

QUANTUM MERUIT IN CONSTRUCTION

Historical Origins, Comparative Jurisprudence, and Strategic Implications

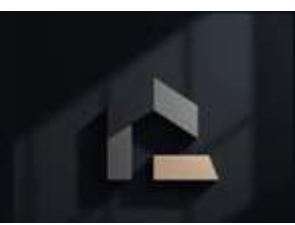
By Garry North | 2026

1. The Dual Nature of Quantum Meruit

The legal doctrine of quantum meruit, translating literally to "as much as he deserved" or "the amount earned," operates as a cornerstone of commercial and construction jurisprudence. It provides a legal mechanism for claiming reasonable remuneration for services rendered in circumstances where no enforceable contract dictates the precise payment obligations between the parties. Navigating the intersection of contract law, equity, and the law of restitution, the doctrine has evolved from its medieval English origins into a highly complex, often contested modern legal remedy.

In contemporary legal practice, a strict dichotomy exists between a contractual quantum meruit and a non-contractual quantum meruit:

- **Contractual Quantum Meruit:** Arises when parties have formed a binding agreement for the provision of services but have either omitted a fixed price or explicitly agreed to pay a "reasonable sum" without quantifying it. In these instances, entitlement to remuneration is rooted firmly within the contract itself, and the court merely implies a term to fulfill the mutual intentions of the parties.
- **Non-Contractual Quantum Meruit:** Arises by operation of law in the absolute absence of a valid contract. This typically occurs in three scenarios:
 1. where work is undertaken pursuant to an anticipated contract that ultimately fails to materialise (such as under a non-binding Letter of Intent);
 2. where work is performed under a contract that is later deemed void or unenforceable; or
 3. historically, where a contract is discharged following a repudiatory breach.



2. Historical Evolution: From Assumpsit to Unjust Enrichment

2.1 The Common Law Origins: Assumpsit and the Implied Promise

Prior to the 16th century, English common law courts strictly refused to enforce payment for services unless the transacting parties had explicitly agreed upon both the scope of work and the precise price in advance. To mitigate this rigidity, the Court of Common Pleas developed the action of assumpsit (a writ originally utilised for simple breaches of contract). Under early assumpsit, a claimant could recover a quantum meruit if they had performed work under an actual, albeit unquantified, promise to pay.

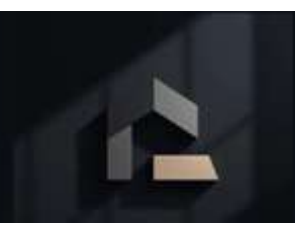
By the late 16th and 17th centuries, the King's Bench expanded this concept into indebitatus assumpsit. To bypass the strict necessity of an express promise, courts created a powerful legal fiction: the "implied promise" to pay. This framework coalesced into the "implied contract theory," which grounded non-contractual claims in a fictitious agreement constructed by the court to achieve an equitable outcome, heavily labeled as "quasi-contractual" liability.

2.2 The 20th Century Transition to Restitution

The persistence of implied contract theory faced mounting judicial hostility in the mid-20th century. A paradigm shift occurred in *James v Thomas H Kent & Co Ltd* (1951) ^[1], where Lord Justice Somervell formally declared that non-contractual quantum meruit was grounded not in quasi-contract or implied promises, but in the independent legal doctrine of restitution. Lord Justice Denning concurred with this, emphasising that the restitutionary obligation enforced by the court arises independently of the unenforceable contract.

This movement was integrated in the text by Goff & Jones in *The Law of Restitution* (1966) ^[2] and reached its zenith in 1985 under Professor Peter Birks ^[3]. Under the orthodox Birksian model, a successful claim necessitates establishing four elements:

1. valuable services provided to the defendant;
2. those services enriched the defendant;
3. the enrichment was gained at the claimant's expense and was unjust (often proven via "free acceptance"); and
4. no legal defenses preclude the claim.



An important caveat to note is that Birks famously abandoned his own "unjust factors" approach in 2005. Shortly before his death, he pivoted to an "Absence of Legal Basis" test, arguing that claimants shouldn't need to prove a specific unjust factor (like free acceptance), but rather just show that the value was transferred without a valid legal ground explaining it.

