

Understanding the Legal Principle of Quantum Meruit in Construction Contracts

[Quantum meruit](#) is a legal principle that is frequently encountered in the construction industry. It is a Latin term that means "as much as is deserved." In the context of [construction contracts](#), quantum meruit refers to the right of a builder or contractor to be paid for work done or materials supplied that is outside the scope of the original contract.

The principle of quantum meruit allows builders and contractors to recover the value of the work they have done, even if there was no express agreement for that work to be done. This can be particularly relevant in construction projects where changes or variations are made to the original plans.

However, the right to recover under quantum meruit is not automatic, and there are certain requirements that must be met in order for a builder or contractor to successfully claim quantum meruit. This article will explore the legal principle of quantum meruit in the context of construction contracts, including the circumstances in which it may apply, and the requirements that must be met to successfully claim quantum meruit.

Definition and application of quantum meruit in construction contracts

The legal principle of [quantum meruit](#) allows a builder or contractor to recover the value of work done or materials supplied that is outside the scope of the original contract, even if there was no express agreement for that work to be done.

In [construction contracts](#), quantum meruit can arise in several situations, such as when there is a variation or change to the original plans, or when the owner requests additional work that is not covered by the contract. In these cases, the builder or contractor may be entitled to recover the value of the work they have done, even if there is no express agreement for that work to be done.

It is important to note that quantum meruit is not automatic, and there are certain requirements that must be met in order for a builder or contractor to successfully claim quantum meruit. One of the key requirements is that the builder or contractor must have

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provided a benefit to the owner, which has been accepted by the owner. This means that the owner must have received and accepted the benefit of the work done or materials supplied by the builder or contractor.

Another requirement is that the builder or contractor must not have an existing contract or agreement that governs the right to compensation for the work done or materials supplied. If there is an existing enforceable agreement governing the builder or contractor's right to compensation, there is no legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration.

Overall, [quantum meruit](#) is a legal principle that can provide an avenue for builders and contractors to recover the value of work done or materials supplied that are outside the scope of the original contract. However, there are certain requirements that must be met in order to successfully claim quantum meruit.

Key requirements for claiming quantum meruit in construction contracts

In order to successfully claim [quantum meruit](#) in a construction contract, there are certain key requirements that must be met. These requirements are based on established legal principles and have been refined over time through case law.

The five components of a successful quantum meruit claim, as set out in *Goodacre v Trinder Alpine Constructions Pty Ltd* [2013] NSWCCCT 124, are as follows:

1. The subject building work fell outside the requirements of the contract, specifications, and other included documents.
2. The owner had actual knowledge of the variations as they were being done.
3. The owner knew that they were outside the contract.
4. The owner knew that the builder expected to be paid for the work as a variation to the contract.
5. The builder had provided evidence that the amount claimed was fair value for the non-compliant work.

In addition to these five components, there are other key requirements that must be met in order to successfully claim quantum meruit. One of these requirements is that the builder or contractor must have provided a benefit to the owner that has been accepted by the

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owner. This means that the owner must have received and accepted the benefit of the work done or materials supplied by the builder or contractor.

Another key requirement is that there must not be an existing enforceable agreement governing the builder or contractor's right to compensation for the work done or materials supplied. If there is an existing agreement, there is no legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration.

It is also important to note that the builder or contractor must act reasonably in carrying out the work or supplying the materials. This means that they must act in a way that is consistent with industry standards and practices and that they must not engage in any conduct that is fraudulent, negligent, or otherwise improper.

Overall, in order to successfully claim quantum meruit in a construction contract, there are several key requirements that must be met. These requirements are based on established legal principles and have been refined over time through case law. By understanding these requirements, builders and contractors can ensure that they are able to recover the value of work done or materials supplied that are outside the scope of the original contract.

Impact of *Pavey & Matthews Pty Ltd v Paul* on the construction industry

Pavey & Matthews Pty Ltd v Paul [1987] HCA 5 is a landmark case that has had a significant impact on the way in which quantum meruit claims are viewed in the construction industry. In this case, the High Court held that quantum meruit could not be claimed where there was an existing enforceable agreement governing the builder or contractor's right to compensation.

This decision has had significant implications for builders and contractors in the construction industry, as it means that they must have a clear and enforceable agreement with the owner that covers all aspects of the work to be done and the compensation to be paid. If there is an existing agreement in place, the builder or contractor cannot claim quantum meruit for work that is outside the scope of that agreement.

However, it is important to note that *Pavey & Matthews Pty Ltd v Paul* does not mean that quantum meruit claims are no longer possible in the construction industry. Instead, it means that builders and contractors must ensure that they have a clear and enforceable agreement with the owner that covers all aspects of the work to be done and the compensation to be paid. If there is no such agreement in place, then the builder or contractor may be able to claim quantum meruit for work that is outside the scope of the original contract.

It is also worth noting that the decision in *Pavey & Matthews Pty Ltd v Paul* has been the subject of much debate and discussion in the legal community, with some commentators suggesting that the

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decision is overly restrictive and does not reflect the realities of the construction industry. As a result, there have been calls for the decision to be revisited or for legislative reform to clarify the scope of quantum meruit claims in the construction industry.

