

QUANTUM MERUIT v. UNJUST ENRICHMENT

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At his best, man is the noblest of all animals; separated from law and justice, he is the worst.”

- Aristotle

Day to day situations exist where people receive services from others often on unexpected basis or without obtaining a price for those services albeit the fact that a reasonable man would know that a payment is expected. One of the example of such services would be obtaining spur-of-the moment service of your neighbour's gardener. It is not necessary for a written agreement to be present so that a contractual relationship can exist. A contract is seen to exist when one individual provides to another any service for which the other may have requested knowing that they are not performed free of charge¹. If a situation occurs where the receiver of the service fails to pay, the one providing the service may file a civil lawsuit seeking payment. The question of fair payment maybe brought to the court in situations where the contract is entered into but the services are not completed. This failure to provide proper and complete services may be due to many reasons including impossibility of performance. In such cases, the theory of 'quantum meruit' applies which further determines whether the payment is due or not, what amount of payment should be made and which party should be paid.

The term 'quantum meruit' means 'as much as is done' or 'according to the quantity of work done'. In other words, it means payment done in proportion of the amount of work done. Under contracts, this essentially means that if a breach of contract takes place, and some of the work has already been done in lieu of that contract then the party who has done the work is entitled to claim consideration for the same under the contract. This claim of 'quantum meruit' should be brought by the party who is not at default. In cases where there is divisible work, and one party has performed a part of the work and the rest of the work is not performed due to impossibility of performance or breach of the contract, then the party who has done such part of the work is entitled to receive remuneration for the same. Any claim for 'quantum meruit' may arise when:

¹ <http://legaldictionary.net/quantum-meruit/> visited on 07-09-16 at 19:08

- A person has done some work under the contract and the other party repudiates the contract
- The contract cannot be performed due to impossibility or illegality.
- When a work has been done under a contract which is later found to be void.
- When a person has done something for the other person with an intention to receive payment and the other person has enjoyed the benefits of the services offered².

The history of 'quantum meruit' dates back to the seventeenth century England. It was developed by the Royal Court of Chancery as it worked differently from the common law courts to grant relief under the general principle of fairness which was not being obtained under strict legal precedents of the common law³. This court created 'quantum meruit' alongside other even handed principles that permitted a man to recuperate or gather for other significant acts performed without an agreement, for example, the conveyance of products or cash. A portion of the primary instances of 'quantum meruit' included recuperation by people in supposed exchanges of basic calling, for example, owners, tailors, smithies, and leather experts. The particular case of *Montes v. Naismith and Trevino Construction Co.*⁴ explains as to how this theory of 'quantum meruit' works. In this particular case, Montes, had some oral negotiations with Perez regarding the renovation of his home. No contract was ever signed and despite this, Perez arranged for N & T Construction Co. to carry out the work at Montes' home. The company made improvements on Montes' home but he refused to pay them which resulted in the company bringing a civil suit against Montes where they contended that they should be paid for their labour and the materials used in making the improvisations. The court ruled in the company's favour and ordered Montes to pay the amount due. This ruling was based on the theory of 'quantum meruit'.

The doctrine of 'quantum meruit' can be a confusing doctrine sometimes as many courts mix this doctrine with the similar principle of 'unjust enrichment'. This principle suffers from the confusion of nomenclature. 'Unjust enrichment' is a legal concept referring to situations in which one person is enriched at the expense of another in circumstances which the law treats as unjust.

² <http://gradestack.com/CA-CPT-Exam-Prep-by-AOC/Breach-of-Contract/Suit-Up-On-Quantum-Meruit/14449-2914-1176-study-wtw> visited on 07-09-16 at 19:12

³ <http://www.encyclopedia.com/doc/1G2-3437703614.html> visited on 07-09-16 at 19:17

⁴ 459 S.W.2d 691 (Tex. Civ. App. 1970)

This doctrine is more of a civil approach that covers more than just contractual relationships. A civil plaintiff may recover under the doctrine of ‘unjust enrichment’ if the plaintiff shows that:

- He conferred a benefit on the defendant
- The defendant knew the benefit and appreciated it; and
- Under the circumstances, it was not fair on part of the defendant to accept the benefit without paying for it⁵.

