, 1975 but C & M did not receive payment until July 16, 1976. See id. at 390-91, 486 N.E.2d at 55 (explaining the procedural history). The Commonwealth did not appeal the judgment, therefore payment occurred more than one year after judgment due to the delay in the Legislature to appropriate the funds. Id.

177 See Chapman II, 423 Mass. at 585, 670 N.E.2d at 168 (explaining the clerk refused to issue an execution including postjudgment interest). The amended judgment after rescript awarded postjudgment interest from the date of judgment to the date of judgment after rescript. Id. Upon the clerk's refusal to
entered in the trial court because the Commonwealth did not appeal.\textsuperscript{178} Final resolution of Chapman's contract claim did not occur until the Supreme Judicial Court issued its decision in \textit{Chapman I}.\textsuperscript{179} C & M filed a separate lawsuit claiming postjudgment interest.\textsuperscript{180} Chapman filed a \textit{motion} for postjudgment interest.\textsuperscript{181} The court in \textit{Chapman II} concluded the reasoning in \textit{C & M Construction Co., Inc.} controlled, however the reasoning in \textit{C & M Construction Co., Inc.} does not comport with the facts in \textit{Chapman II}.\textsuperscript{182}

The Commonwealth waives the protections of sovereign immunity in a contract action when it enters into a contract.\textsuperscript{183} In \textit{C & M Construction Co., Inc.}, the plaintiff argued the action for postjudgment interest was a continuation of the underlying contract claim and therefore the scope of the Commonwealth's common law waiver of sovereign immunity included liability for postjudgment interest.\textsuperscript{184}

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\textsuperscript{180} See \textit{C & M Constr. Co., Inc.}, 396 Mass at 390, 486 N.E.2d at 55 (stating C & M's judgment was issued in a prior action).

\textsuperscript{181} See \textit{Chapman II}, 423 Mass. at 585, 670 N.E.2d at 168 (explaining the procedural history).

\textsuperscript{182} See \textit{Chapman II}, 423 Mass. at 587, 670 N.E.2d at 169 (relying solely on the reasoning in \textit{C & M Constr. Co., Inc.}).


The court disagreed and found C & M's action for postjudgment interest was noncontractual.185

The court provided no additional support for its conclusion but it was unnecessary to look any further than the facts to determine C & M's claim for postjudgment interest was noncontractual.186 The contract claim ended upon the trial court's judgment and C & M filed a separate action for interest.187 C & M's second lawsuit was not founded on contract because the trial court's judgment represented the final disposition of the rights of the parties under the contract.188

The court in Chapman II concluded a claim for postjudgment interest is noncontractual but disregarded the factual differences between Chapman's claim and C & M's claim.189 The court reasoned the nature of postjudgment interest is noncontractual even if the underlying claim is based on contract.190 The holding in Chapman II that the Commonwealth is not liable for postjudgment interest in contract actions rests solely on the premise that a claim for postjudgment interest is noncontractual.191 The court established the law in Massachusetts but did not set forth any definitive case or statute regarding the noncontractual nature of postjudgment interest.192

185 See id. at 391-92, 486 N.E.2d at 55 (disposing of C & M's argument by concluding the claim for interest was not contractual).

186 See id. at 392, 486 N.E.2d at 56 (stating C & M's action for interest is not based on the contract). The court cited chapter 235, section 8 as authority that postjudgment interest is not part of the underlying contract claim. Id.

187 Id.

188 See id. at 391-92, 486 N.E.2d at 55-56 (stating C & M's claim for postjudgment interest was a separate action).


191 See id. at 588, 670 N.E.2d at 169 (concluding a claim for postjudgment interest must be authorized statutorily).

192 Id. at 587-88, 670 N.E.2d at 169 (discussing the nature of postjudgment interest). The court did cite an appeals court decision discussing the nature of
The inherent nature of sovereignty dictates that C & M not recover postjudgment interest for the time it takes the Legislature to appropriate the funds to satisfy the judgment. Chapman claimed interest because Chapman’s judgment was not payable while the Commonwealth pursued final resolution of the contract claim through the appellate process for over two years. Chapman was not enti-


See Morash & Sons, Inc. v. Commonwealth, 363 Mass. 612, 618, 296 N.E.2d 461, 465 (1973) (discussing the origins of the doctrine of sovereign immunity). See also MASS. GEN. LAWS ch. 79, § 37 (1993) (limiting the Commonwealth’s liability for postjudgment interest up to thirty days for the time it takes the Commonwealth to satisfy the judgment). Section 37 states “a judgment against the commonwealth shall not bear interest if it is satisfied within thirty days of such entry.” Id.