3. The Doctrinal Quagmire: Property vs. Services

While English courts embraced Birksian unjust enrichment, profound theoretical resistance emerged elsewhere. New Zealand legal scholar Professor Peter Watts KC ^[4] argues against subsuming all quasi-contract claims under the single umbrella of unjust enrichment, emphasising the fundamental difference between physical chattels and intangible services. While money or physical property can be 'restored' or 'disgorged,' services are irrevocably consumed upon performance. Therefore, Watts posits that non-contractual quantum meruit claims for services rendered are not about the mechanical subtraction of an unjust gain, but are instead 'assumed obligations' rooted in request, consent, or tacit agreement. A claimant performing requested work is seeking reasonable remuneration, rather than the reversal of an enrichment held by the defendant.

Recognising these claims as 'contract-adjacent' avoids the artificial concepts required to force pure services into an unjust enrichment framework, a distinction that has direct practical relevance for construction contract disputes involving varied or incomplete work.

4. The Evolution of New Zealand Jurisprudence

4.1 Shifting Elements and Judicial Tests

New Zealand jurisprudence has acknowledged the doctrinal debate between the orthodox unjust enrichment model and promissory/reliance theories, though the courts have refrained from forcing a rigid single-theory resolution:

- **Villages of New Zealand (2005)** ^[5] : Grounded non-contractual quantum meruit solidly in principles of unjust enrichment, establishing that proof of a tangible economic benefit in a strict monetary sense is unnecessary, provided the services were either requested by the defendant or freely accepted with the knowledge that they were not offered gratuitously.
- **Morning Star v Canam Construction (2006)** ^[6] : The Court of Appeal explicitly recognised the "doctrinal quagmire" between the traditional unjust enrichment view and the promissory/reliance



view advocated by academic critics. However, the Court declined to resolve the theoretical dispute. They found liability on the facts because the work was expressly requested, there was a mutual expectation of payment, and the developer could not enjoy the benefit of the executed work without paying reasonable remuneration.

- **Cassels v Body Corporate 86975 (2007)** ^[7] : Established limits on claims for unrequested expenditure, ruling that quantum meruit recovery generally requires a prior request, free acceptance, or an emergency that discharges an inescapable statutory or legal duty

4.2 The Watershed Moment: Electrix Ltd v Fletcher Construction Co Ltd (2020)

The theoretical tension culminated in *Electrix Ltd v Fletcher Construction Co Ltd* (2020) ^[8]. Fletcher engaged Electrix for electrical works on the Christchurch Justice Precinct under nine successive Letters of Intent (LOIs) totaling \$14M. The parties failed to reach consensus on essential terms. Electrix submitted claims totaling \$28M and launched a \$7M quantum meruit claim.

Justice Palmer formally adopted Professor Peter Watts' critique, ruling that New Zealand restitution law extends to providing redress for those who have been "unjustly impoverished." The High Court established a cost-plus input valuation methodology: the market value of inputs deployed (labor, materials, plant, overheads) plus a market profit margin, awarding Electrix over \$7.4M GST exclusive.

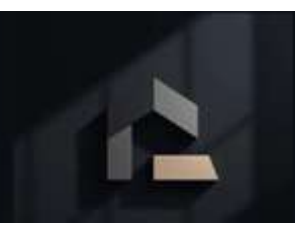
4.3 Navigating the Edges: Edubase Ltd v Minister of Education (2024)

In *Edubase Ltd v Minister of Education* (2024) ^[9], the Court of Appeal confirmed that valuation in quantum meruit remains anchored in objective market analysis rather than simply compensating a plaintiff's actual costs. Edubase rejected the Ministry's \$60 placement fee during COVID-19 lockdowns and sued for \$316k+. The Court of Appeal overturned a lower court's ruling that the \$60 fee was reasonable, noting the Ministry underestimated the administrative burden. However, the Court also rejected Edubase's customised rates, ultimately fixing the objective market value of the services at a lump sum of \$50,000.