Overall, the decision in *Pavey & Matthews Pty Ltd v Paul* has had a significant impact on the construction industry, and has highlighted the importance of having clear and enforceable agreements in place when carrying out construction work. While the decision has been the subject of much debate and discussion, it remains an important landmark case that all builders and contractors in the construction industry should be aware of.

Case law examples after *Pavey & Matthews Pty Ltd v Paul*

Since the landmark decision in *Pavey & Matthews Pty Ltd v Paul* [1987] HCA 5, there have been a number of cases that have explored the application of quantum meruit in the construction industry. These cases provide useful guidance on how the principle of quantum meruit operates in practice, and the types of claims that may be successful in the absence of a clear and enforceable agreement.

One such case is *Goodacre v Trinder Alpine Constructions Pty Ltd* [2013] NSWCCCT 124, which was approved and adopted by the Appeal Panel in the recent case of *Nayak v Rockwall Constructions Pty Ltd* [2017] NSWCATAP 18. In this case, the Tribunal Member set out the five components that must be complied with by the builder before it can recover on a quantum meruit basis for variations not signed and accepted by the owner:

- (a) The subject building work fell outside the requirements of the contract, specifications, and other included documents.**
- (b) The owner had actual knowledge of the variations as they were being done.**
- (c) The owner knew that they were outside the contract.**
- (d) The owner knew that the builder expected to be paid for the work as a variation to the contract.**
- (e) The builder had provided evidence that the amount claimed was fair value for the non-compliant work.**

The decision in *Goodacre v Trinder Alpine Constructions Pty Ltd* followed and applied the High Court decision in *Liebe v Molloy* (1906) 4 CLR, which was concerned with a claim for

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variations that were not documented in accordance with the terms of the contract that the parties had signed.

Another case that is worth noting is Update Constructions Pty Ltd v Roseville Childcare Centre Pty Ltd (1990) 20 NSWLR 251. In this case, the Court of Appeal referred to the decision in Liebe v Molloy and held that a builder could not recover for work that was required by the contract to be done, but could recover for work that was outside the scope of the contract if certain further facts were found. The Court of Appeal also noted that there were no cases (except possibly in one area of the law) where an existing enforceable contract governed specific relations between two parties and yet one had recovered against the other in respect of a matter governed by the contract, on the basis of quantum meruit, quasi contract, or restitution.

These cases highlight the importance of having a clear and enforceable agreement in place when carrying out construction work. If such an agreement exists, then quantum meruit claims may be difficult to pursue. However, if there is no such agreement in place, then builders and contractors may be able to recover on a quantum meruit basis for work that is outside the scope of the original contract, provided that certain requirements are met.

Practical advice for builders on quantum meruit claims after Pavey & Matthews Pty Ltd v Paul

Builders and contractors who are considering making a [quantum meruit](#) claim should bear in mind the impact of the Pavey & Matthews Pty Ltd v Paul decision and the subsequent case law developments. While quantum meruit claims may be possible in certain circumstances, it is important to note that they will only succeed where certain requirements are met. Below are some practical tips for builders and contractors who are considering making a quantum meruit claim:

1. **Keep detailed records:** It is essential that builders and contractors keep detailed records of all work that is carried out, including any variations to the original contract. This will help to provide evidence in support of a quantum meruit claim, should it become necessary.
2. **Communicate with the owner:** Builders and contractors should ensure that they communicate clearly with the owner throughout the project, particularly in relation to any variations or changes to the original contract. This will help to ensure that the

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owner is aware of the work that is being carried out and the reasons for any additional costs that may be incurred.

3. Obtain written agreement for any variations: While it is possible to recover on a quantum meruit basis for work that is outside the scope of the original contract, it is always best to obtain written agreement from the owner for any variations that are made. This will help to [avoid disputes](#) down the line and ensure that the builder or contractor is paid for the work that they have carried out.
4. Seek legal advice: If builders or contractors are unsure about their rights or obligations in relation to a quantum meruit claim, they should seek legal advice. A lawyer with experience in construction law can provide valuable guidance and advice on the best course of action to take.

In summary, while quantum meruit claims can be complex, they are an important legal principle in the construction industry. By understanding the requirements for making a successful claim and taking practical steps to protect their interests, builders and contractors can ensure that they are fairly compensated for the work that they carry out.

Conclusion

In conclusion, understanding the legal principle of [quantum meruit](#) is essential for builders and contractors in the construction industry. While it can be a complex area of law, particularly in light of the *Pavey & Matthews Pty Ltd v Paul* decision and subsequent case law developments, builders and contractors can still make successful claims for payment on a quantum meruit basis where certain requirements are met.

Builders and contractors should take steps to protect their interests, such as keeping detailed records of all work carried out and obtaining written agreement for any variations made. Seeking legal advice can also be helpful in ensuring that their rights are protected.

Ultimately, by understanding the legal principle of quantum meruit and taking practical steps to protect their interests, builders and contractors can ensure that they are fairly compensated for the work that they carry out.

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