It took the Commonwealth over one year to satisfy C & M’s judgment and the delay was primarily due to the time it took the Legislature to appropriate funds. C & M Constr. Co., Inc. v. Commonwealth, 396 Mass. 390, 391, 486 N.E.2d 54, 55 (1985).


The court did acknowledge the distinction between an action involving an appeal and an action due to unreasonable delay in payment when it addressed Chapman’s argument regarding unlawful detention of funds. Id. at 588, 670 N.E.2d at 169-70 (relaying on the distinction to find that funds were not unlawfully detained). Interest may be allowed against the Commonwealth for the wrongful detention of money if the Commonwealth has not done all that the law has required it to do. See Perkins Sch. for the Blind v. Rate Setting Comm’n, 383 Mass. 825, 831, 423 N.E.2d 765, 770 (1981) (setting forth the standard of analysis for the wrongful detention of money). Chapman argued the Commonwealth’s unsuccessful appeal delayed payment for an unreasonable amount of time resulting in an unlawful detention of funds. See Chapman II, 423 Mass. at 588, 670 N.E.2d at 169 (addressing Chapman’s argument). Chapman referred to two prior decisions where postjudgment interest was awarded for wrongful detention of money but in each instance no appeal on the underlying
tied to interest for the time it took the Legislature to appropriate the funds. The nature of Chapman's claim for postjudgment interest in these circumstances is contractual and the Commonwealth should pay interest as any other private citizen would while the Commonwealth pursued an appeal. The court in Chapman II expanded the scope of the holding in C & M Construction Co., Inc. by concluding the contract action ends upon entry of judgment by the trial court, notwithstanding an appeal, but provided no additional support consistent with the facts in Chapman II.

The nature of Chapman's claim for postjudgment interest in these circumstances is contractual and the Commonwealth should pay interest as any other private citizen would while the Commonwealth pursued an appeal. The court in Chapman II expanded the scope of the holding in C & M Construction Co., Inc. by concluding the contract action ends upon entry of judgment by the trial court, notwithstanding an appeal, but provided no additional support consistent with the facts in Chapman II.

The court in Chapman II reasoned, unlike Perkins School for the Blind and Massachusetts General Hospital, the Commonwealth made a legitimate appeal and therefore did not unreasonably delay payment. See Chapman II, 423 Mass. at 588, 670 N.E.2d at 169-70 (rejecting plaintiff's argument). Similar to Perkins School for the Blind and Massachusetts General Hospital, the government in C & M Constr. Co., Inc. did not appeal the underlying claim, yet C & M's argument for wrongful detention of money due to unreasonable delay failed. See C & M Constr. Co., Inc. v. Commonwealth, 396 Mass. 390, 394, 486 N.E.2d 54, 57 (1985) (concluding C & M's reliance on Perkins Sch. for the Blind was "misplaced").

See C & M Constr. Co., Inc., 396 Mass. at 390, 486 N.E.2d at 55 (holding the Commonwealth not liable for interest during the time it takes the Legislature to appropriate funds to satisfy the judgment).

See MASS. GEN. LAWS ch. 235, § 8 (1986) (requiring interest from the date of entry of judgment to the date of payment).

B. Sovereign Immunity

The court in *Chapman II* relied on the doctrine of sovereign immunity and rules of statutory construction to reach its holding but these same concepts also support Chapman's argument that a claim for postjudgment interest is contractual in nature. See Chapman II, 423 Mass. at 586-87, 670 N.E.2d at 169 (maintaining statutes applicable to private parties are not necessarily applicable to the Commonwealth).


The contractual relationships among the parties defines the scope of the Commonwealth's consent to suit in a contract action. See McArthur Bros. Co., 197 Mass. at 138, 83 N.E. at 334 (stating consent limited to the exact terms expressed).

The court determined the nature of postjudgment interest is noncontractual therefore the Commonwealth's liability for interest must be expressed in a statute.

The general postjudgment interest statute does not expressly authorize interest against the Commonwealth. The court in Chapman II concluded the absence of an express authorization for postjudgment interest in chapter 235, section 8 precluded Chapman's recovery. The court relied on the reasoning in C & M Construction Co., Inc. that the statute awarding postjudgment interest in eminent domain cases indicated the Legislature's intent that chapter 235, section 8 not apply to the Commonwealth.


The scope of the Commonwealth’s consent to suit in eminent domain actions is also statutory and is found in chapter 79 of the general laws. The MTCA and chapter 79 provide comprehensive statutory schemes that delineate the rights and obligations of the private parties and government entities involved in tort and eminent domain actions. The MTCA does not expressly authorize recovery of postjudgment interest and this limits the Commonwealth’s consent to suit regarding postjudgment interest. Chapter 79 expressly authorizes recovery of postjudgment interest in eminent domain actions.

