

RESTITUTIONARY QUANTUM MERUIT

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I declare that this thesis entitle "*Restitutionary Quantum Meruit*" is the result of my own research except as cited in the references. The thesis has not been accepted for any degree and is not concurrently submitted in candidate of any other degree.

Signature :

Name of Supervisor I : Dr Nur Emma Mustaffa

Date :

DEDICATION

Specially dedicated.....

To my beloved wife and children

Siti Halimah

Muhammad Afif Aiman

Amirah Irdina

Thank you for your very understanding, support, love and encouragement

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ABSTRACT

Claim for *quantum meruit* in restitution seek to impose right to payment by law arising from the circumstances of unjust enrichment by one party at the expense of another which occasionally referred to as a claim in quasi-contract. At common law there are several circumstances or entitlement where *quantum meruit* applicable in law as cited in the literature note. The objective of this study is to identify the recent position in Malaysia with regard to *quantum meruit* legal bases or entitlement thus confirming the principle applied at common law. Eight (8) cases being identified from Lexis Nexis database under the Malayan Law Journal (MLJ) website which has been decided from 1954 until 1998 to be analysed. Based on the findings; claim for *quantum meruit* in restitution may arise under the following circumstances where six (6) of the cases being analysed falls under the situation where the contract has been repudiated by the Employer and the contractor choose to claim for damages for breach of contract or *quantum meruit* in restitution for the work performed. One (1) case identify as falling under the circumstance whereby the parties proceed on the mistaken basis that there is an enforceable contract, but there is no contract e.g. in the way of letter of intent. One (1) case identified fall under the circumstances of *quantum meruit* in contractual nature when the contract contains an express agreement to pay reasonable sum or similar in terms. Under the common law, restitutionary *quantum meruit* may also arise when one party requests for services from the other party which are not governed by any contract; and when the contract has been discharged by the operations of doctrine of frustration. It is advisable that the party who requires the services or works to be executed by another party should at least ensure that both parties have agreed all essential terms preferably in writing. This is to avoid any lengthy time and substantial cost involved when it is referred to arbitration or litigation subsequently.

ABSTRAK

Tuntutan gantirugi kuantum meruit adalah untuk menguatkusakan hak mendapat bayaran dalam undang-undang yang timbul daripada (unjust enrichment) ketidakadilan kekayaan yang diperolehi oleh pihak lain dari satu pihak yang lain dirujuk sebagai tuntutan dalam kontrak kuasi. Rujukan literatur mendapati ada beberapa situasi atau kedudukan dimana hak terhadap kuantum meruit diberi dalam undang-undang. Objektif utama kajian ini adalah untuk mengenalpasti apakah situasi dan hak kuantum meruit yang digunapakai di Malaysia dan seterusnya mengesahkan principal yang telah digunapakai oleh undang-undang lazim Inggeris (common law). Melalui pengkalan data oleh Lexis Nexis melalui carian didalam laman web Malaysian Law Journal (MLJ) sebanyak 8 kes yang telah disebut di mahkamah dari tahun 1954 hingga 1998 telah dikenalapasti untuk dianalisa. Analisa mendapati enam (6) kes mendapat hak kuantum meruit apabila hubungan kontrak telah diputuskan oleh majikan dan kontraktor memilih untuk menuntut kerosakan akibat daripada pelanggaran kontrak atau memilih kuantum meruit kerugian untuk kerja yang telah dijalankan. Satu (1) kes dikenalpasti mendapat hak kuantum meruit apabila pihak tertentu melakukan kesilapan meneruskan perjanjian yang disangka akan dikuatkusakan tetapi tiada kontrak akhirnya contohnya seperti surat niat manakala satu (1) lagi kes mendapat hak kuantum meruit didalam kontrak dimana kontrak tersurat akan liabiliti untuk membayar jumlah yang munasabah. Rujukan dibawah undang-undang lazim terdapat beberapa hak kuantum meruit yang lain iaitu; apabila satu pihak meminta satu pihak lain melakukan kerja tetapi kerja itu tidak dikuatkusakan dan apabila sesuatu kontrak itu telah digugurkan atas sebab kekecewaan. Adalah dinasihatkan bahawa pihak yang berkontrak hendaklah bersetuju pada terma penting dalam kontrak sebelum melaksanakan kontrak tersebut bagi mengelakan masa berlanjutan dan kos pertelingkahan yang tinggi apabila ianya dirujuk pada arbitrase dan undang-undang.