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RELEVANCE OF DOCTRINE OF QUANTUM MERUIT IN INDIA AND ENGLAND *

INTRODUCTION

The Latin expression **"*quantum meruit*"** is one of the most popular expressions used in law today. It relates to the field of law of contract. Unfortunately, its meaning is not clear. The definition varies slightly from one judicial system to another. This is largely based on the different legal decisions that have interpreted the term. It actually means **"*as much as he deserves*".** Traditionally, courts assessed a quantum of damages, where work was performed pursuant to a contract, but no agreement was reached on the amount, the Court would just determine what was fair. In some judicial systems, "*quantum meruit*" is the court's method of calculating damages arising from a contract, when the contract is unclear.

THEORY OF QUANTUM MERUIT:

As mentioned above, *quantum meruit* involves cases where someone gets a benefit while the other party gets nothing. In Latin, this phrase means "***what one has earned***". In law of contract, this refers to the benefit or enrichment one party receives as a result of the other party's actions. Under the law, the theory means that another party has received an unfair benefit and thus must provide restitution to the party who provided that benefit. Thus, *Quantum meruit* is a theory in the law that requires fairness and reasonableness. The theory fosters equity of the parties and helps to ensure that if a person provided a service or a good, that person receives the benefit of the contract. It is an important theory in law because it allows a court to provide a fair result in an unfair situation.

Quantum meruit is the measure of damages where an express contract is mutually modified by the implied agreement of the parties, or not completed. While there is often confusion between the concept of quantum meruit and that of "unjust enrichment" of one party at the expense of another, the two concepts are distinct.

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DOCTRINE OF *QUANTUM MERUIT* IN INDIA:

In India, the Common Law rule has been departed from, and the Legislature in Section-70[1] of the Indian Contract Act, 1872 provides for the recovery of compensation in certain cases, where a person lawfully does anything for another without intending to do so gratuitously, and such other person enjoys the benefit thereof. In order to come within the principle contained in the section, two essential points have to be made out: firstly, that the person doing the work did not intend to do it gratuitously, that is, without intending to receive anything towards remuneration, and secondly, that the other person has received the benefit from the work done. The mere acceptance of the benefit of another's work does not give rise to an implied promise to pay thereof. The work must have been lawfully done with the intention of claiming something in remuneration, and under Indian law there is also an authority to hold that it is necessary to give the person who is sought to be made liable, an opportunity to refuse, on the principle that no man is bound to pay for that which he had not had the option of refusing, though it may be noticed that the decisions are not uniform, and the question is still not free from doubts.

DOCTRINE OF *QUANTUM MERUIT* IN ENGLAND:

The term "*quantum meruit*" actually describes the measure of damages for recovery on a contract that is said to be "implied in fact." In an English case[2] it was held by the court that the law imputes the existence of a contract based upon one party's having performed services under circumstances in which the parties must have understood and intended compensation to be paid. Therefore, further, it was held by the court in a case,[3] that the recovery in *quantum meruit* is said to be based upon the "assent" of the parties and, being contractual in nature, it sounds in law.

Thus, in Hermanowski v. Naranja Lakes Condominium No. Five, Inc.,[4] the court held that to recover under *quantum meruit* one must show that the recipient:

a.) acquiesced in the provision of services;
b.) was aware that the provider expected to be compensated; and
c.) was unjustly enriched thereby.

[1] Section70 of the Indian Contract Act Says: Obligation of person enjoying benefit of non-gratuitous act; "Where a person lawfully does anything for another person, or delivers anything to him, not intending to gratuitously, and such person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing no done or delivered".

[2] Tipper v. Great Lakes Chem. Co., 281 So. 2d 10 (Fla.1973).

[3] Rite-way Painting & Plastering, Inc. v. Tetor 582 So. 2d 15 (Fla. 2d DCA 1991), rev. dismissed, 587 So. 2d 1329 (Fla.1991).

[4] 421 So. 2d 558 (Fla. 3d DCA 1982), rev. denied, 430 So. 2d 451 (Fla. 1983).

Quantum meruit recovery is appropriate where the parties, by their conduct, have formed a relationship which is contractual in nature, even though an enforceable contract may never have been created. For example, where a written agreement between an owner and a contractor is deemed unenforceable as a result of a technical deficiency or because it violates public policy, the contractor may still recover in *quantum meruit*.[5]

In an English authority,[6] the court explained that statute of frauds barred enforcement of oral contract. As a general rule, one should not look to recover in *quantum meruit* unless there have been direct dealings between the parties that create the basis for the contract to be implied "in fact."