The “rules of construction governing statutory waivers of sovereign immunity are stringent” and the courts must look to the express language of the statutes to determine the rights and obligations of the parties. Unlike the waiver of sovereign immunity in tort and emi-

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208 See MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the scope of the Commonwealth’s consent to suit in tort actions).
210 See MASS. GEN. LAWS ch. 79, §§ 1-45 (1993); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985).
211 See MASS. GEN. LAWS ch. 258, § 2 (1985) (stating Commonwealth not liable for prejudgment interest). The Supreme Judicial Court held the MTCA’s silence regarding postjudgment interest requires an interpretation of the statute that the Commonwealth is not liable for postjudgment interest because waivers of sovereign immunity are strictly construed. See Onofrio v. Department of Mental Health, 411 Mass. 657, 659, 584 N.E.2d 619, 620 (1992) (discussing statutes governing waivers of sovereign immunity).
212 See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing for interest until payment).
213 See Onofrio, 411 Mass. at 659, 584 N.E.2d at 620 (quoting Ware v. Commonwealth, 409 Mass. 89, 91, 564 N.E.2d 998, 999 (1991)); Broadhurst v. Director of Div. of Emp. Sec., 373 Mass. 720, 727, 369 N.E.2d 1018, 1022-23 (1977) (concluding Legislature’s silence regarding interest in unemployment benefits statute evinces an intent that Commonwealth is not liable). The court in Broadhurst stated “[w]e think that the legislative silence as to interest in c. 151A, which otherwise contains a rather detailed consideration of proceedings and remedy, indicates a legislative intent that interest not be payable on
nent domain actions, the waiver of immunity in a contract action is not statutory.\textsuperscript{214} Where the Legislature enacts a comprehensive statute regarding a particular subject it evinces an intent that such statute stand as the authority governing that subject.\textsuperscript{215} No such statute governs contract actions.\textsuperscript{216}

The Commonwealth is treated as a private party when it enters into a contract.\textsuperscript{217} The United States Supreme Court stated "[i]f the [government] comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there."\textsuperscript{218} Unlike tort actions and eminent domain actions, no comprehensive statutory scheme exists in the general laws that governs contract actions against the Commonwealth.\textsuperscript{219} A pri-


\textsuperscript{216}\textit{See Monadnock Display Fireworks, Inc.,} 388 Mass. at 156-57, 445 N.E.2d at 1056 (recognizing the waiver of immunity in contract actions is not statutory).

\textsuperscript{217}\textit{See Boston Molasses Co. v. Commonwealth,} 193 Mass. 387, 389, 79 N.E. 827, 827 (1907) (citing Hall v. Wisconsin, 103 U.S. 5, 11 (1880)).


In \textit{Onofrio}, the court based its opinion on the statutory scheme that governed tort actions against the Commonwealth. \textit{See Onofrio,} 411 Mass. at 660 n.4, 584 N.E.2d at 620 (explaining its decision rests on a distinct statutory
Private party litigant commencing a contract claim against the Commonwealth looks to the same statutes as if the litigant were bringing an action against a private party. Unlike tort actions and eminent


Prior to enactment of the MTCA, sovereign immunity protected the Commonwealth from tort actions and similarly, from paying interest pursuant to chapter 231, section 6B or chapter 235, section 8. *See Morash & Sons, Inc. v. Commonwealth*, 363 Mass. 612, 623, 296 N.E.2d 461, 468 (1973) (proffering a comprehensive statute is necessary to waive sovereign immunity in tort actions to avoid indiscriminate and unjust results). Barring recovery of prejudgment interest in the MTCA was essentially unnecessary because the Commonwealth was already protected by sovereign immunity from liability for prejudgment interest under the general interest statutes. *Id.* The Legislature expressly precluded recovery of prejudgment interest indicating the MTCA was intended to be comprehensive. *Id.* This supports the notion the Legislature intended the MTCA to be the exclusive source designating the Commonwealth's consent to suit in tort actions. *See Mass. Gen. Laws* ch. 258, §§ 1-12 (1985) (governing the scope of the Commonwealth's consent to suit).