‘Unjust enrichment’ is often said to be a quasi-contract and is believed to be based upon a contract implied in law however it is not a contract at all, but rather, is a legal fiction described as “an obligation imposed by law to do justice even though it is clear that no promise was ever made or intended.”⁶ In order to be unjustly enriched, one of the parties must have received the benefits without paying for it. This was evident in the case of *Zaleznik v. Gulf Coast Roofing Co.*⁷ where an owner allowed a subcontractor to improve his property knowing that the contractor would be at fault and would be unable to pay to the subcontractor and therefore it would be unjust on the part of the owner to retain the benefits of the work without actually paying anyone for it.

The birth of this doctrine of ‘unjust enrichment’ can be attributed to James Barr Ames as he is often referred to as the founding father of unjust enrichment in the United States. *Moses v Macferlan*⁸, a case decided in 1760 was at the heart of what James had to say. In this case, one Jacob made four promissory notes for Moses. Macferlan, wishing to recuperate in his own particular name against Jacob, requested that Moses indorse the notes. By indorsing the notes, Moses and also Jacob would be liable to Macferlan. And so, in spite of a written agreement, Macferlan brought an action. The court of conscience ruled in favour of Macferlan and said that Moses had to pay. Now Moses wanted to recover his payment using an action for money. The main interest in the decision lay in some passages in the judgment of Lord Mansfield and there have been subsequent debate on whether these words support the idea of ‘unjust

⁵ <http://www.encyclopedia.com/doc/1G2-3437703614.html> visited on 07-09-16 at 20:05

⁶ <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/0/7e3d8e3a6c36217485256adb005d6116?OpenDocument> visited on 07-09-16 at 20:05

⁷ 576 So. 2d 776 (Fla. 2d DCA 1991)

⁸ [1760] EngR 713

enrichment' or not. Ames felt that when joined with Roman law they supported such a principle⁹.

The introduction of the doctrine of 'unjust enrichment' in England occurred in 1802 and by the end of 1930, the discussion had gone full circle. Lord Wright, Atkin and Denning were very significant figures in the history of English Law in the 20th century and they had contended that *Moses vs. Macferlan* was the basis of the modern law quasi-contracts. Lord Justice of Appeal Scott asserted that *Moses v Macferlan* was based on unjust enrichment¹⁰.

It is very common for people to confuse between the doctrine of 'quantum meruit' and 'unjust enrichment' as both the theories have a goal of preventing one party from taking advantage of the other by receiving services and not paying for them however these two theories have a theoretical difference between them based on the measure of recovery and that is, while unjust enrichment solves the issue of the failure to pay for the services rendered, 'quantum meruit' addresses the fair amount that is to be paid. Hence, 'unjust enrichment' focusses on benefits conferred upon the recipient rather than the reasonable value of services provided. Another difference is that, while 'quantum meruit' arises out of the expectations of the parties, unjust enrichment is based upon society's interest in preventing the injustice of a person's retaining a benefit for which no payment has been made to the provider¹¹.

The impossible to miss issues associated with pleading claim for relief under unjust enrichment reflects how unmistakably distinctive it is from quantum meruit. These two remedies are not tradable. Since, one sounds in equity and the other in law, they both can't be pled simultaneously for the same problem.

⁹ <http://www.austlii.edu.au/au/journals/UNSWLawJl/2013/41.html#fn15> visited on 07-09-16 at 19:45

¹⁰ <http://www.austlii.edu.au/au/journals/UNSWLawJl/2013/41.html#fn15> visited on 07-09-16 at 21:00

¹¹ <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/0/7e3d8e3a6c36217485256adb005d6116?OpenDocument> visited on 07-09-16 at 20:05