Since specific terms in an implied contract are absent, the law supplies the missing contract price by asking what one would have to pay in the open market for the same work. Thus the measure of damages under *quantum meruit* is defined as "the reasonable value of the labour performed and the market value of the materials furnished" to the project.[7]

RELEVANCE OF DOCTRINE OF *QUANTUM MERUIT* IN ENGLAND AND INDIA:

To understand the relevance of doctrine of "*quantum-meruit*", application of the same can be analyzed in following terms:

The concept of *quantum meruit* applies in (but is not limited to) the following situations:

1. When a person hires another to do work for him, and the contract is either not completed or is otherwise rendered unperformed, the person performing may sue for the value of the improvements made or the services rendered to the defendant. The law implies a promise from the employer to the workman that he will pay him for his services, as much as he deserve.

The measure of value expressly mentioned in a contract may be submitted to the court as evidence of the value of the improvements or services, but the court is not required to use the terms of the contract, when calculating a *quantum meruit* award. The reason behind this is that the values expressly mentioned in the contract are rebuttable, meaning thereby the one, who, ultimately may have to pay the award can contest the value of services set in the contract.

2. When there is an express contract for mode of compensation for services and for a stipulated amount, the plaintiff cannot abandon the contract and resort to an action for a *quantum meruit* on an implied contract. However, if there is a total failure of consideration, the plaintiff has a right to

[5] See Wood v. Black, 60 So. 2d 15 (1952) (contract unenforceable because contractor not licensed);
[6] Tobin & Tobin Ins. Agency, Inc. v. Zeskind, 315 So. 2d 518.
[7] Moore v. Spanish River Land Co., 159 So. 673, 674 (Fla. 1935).

elect to repudiate the contract and may, then, seek compensation on the basis of doctrine of *quantum meruit*.

In an English judgment[8] it was held and later on applied in Victoria in Sopov v Kane Constructions Pty Ltd.[9] Restitution now forms the doctrinal basis of *quasi contract*. *Quasi contract* or "money claims" included *quantum meruit*, *quantum valebat*, moneys had and received, recovery of moneys paid under a mistake, or upon a total failure of consideration, and note restitution on a *quantum meruit* for terminating party where contract discharged for breach or repudiation as an alternative to sue for damages for breach of contract.

For a plaintiff to claim for lost earnings through a *quantum meruit* claim, it is the basic requirement to prove his claim and eventually to convince the court that there is a benefit to the defendant and an unjust enrichment flowing from the benefit. While the principle of *quantum meruit* claims may appear straightforward for a rescinded contract, the evaluation of benefit is very subjective, so it becomes difficult to apply a standard basis of application. In several cases where benefit was evaluated and held for the plaintiff, the cases were distinguished or over ruled in subsequent cases. Whilst initially plaintiffs sought tangible benefits, recently intangible benefits have been sought and damages won. Hence, there is substantial documented case material for both the plaintiffs and defendants in the argument of *quantum meruit* claims and in particular the claim for benefit and unjust enrichment. Unfortunately, due to the slight differences between cases, that may receive distinguishing treatment, the application in a number of preceding cases is difficult. The subjectiveness of this kind of applications of this doctrine and the individual assessment made by the judges creates uncertainty in this area. Even different judges presiding over different cases, could use different specific cases for their decisions. The research in this chapter will investigate the assessment of the benefit and the unjust enrichment to a defendant, focusing on a subset of frequently referenced English and Indian cases, with discussions on how these cases have been treated subsequently in the courts.

In England basically, doctrine of *quantum meruit* is invoked in a particular type of cases i.e., construction cases. Some of the cases included in this discussion can be listed as below. But one thing is very clear that this list is not exhaustive, many more cases can be added into it. As these are relevant case laws for the better understanding of this concept, hence a discussion on these cases is necessary.

[8] Renard Constructions Pty Ltd v Minister for Public Works, (1992) 26 NSWLR 234.
[9] (No.2) (2009) 257ALR 182, VSCA 141. See Principles of Remedies, at.131ff.

In Sabemo case[10] the factor of benefit and unjust enrichment is addressed. The argument of benefit was difficult, as the defendant could not use any of the work done by the claimant, hence they belied there was no benefit, hence no need for compensation. The basis for the claim used in William Lacey (Hounslow) Ltd. v. Davis[11]case was used in this case, in which the builder, William Lacey, supplied prices to do work on the belief that they would receive the contract. The cost of the pricing of the work would be recovered under the future contract.[12] In this case, J. Sheppard[13] stated: "where two parties proceed upon the joint assumption that a contract will be entered into between them, and one does work beneficial for the project, and thus in the interests of the two parties, which work he would not be expected, in other circumstances, to do gratuitously, he will be entitled to compensation or restitution, if the other party unilaterally decides to abandon the project, not for any reason associated with bona fide disagreement concerning the terms of the contract to be entered into, but for reasons which, however valid, pertaining only to his own position and do not relate at all to that of the other party."