*See Nash v. Commonwealth*, 174 Mass. 335, 339, 54 N.E. 865, 867 (1899) (holding statute gives superior court jurisdiction over claim "of the character which civilized governments have always recognized"); *People v. Stephens*, 71 N.Y. 527, 549 (1878) (quoted in *Boston Molasses Co. v. Commonwealth*, 193 Mass. 387, 389-90 (1907)). The court in *Stephens* stated:
The state, in all its contracts... with individuals, must be adjudged and abide by the rules which govern in determining the rights of private citizens contracting... with each other. There is not one law for the sovereign and another for the subject; but when the sovereign... contracts with individuals, ... the rights and obligations of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the contractor, dealer and suitor.

*Stephens*, 71 N.Y. at 549. The scope of an action was such that the parties to the contract had equal rights and obligations “whenever the contract in any form [came] before the courts.” *Id.*

Massachusetts laws at one time limited contract actions against the Commonwealth. See 1882 Mass. Acts ch. 195, § 1 (providing the superior court with jurisdiction for certain contract claims against the Commonwealth); Wesson v. Commonwealth, 144 Mass. 60, 63, 10 N.E. 762, 766 (1887) (holding Commonwealth not liable for breach of a contract not involving payment of money). An 1882 statute stated the superior court had jurisdiction of “all claims against the commonwealth which are founded on contract for the payment of money.” 1882 Mass. Acts ch. 195, § 1 (emphasis added). The Supreme Judicial Court interpreted chapter 195 to preclude an action for damages against the state for breach of a contract that required an act other than the payment of money. See Wesson, 144 Mass. at 62, 10 N.E. at 765 (limiting the scope of the superior court's jurisdiction). Shortly after Wesson, the Legislature amended chapter 195, section 1, and gave the superior court “jurisdiction of all claims against the commonwealth, whether at law or equity.” See 1887 Mass. Acts ch. 246 (emphasis added).

In *Murdock Parlor Grate Co. v. Commonwealth*, the court interpreted the scope of amended chapter 195, section 1 and addressed whether the plaintiff may maintain a tort action against the state. See Murdock Parlor Grate Co. v. Commonwealth, 152 Mass. 28, 31, 24 N.E. 854, 855 (1890) (considering the Commonwealth's tort liability). The court held the language “whether at law or equity” did not enlarge the statute to include the requested remedy in tort. *Id.* The court analyzed which actions amended chapter 195 encompassed to determine those actions it excluded. *Id.* at 31, 24 N.E. at 855 (discussing the development of the statute). The court concluded the amendment indicated the Legislature's intent to modify the holding in Wesson. *Id.* As a result of the
domain actions, a private party does not rely on express statutory authority to bring a contract action against the Commonwealth because the waiver of sovereign immunity is not statutory.221

The court's conclusion in Chapman II and C & M Construction Co., Inc. that authorizing postjudgment interest in eminent domain actions evinced a legislative intent that the general postjudgment interest statute, chapter 235, section 8, not be applied in contract actions does not completely address the issue of sovereign immunity.222 The Supreme Judicial Court in 1956 recognized that statutes governing postjudgment interest in eminent domain actions consisted of an entirely separate body of law from the law governing postjudgment interest in contract actions.223 A private party bringing an eminent

amendment, a private party's contract action was no longer limited to an action founded on a contract for the payment of money. See 1887 Mass. Acts ch. 246 (amending chapter 195, section 1).

221 See Boston Molasses Co. v. Commonwealth, 193 Mass. 387, 389, 79 N.E. 827, 826 (1907) (discussing the nature of sovereignty in a contract action). The court stated:

[I]n giving this lease the commonwealth was not acting in its political character as sovereign, but merely as the owner of property, about which it was making a contract. As to this contract it put itself into the position of a private citizen, and the lease must be construed as if it were made between two individuals.

Id. (emphasis added).


223 See C & R Constr. Co. v. Commonwealth, 334 Mass. 232, 234, 135 N.E.2d 539, 540 (1956) (holding the Commonwealth liable for interest). In C & R Construction Co., a contractor sought to recover the balance due from the Commonwealth for work it did on Logan International Airport. Id. at 232, 135 N.E.2d at 539. The contractor brought the action under chapter 258, and cited section one as authority that the state was liable for interest. Id. at 233, 135
domain action looks to chapter 79 to determine his rights and obligations and courts look to the eminent domain statutes to determine the Commonwealth's liability for postjudgment interest. A private party bringing a contract action against the Commonwealth, however, looks to the same statutes as any other private citizen would. It is unnecessary for the Legislature to expressly authorize postjudgment interest against the Commonwealth in the general postjudgment interest statute for the same reason it is unnecessary to expressly reference the Commonwealth in the statute governing the statute of limita-

N.E.2d at 540. In 1956, chapter 258, section one stated in pertinent part, "[t]he superior court, except as otherwise expressly provided, shall have jurisdiction of all claims at law or in equity against the commonwealth. Such claims may be enforced by petition stating clearly and concisely the nature of the claim and the damages demanded." MASS. GEN. LAWS ch. 258, § 1 (1956).

