

1812 QUANTUM MERUIT: MEASURE OF SERVICES RENDERED

If you find that (name), in good faith, rendered services to (name), you will award (name) the reasonable value of such services, being the customary rate of pay for the work in the community at the time the work was performed.

COMMENT

This instruction and comment were originally published in 1960. They were revised in 1983. The comment was reviewed without change in 1990. Editorial changes were made in 1992 to address gender references in the instruction. No substantive changes were made to the instruction.

This measure of damages was approved in Barnes v. Lozoff, 20 Wis.2d 644, 123 N.W.2d 543 (1963), and Mead v. Ringling, 266 Wis. 523, 64 N.W.2d 222 (1954). See also Estate of Voss, 20 Wis.2d 238, 121 N.W.2d 744 (1963); Fieldhouse Landscape v. Gentile, 12 Wis.2d 418, 107 N.W.2d 491 (1961); Guentner v. Gnagi, 258 Wis. 383, 46 N.W.2d 194 (1951).

The value of the services may be recovered even though rendered under an invalid and unenforceable contract. Theuerkauf v. Sutton, 102 Wis.2d 176, 197, 306 N.W.2d 651 (1981); Mead v. Ringling, *supra*.

Wis. Stat. § 893.44 (1979) limits recovery of compensation to two years where there was no express agreement as to compensation and recovery is based upon quantum meruit. Estate of Nale, 61 Wis.2d 654, 213 N.W.2d 552 (1974).

The supreme court has recognized that the principle that "where one renders valuable services for another payment is expected" is "well-grounded in human experience." In Matter of Estate of Steffes, 95 Wis.2d 490, 500, 290 N.W.2d 697 (1980). The court further noted in that decision that "if one merely accepts services from another which are valuable to him, in general, the presumption of fact arises that a compensation equivalent is to pass between the parties." Steffes, *supra* at 500.

Recovery in quantum meruit is allowed for services performed for another on the basis of a contract implied in law to pay the performer for what the services were reasonably worth. However, before recovery can be permitted on quantum meruit, there must be sufficient competent evidence in the record which shows that the services were performed at the instance of the person to be charged and that the performer expected reasonable compensation. In Matter of Estate of Lade, 82 Wis.2d 80, 260 N.W.2d 665 (1978); Gename v. Benson, 36 Wis.2d 370, 376, 153 N.W.2d 571 (1967).