5. Comparative Jurisprudence: Australia, the UK, and Singapore

Comparative jurisprudence illustrates diverse strategies for managing quantum meruit:

- **Australia — Mann v Paterson Constructions (2019)** ^[10]: The High Court of Australia dismantled the "rescission fallacy." Held:



1. for work where a right to payment has already accrued, the builder is restricted to recovering the contractual debt or damages, and cannot claim quantum meruit ;
 2. for work where no right to payment has accrued, restitutionary quantum meruit is available, but the amount recoverable is strictly capped by the portion of the contract price attributable to that work
- **Australia — Southern Han (2016)** ^[11]: Confirmed a valid contractual reference date is a jurisdictional prerequisite for Security of Payment claims; quantum meruit upon termination is excluded from statutory adjudication.
 - **United Kingdom — Benedetti v Sawiris (2013)** ^[12]: Valuation starts with the objective market value of the benefit received, rejecting subjective revaluation but allowing subjective devaluation.
 - **United Kingdom — Barton v Morris (2023)** ^[13]: Where an express contract dictated payment upon a £6.5M property sale trigger, and the property sold for £6M, the UK Supreme Court denied quantum meruit, ruling "unjust enrichment mends no-one's bargain."
 - **Singapore — Tanjung Teras (2015)** ^[14] & **33Club Pte Ltd (2026)** ^[15]: Applies Section 71 of the Contracts Act 1950 for non-gratuitous beneficial acts, but emphasizes that SOP Act adjudication requires a valid underlying contract; informal uncertain agreements force parties into formal litigation.

6. Quantum Meruit under the Construction Contracts Act 2002 and NZS 3910/3916

Applying quantum meruit in New Zealand requires managing its interaction with statutory regimes and standard form contracts:

6.1 The Construction Contracts Act 2002 (CCA)

The CCA facilitates fast-track adjudication based on "pay now, argue later" (s 20 payment claims, s 21 payment schedules). Unresponded claims become a statutory "debt due." However, Section 5 and Section 20 require disputes to arise "under a construction contract."

The Jurisdictional Hazard: If a claimant initiates an adjudication seeking pure non-contractual quantum



meruit (asserting no contract exists), the adjudicator lacks statutory jurisdiction. In *Canam Construction (1955) Ltd v LaHatte* ^[16] Justice Keane explicitly ruled that an adjudicator's jurisdiction under the CCA "concerns only rights and liabilities arising under construction contracts" and "extends no more widely". Because a pure non-contractual quantum meruit claim arises independently of a contract, an adjudicator lacks the statutory jurisdiction to determine it. Claimants must strategically plead contractual quantum meruit (implied term) as primary, reserving non-contractual quantum meruit for litigation.

6.2 NZS 3910 Section 9 Variations vs. Extra-Contractual Claims

NZS 3910 Section 9 provides express variation mechanisms (scheduled rates or net cost + margin), operating as an express contractual quantum meruit. Where contractors perform uninstructed extra work without written Variation Orders, non-contractual quantum meruit will rarely save them; contractors assume the commercial risk of non-payment by bypassing contractual notice procedures.

6.3 The Power of Inferred Contracts: *Teak Construction v KMJB Harris (2025)*

In *Teak Construction Group Ltd v KMJB Harris Ltd (2025)* ^[17], the High Court set aside a statutory demand, holding that a binding subcontract was inferred from conduct (submitting claims consistent with proposed terms, site operations). Because an inferred contract existed, non-contractual quantum meruit was unavailable. New Zealand courts actively infer conduct-based contracts to preserve contractual risk allocation.

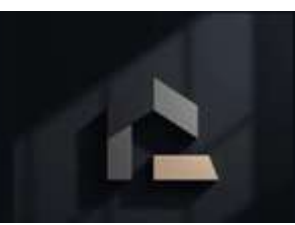
7. Practical Guidelines for Industry Participants

7.1 Guidelines for Arbitrators and Adjudicators

- **Establish Jurisdiction Immediately:** Confirm whether claims sound in contract or pure restitution. Pure non-contractual claims lack statutory CCA adjudication jurisdiction.
- **Apply Input-Based Valuation:** Follow *Electrix* by assessing objective market cost of inputs (labor, materials, plant, overheads) plus market profit margin.
- **Apply Contract Ceilings in Repudiation:** Adopt *Mann v Paterson* logic to cap unaccrued restitutionary recovery at the agreed contract price.

