

CONTRACT SUBSTITUTES

I. QUANTUM MERUIT

If you find there was no contract, in fairness and equity, the plaintiff may still be entitled to recover. In certain circumstances where one party is unjustly enriched by the other party but traditional remedies for breach of contract are not available because there is no contract, a quasi-contract may be implied from the parties' dealings to offer a remedy to the injured party. The remedy is called "quantum meruit", which is Latin for "the amount earned".

Quantum meruit allows recovery for the reasonable value of services rendered by the injured party. It is based on the concept that one who benefits by the labor and material of another should not be unjustly enriched. The law implies that a party makes a promise to pay a reasonable amount for the services and materials furnished, even absent a specific contract.

To recover under the doctrine of quantum meruit, a plaintiff must prove the following elements by a preponderance of the evidence:

First: That the plaintiff in fact gave a benefit, for example, provided services or furnished materials, to the defendant;

Second: That the plaintiff gave this benefit with the reasonable expectation of being paid by the defendant; and

Third: That the defendant accepted this benefit without objection and knew or reasonably should have known that the plaintiff expected to be paid.

The test is not what the defendant actually expected or intended, but what, as a reasonable person, (he / she / they / it) should have expected.

The plaintiff's damages in quantum meruit are the reasonable market value of services and materials rendered at the time they were rendered, less payments, if any already made by the defendant to the plaintiff.

Black's Law Dictionary defines Quantum Meruit: "As much deserved." *Sacks v. Dissinger*, 488 Mass. 780, 789 (2021) ("Unjust enrichment is defined as retention of money or property of another against the fundamental principles of justice or equity and good conscience.") (internal citations and quotations omitted); *Metropolitan Life Inc. Co. v. Cotter*, 464 Mass. 623, 643-44 (2013); *Salamon v. Terra*, 394 Mass. 857, 859 (1985); *Boston Athletic Ass'n v. Int'l Marathons, Inc.*, 392 Mass. 356, 368 (1984); *Chang v. Winklevoss*, 95 Mass. App. Ct. 202, 211-12 (2019); *Home Carpet Cleaning Co., Inc. v. Baker*, 1 Mass. App. Ct. 879, 880 (1974).

For Quantum Meruit in a construction contract, see: *G4S Tech. LLC v. Massachusetts Tech. Park Corporation*, 479 Mass. 721, 740-41 (2018).

A Quantum meruit claim may be sent to a jury even if the contract is integrated if the contract does not address or is silent on the circumstances giving rise to the parties' dispute. *Sugarman & Sugarman, P. C. v. Shapiro*, 102 Mass. App. Ct. 816, 820 (2023). A fully integrated agreement is a "statement which the parties have adopted as a complete and exclusive expression of their agreement." *Chambers v. Gold Medal Bakery, Inc.*, 83 Mass. App. Ct. 234, 242 (2013) (citations omitted).

II. THIRD PARTY BENEFICIARY

Usually, someone who is not a party to a contract may not bring suit for breach of the contract. However, if a contract was made between two parties for the benefit of a third person, that third person is called a third-party beneficiary and has a right to enforce the contract provision in (his / her / their / its) favor. In this case, the plaintiff alleges that (he / she / they / it) is a third party beneficiary in the contract [between _____ and _____.]

The plaintiff must demonstrate that (he / she / they / it) is an intended beneficiary of the contract, as opposed to an incidental beneficiary. The plaintiff is an intended beneficiary if, by looking at the language and circumstances of the contract, it is clear that the parties to the contract intended that performance of the contract would result in a benefit to (him / her / them / it).

Markel Serv. Ins. Agency, Inc. v. Tifco, Inc. 403 Mass. 401, 405 (1988); *Rae v. Air-Speed, Inc.*, 386 Mass. 187, 192-193 (1982); *Lind v. Domino's Pizza, LLC*, 87 Mass. App. Ct. 650, 661 (2015); *James Family Charitable Found. v. State Street Bank and Trust Co.*, 80 Mass. App. Ct. 720, 723-5 (2011); 2 Restatement (Second) of Contracts § 302 (1981).