

**PAVEY & MATTHEWS PTY LTD v PAUL
(1987) 162 CLR 221
High Court of Australia**

FACTS

Pavey & Matthews Pty Ltd ('Pavey') held a builders' licence under the *Builders Licensing Act 1971* (NSW). Pavey sued Paul for the value of work done and materials supplied under an oral contract. Paul submitted that any such contract was unenforceable by force of the requirements of the *Builders Licensing Act 1971*, section 45. That section requires that a contract of a licence holder to carry out building work, as defined, is not enforceable unless in writing, signed by the parties or their agent and sufficiently describing the building work. It was a term of the oral contract that Pavey would do the work requested by Paul and that Paul would pay a reasonable remuneration calculated by reference to prevailing rates in the building industry. Pavey completed the work as requested by Paul and Paul accepted it. The Supreme Court held that the legislation evinced a policy to exclude recovery outside a written contract.

ISSUE

What is the basis of a claim in *quantum meruit*?

FINDING

Deane J held that the basis of the obligation to make payment for an executed consideration given and received under an unenforceable contract should now be accepted as lying in restitution or unjust enrichment.

The underlying obligation for debt for the work done, goods supplied or services rendered does not arise from a genuine agreement at all. It is an obligation or debt imposed by operation of law which arises from the defendant having taken the benefit of the work done, goods supplied or services rendered and which can be enforced as if it had a contractual origin.

The quasi-contractual obligation to pay fair and just compensation for a benefit which has been accepted will only arise in a case where there is no applicable genuine agreement or where such an agreement is frustrated, avoided or unenforceable. In such a case it is that very fact that provides the occasion for (and part of the circumstances giving rise to) the imposition by the law of the obligation to make restitution.

The High Court concluded that Pavey was entitled to recover the agreed remuneration for building work done notwithstanding that the contract was "not enforceable" for want of writing.

QUOTE

Mason and Wilson JJ held at page 583: "...an action on a *quantum meruit* rests, not on implied contract, but on a claim to restitution or one based on unjust enrichment, arising from the respondent's acceptance of benefits accruing to the respondent from the appellant's performance of the unenforceable oral contract."

Further, Mason and Wilson JJ continued: "...the true foundation of the right to recover on a quantum meruit does not depend on the exercise of an implied contract."

Furthermore, Deane J explained, if there is a valid and enforceable agreement governing the claimant's right to payment, there is "neither occasion nor legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration."

IMPACT

This case stands for the proposition that quantum meruit is based not on an implied contract, but on a claim to restitution or unjust enrichment and arises from the acceptance of benefits accruing to one party as a result of the work done by the other. Further, the obligation to pay fair and just compensation for a benefit which has been accepted will only arise where such an agreement is frustrated, avoided or unenforceable.

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