7.2 Guidelines for Clients and Principals

- **Eradicate Extended Letters of Intent:** Ensure full contracts are executed before site



mobilisation to prevent exposure to cost-plus quantum meruit claims.

- **Enforce Variation Procedures:** Require written variation orders under NZS 3910/3916 and contemporaneously disclaim uninstructed works.
- **Maintain Timetable Discipline:** Issue detailed CCA payment schedules within statutory deadlines (default 20 working days).

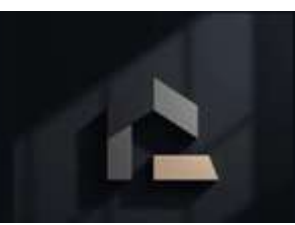
7.3 Guidelines for Contractors and Consultants

- **Secure Commercial Baselines:** Ensure LOIs contain capped pricing or explicit valuation formulas.
- **Formalise Variations in Writing:** Do not rely on equitable conscience for unauthorised extra works.
- **Plead Inferred Contracts:** Meticulously document principal conduct to establish inferred contracts and unlock CCA statutory enforcement.

8. Conclusion: Compensatory Redress, Not a Rescue for Bad Bargains

The evolution of quantum meruit reflects an ongoing judicial struggle to balance contractual certainty against equitable fairness. While the UK and Australia anchor non-contractual quantum meruit within a benefit-centric model of unjust enrichment, New Zealand has established a compensatory, reliance-based mode that acknowledges 'unjust impoverishment' and utilises a plaintiff's actual input costs as a vital cross-check against objective market value.

For the construction industry, quantum meruit provides an indispensable safety net for uncompensated effort under failed contracts. However, comparative jurisprudence uniformly cautions that it cannot, and will not, be weaponised to rewrite commercial risk or resurrect a fundamentally flawed contractual bargain.



Footnotes & References

- [1] James v Thomas H Kent & Co Ltd [1950] 2 All ER 1099 (CA) (Lord Justice Somerville establishing restitutionary foundation).
- [2] Lord Goff & Gareth Jones, The Law of Restitution (1st ed, Sweet & Maxwell, London, 1966).
- [3] Peter Birks, An Introduction to the Law of Restitution (Clarendon Press, Oxford, 1985); Peter Birks, Unjust Enrichment (2nd ed, Oxford University Press, 2005).
- [4] Peter Watts KC, 'Where Does Quasi-Contract Belong?' (2009) 25 NZULR 1; Peter Watts KC, 'Services and Unjust Enrichment' (2021) 137 LQR 210.
- [5] Villages of New Zealand (Pakuranga) Ltd v Ministry of Health HC Auckland CIV-2004-404-3310, 28 October 2005.
- [6] Morning Star (St Lukes Garden Apartments) Ltd v Canam Construction Ltd (2006) 8 NZBLC 101,802 (CA).
- [7] Cassels v Body Corporate 86975 (2007) 6 NZCPR 837 (HC).
- [8] Electrix Ltd v The Fletcher Construction Company Ltd [2020] NZHC 918 (Palmer J).
- [9] Edubase Ltd v Minister of Education [2024] NZCA 430.
- [10] Mann v Paterson Constructions Pty Ltd [2019] HCA 32, (2019) 267 CLR 560.
- [11] Southern Han Breakfast Point Pty Ltd v Lewence Construction Pty Ltd [2016] HCA 52, (2016) 260 CLR 340.
- [12] Benedetti v Sawiris [2013] UKSC 50, [2014] AC 938.
- [13] Barton v Morris [2023] UKSC 3, [2023] 1 WLR 269.
- [14] Tanjung Teras SDN BHD v Pan-United Concrete Pte Ltd [2015] SGCA 58.
- [15] 33Club Pte Ltd v Integrated Interior Architecture Pte Ltd [2026] SGHC 39.
- [16] Canam Construction (1955) Ltd v LaHatte [2009] NZHC 1476, [2010] 1 NZLR 848.
- [17] Teak Construction Group Ltd v KMJB Harris Ltd [2025] NZHC 412.