Thus, this case can be summarised in simpler terms. If A does work for B and which he believes is not gratuitous, then B can expect to reimburse A in a reasonable manner. There are of course clarifications and qualifications of this factor in cases such as Sabemo.[14] In this case, the Council's decision to cancel the project was not attributed to any error or omission by Sabemo and hence they required reimbursement.

Another judgement[15] is there by English court, in which the Court held that properly construed, clause 47 (which was in question in this case), is in the nature of a residual clause. The requirement of notice must be met if payment is to be obtained for the extra work done as a result of the occurrence of events or circumstances. The requirement of written notice, which is so common in contracts, puts the matter on a formal and readily identifiable basis and one can claim on the basis of *quantum meruit*.

In Pavey and Matthews case[16] the main issue was whether under an oral building contract, unenforceable under section 45 of the Builders Licensing Act 1971 (NSW) (s45 of the Act), a builder can bring an action in *Indebitatus assumptus*?[17]. Essentially, Pavey and Matthews worked on Mrs Paul's house on an oral contract arrangement, where the consideration was to be reasonable.

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10 Sabemo Pty Ltd v. North Sydney Municipal Council, (1977) 2 NSWLR 880.
11 (1957) 1All E.R. 712.
12 Akhileshwar Pathak, "Contract Law", IIM Ahmadabad, ed. 1st, (2011) at.311.
13 *Supra* note 1, at.902.
14 *Ibid.*
15 Jennings Construction Ltd. v. Q H & M Birt Pty Ltd. (1986) 8 NSWLR 18.
16 Kailash Chander Srivastava, "The Rationale of Quasi-Contract", 1961 SCJ 35at.41.
17 This line of action can be traced back to 1621 with "Slade's Case" where the action depended on the fiction that there is a separate and subsequent promise to pay a debt though the debt arises out of a contract. As stated in Pavey and Matthews (1987) BC 8701760.

The completed works included an enlarged scope, and subsequently Mrs Paul paid Pavey and Matthews what she considered to be a reasonable sum. The plaintiff sued on a *quantum meruit* basis.

In this way, success in a *quantum meruit* cases depend not only on the plaintiff proving that he/she did the work, but also on the defendant's acceptance of the work without paying the agreed remuneration. It is evident that the court is enforcing against the defendant an obligation that differs in character from the contractual obligation had it been enforceable[18].

Thus, from the analysis of this case it can be inferred that when a claim is based on completed works, it is obvious that the defendant has a real benefit of the works, and this benefit may be assessed. To assess the benefit of a building that was only partially complete, would be to some extent difficult to quantify. In this case, the defendant can liquidate the benefit gained by the "contract" works, i.e. the building could be sold and compensation taken from such sale and without any extra cost. This action could occur in extreme circumstances. Pavey essentially demonstrated that it is better for a builder to conduct work without a contract, as the Building Act will prove the oral contract to be unenforceable. From there a *quantum meruit* claim can result and result in the remuneration for the plaintiff of his reasonable and fair costs for the work. This case has been used in subsequent cases quite extensively, and would appear to be the milestone in general claims of *Quantum Meruit*.

One more English case[19] needs to be discussed here, to understand the application of doctrine of *Quantum Meruit*. In this case, there was a contract between Renard and the Minister of Public Works for building pump stations. During the course of the two contracts, Renard was not doing progress in his works to the satisfaction of the principal, to the point that resulted in a Show Cause Notice being issued to Renard. Renard responded by issuing a letter.[20] After some time, the Principal served notices taking over the works, which lead the Contractor to commence action against the principal for the wrongful repudiation of the contract. Renard informed the principal that they accepted their action, and asserted that they rescinded the contract, and began arbitration on the lines of a *quantum meruit* claim. The Court of Appeal held in its decision: "The contract contained ad hoc implied terms and terms implied by law that the principal would give reasonable consideration to the question whether the contractor had failed to show cause against the exercise of the power and if the contractor had failed to do so whether the power should be exercised"[21]. The court explained clearly that the principal must act reasonably and in good faith.