The court did not distinguish between prejudgment or postjudgment interest but made a broad finding that the state was liable for interest. C & R Constr. Co., 334 Mass. at 234, 135 N.E.2d at 540. The court agreed with C & R's argument that "the Commonwealth is bound to pay interest on valid claims against it if, in similar circumstances, interest would be charged against a private person." Id. at 233, 135 N.E.2d at 540.

The court noted in dicta the case of General Electric Co. v. Commonwealth where the court held the Commonwealth was not liable for interest in an eminent domain action from the date of judgment until payment. Id. The court in C & R Construction Co. stated that General Electric Co., involving an eminent domain action, was not an authority that the Commonwealth is not liable for interest in an action under chapter 258, section 1, a contract action. Id.

Note the statutory schemes relied on in General Electric Co. and C & R Construction Co. have been amended or repealed such that neither would be applicable today. See MASS. GEN. LAWS ch. 79, § 37 (1993) (providing express authorization for postjudgment interest); MASS. GEN. LAWS ch. 258, §§ 1-12 (1985) (setting forth the Massachusetts Tort Claims Act).


A contract claim against the Commonwealth is determined in the same manner and to the same extent as a contract claim against a private citizen.

Just compensation requires payment of postjudgment interest. Although a private party litigant in a contract action against the Commonwealth does not have a constitutional or statutory right to just compensation, a private party does have a right to contract with the Commonwealth and rely on the laws to the same extent as if contracting with a private party. Payment of postjudgment interest, however, is noncontractual and a private party litigant must look to express waivers of sovereign immunity to recover postjudgment interest. The same laws do not apply to the Commonwealth in contract actions because no such express waiver exists.

VII. CONCLUSION

The Commonwealth of Massachusetts is not liable for postjudgment interest in contract actions. The holding in Chapman v. University of Massachusetts Medical Center forecloses the possibility of recovering postjudgment interest unless the Commonwealth consents to such liability in the express terms of a contract. The antiquated doctrine of sovereign immunity protects the Commonwealth from li-

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229 See R. Zoppo Co. v. Commonwealth, 353 Mass. 401, 404, 232 N.E.2d 346, 349 (1967) (stating the "law applicable to public contracts is the same as that applicable to private contracts").
231 Id.
ability for postjudgment interest because no express statutory authorization exists. The Commonwealth has the luxury of appealing a trial court judgment in bliss because it may ignore the basic economic notion of the time value of money. A private party litigant, however, must defend the appeal with the unfortunate knowledge that a judgment today is not worth more than a judgment tomorrow.

A private party litigant may not recover postjudgment interest against the Commonwealth absent a waiver of sovereign immunity. A private party may not rely on the common law waiver that exists when the Commonwealth enters into a contract because the nature of postjudgment interest is noncontractual. In Chapman II, the Commonwealth appealed a contract claim and Chapman defended a contract claim. Chapman could not recover on the contract claim until the appeals process ended. Chapman recovered over $200,000 for breach of contract. Chapman’s contract claim did not end until the Supreme Judicial Court rendered its decision in Chapman I and the nature of postjudgment interest in these circumstances is contractual.

The waivers of sovereign immunity in eminent domain and tort actions are different in scope than the waiver in contract actions. Eminent domain and tort actions against the Commonwealth are governed by statute. A private party may recover postjudgment interest in an eminent domain action because chapter 79 expressly authorizes such recovery. A private party in a tort action may not recover postjudgment interest because the Massachusetts Tort Claims Act does not affirmatively authorize such recovery. In contract actions, the same laws applicable to private parties apply to the Commonwealth. Express statutory authority for postjudgment interest is unnecessary because the general interest statute, chapter 235, section 8, already applies. The trial court used the very same statute that awards postjudgment interest and awarded Chapman prejudgment interest from the date of the court’s finding to the date of judgment.

The 1973 amendments to Rule 54 greatly expanded the postjudgment interest period to the detriment of the private party in a contract action against the Commonwealth. The Legislature has not acted since Chapman II to provide express statutory authority for postjudgment interest and this indicates the Legislature’s agreement
with the court's result. The court may have reached the intended result, but it provided little authority to reassure private litigants it was the correct result. A private party should not be denied interest on a judgment while the government appeals that judgment but this is exactly the case in the Commonwealth of Massachusetts. It does not appear that the Legislature or the courts will take action to correct this wrong and overrule *Chapman II*.

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