[18] Mason and Wilson JJ. Their decision in Pavey and Matthews v Paul (1987) BC 8701760.
[19] Renard Constructions Pty Ltd. v. Minister for Public Works, BC9203258 at 5.
[20] *Ibid.*
[21] *Id.* at.1.

This case holds the significance that if a show cause notice is served, and the plaintiff terminates the contract wrongfully, then the defendant will be entitled to his costs to a reasonable extent. This was ended in the Supreme Court, Court of Appeal that the issue reasonable costs cannot be extended to profits.

Further, Brenner's case[22] is important in this regard. As it was a very complex case and contained several plaintiffs, defendants, and cross claims. That is why, Byrne J noted that the Brenner case had "given me cause to pause, for the case was long and the law was not easy". In this case the issue was that Brenner and Fenner had supplied services to First Artists Management (FAM). After a time FAM terminated the managers services prior to releasing an album. The manager sued FAM on the basis of a *quantum meruit* claim, with the value of that to the plaintiff, which had been previously been agreed. Byrne J stated that "There is no requirement that "benefit" for the purpose of the rule of restitution in a claim for payment for services must be an economic benefit. Nor is there a requirement that the provider of the services show that any benefit has arisen as a direct consequence of a particular service rendered".[23]

As a result of the findings in this case, the benefit to a defendant is extended from one which is real and identifiable, to one that is unusable and not perceived benefit at all. The benefit is said to be have the service available to the plaintiff, not necessarily if it can be converted into some other tangible benefit. This extends Sabemo's case[24] where the benefit was held on a proposal that could not be used by the plaintiff. This case has a significant impact on the project management area, as this area can be based on service related contracts where the benefit to the plaintiff is purely in the service provided, hence the party physically being there, not necessary the value of the work they produce. Hence, one would have to investigate and evaluate the parties which they intend to engage for contracts of services, as their performance or work standard will probably not be in question.

In WC Gray (Constructions) Pty Ltd v. Hogan[25] the referee found that the contract was unenforceable but that plaintiff was entitled to recover on the basis of *quantum meruit*. The proceeding returned to the District Court and the judge was prepared to accept the referee's findings of *quantum meruit*. However the judge decided that the *quantum meruit* amount was overstated as it included a profit margin and did not accurately reflect the value of work performed. Since the *quantum meruit* amount was less than the amount already paid by defendant

[22] Brenner v. First Artists' Management Pty Ltd., (1993) 2 VR 221.
[23] *Ibid,* at. 222.
[24] *Supra* note 8.
[25] (2000) NSWCA 26.

the Court ordered judgment in favour of the defendant with interest and costs. In appeal by the plaintiff, the main issue was: Should the *quantum meruit* award include a profit margin on top of the reasonable costs incurred by the builder?

Thus, the court held while deciding the issue that in some cases it was reasonable for the value of the *quantum meruit* to be the value of work performed. However when the claim is for goods and services received the usual basis of a *quantum meruit* claim will be a reasonable remuneration. J. Mason P stated: "There will be cases where such an approach is called for, but not in relation to the valuation of a claim made on a *'quantum meruit'* for goods and services freely accepted under an arrangement such as the present one in which an intended underlying contract is rendered unenforceable by statute. The correct approach is to determine a reasonable remuneration for the builder, including remuneration which includes a reasonable profit margin."

Thus, a claim for *quantum meruit* may be for more than the value of a product received. In a case where a person has expended time and effort in providing a product to a customer a reasonable profit margin will be allowed to fairly compensate the person who provided the product. *Quantum meruit* claims have no peer other than the law of negligence or, more recently, the statutory rights flowing from misleading or deceptive conduct.

For assessing the findings of the above cases a basis model can be outlined for subsequent claims. Hence, *quantum meruit* claims may generally be invoked in the following circumstances:

- Work completed, but with no contract, with no prior agreement to damages;
- Work completed, but before a contract could be finalised, the plaintiff or defendant cancels for their convenience.
- Work is being completed within an agreed contract, but the plaintiff or defendant cancels the contract wrongfully or for their convenience.
- Work is being completed within an agreed contract and the nature and type of the work (be it through variations in circumstances and variation in the market price) becomes significantly different to that in the original contract.

CONCLUSION:

Thus, the doctrine of *quantum meruit* under law of contract is such a beautiful concept that requires fairness and reasonableness. This concept promotes the equity of the parties and helps to ensure that if a person provided a service or a good, that person receives the benefit of the contract. It is very important concept in law because it allows a court to provide a fair result in an unfair situation. This doctrine has proved to be very helpful for Indian judicial system.