N.C.P.I.—Civil 736.01
QUANTUM MERUIT—QUASI CONTRACT—CONTRACT IMPLIED AT LAW: MEASURE OF RECOVERY.
GENERAL CIVIL VOLUME
REPLACEMENT JUNE 2015

736.01 *QUANTUM MERUIT*—QUASI CONTRACT—CONTRACT IMPLIED AT LAW: MEASURE OF RECOVERY.[1]

This issue reads:

"What amount is (*name plaintiff*) entitled to recover from (*name defendant*)?"

You will answer this issue only if you have answered the first issue in favor of the plaintiff.

If you have answered this first issue "Yes" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach. [2]

To recover more than a nominal amount, however, the burden of proof is on the plaintiff to prove, by the greater weight of the evidence, the reasonable value of the [(*describe services rendered*)] [(*describe goods delivered*)] to the defendant.[3]

In deciding the reasonable value of the plaintiff's [(*describe services rendered*)] [(*describe goods delivered*)], you may not consider the defendant's financial condition. Nor may you speculate as to the value of the [(*describe services*)] [(*describe goods*)] based upon your own experience.[4] You must consider only that evidence presented to you which bears on the reasonable value of the [(*describe services*)] [(*describe goods*)] actually realized and retained by the defendant.[5]

So I instruct you that if the plaintiff has proved, by the greater weight of the evidence, the reasonable value of the [(*describe services rendered*)] [(*describe goods delivered*)], then you will answer this issue by writing the

amount in the blank space provided.

On the other hand, if after considering all the evidence, you are not so persuaded then it would be your duty to write a nominal amount such as "One Dollar" in the blank space provided.

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1. The jury should be instructed that it should consider this issue only if it answers N.C.P.I.-Civil 736.00 in the affirmative.

Quantum meruit is based upon a contract implied at law. *Burns v. Burns*, 4 N.C. App. 426, 167 S.E.2d 82 (1969).

If the issue is one of contract implied in fact, a contract instruction must be given. Perhaps the most litigated situation where the lines between contracts implied at law and contracts implied in fact are blurred is where an action is brought for services rendered to a decedent. To avoid confusion, the jury should be charged separately on contracts implied in fact where the plaintiff attempts to prove their existence. *See* N.C.P.I.-Civil 735.00 *et seq*.

While there is a difference between contracts implied at law and implied in fact for purposes of instructing the jury, the same statute of limitations applies. An action based on an implied contract must be commenced within 3 years of the date on which the action accrues. N.C. Gen. Stat. § 1-52. Absent a special agreement, prevalent custom or other circumstance indicating that compensation will become due at a later date, the implied promise is to pay for the property or services as rendered, and thus, the statute precludes recovery for whatever services and property were rendered beyond the prescribed limitation. *Doub v. Hauser*, 256 N.C. 331, 123 S.E.2d 821 (1961) *Hodge v. Perry*, 255 N.C. 697, 122 S.E.2d 677, 678 (1961). The jury should be instructed to limit its verdict accordingly. *See* N.C.P.I.-Civil 735.40.

It may be contended that the parties implicitly intended compensation to be provided at some later point, such as in the will of the recipient, rather than the time at which the services or property was rendered.

If this contention is made and is supported by evidence, the jury should be instructed that it must determine whether or not such was the case and how its determination will affect the verdict. *See Doub*, 256 N.C. at 337, 123 S.E.2d at 825.

2. Nominal damages consist of some trifling amount and are recoverable where some legal right has been invaded but no actual loss or substantial injury has been sustained. Nominal damages are awarded in recognition of the right and of the technical injury resulting from its violation. *Hairston v. Atlantic Greyhound Corporation*, 220 N.C. 642, 644, 18 S.E.2d 166, 168 (1942) (*quoting Hutton & Bourbonnais v. Cook*, 173 N.C. 496, 92 S.E. 355 (1917)).

3. *McEachern v. Rockwell Int'l. Corp.*, 41 N.C. App. 73, 254 S.E.2d 263 (1979);

Johnson, 260 N.C. at 291, 132 S.E.2d at 582.

If the defendant contends that the plaintiff has received total or partial compensation, the jury should be charged on this question as well and instructed that the amount to be paid should be reduced by an amount equal to the benefit previously conferred on the plaintiff by the defendant.

4. *Johnson* 260 N.C. at 291, 132 S.E.2d at 582; *Cline v. Cline*, 258 N.C. 295, 128 S.E.2d 401 (1962).

5. The cases tend to treat services and goods differently from improvements to realty. Where compensation for services rendered is sought, the measure of recovery is limited by the value of the benefit actually realized and retained by the recipient. *Forbes v. Pillmon*, 22 N.C. App. 69, 205 S.E.2d 600, 601 (1974); *Stout v. Smith*, 4 N.C. App. 81, 165 S.E.2d 789, 791-792 (1969). Where compensation for improvements to land is sought, the measure of recovery is limited to the amount by which the value of the property has been enhanced by reason of the improvements. *Wright v. Wright*, 305 N.C. 345, 289 S.E.2d 347, 350 n. 4 (1982); *Jones, Inc. v. Western Waterproofing*, 66 N.C. App. 641, 312 S.E.2d 215, 217-218 (1984); *Jones v. Sandlin*, 160 N.C. 150, 75 S.E. 1075, 1076 (1912); *Homes, Inc. v. Holt*, 266 N.C. 467, 146 S.E.2d 434, 440 (1966); *McCoy v. Peach*, 40 N.C. App. 6, 251 S.E.2d 881, 883 (1979). "Reasonable value" is a flexible concept. What constitutes competent evidence of reasonable value depends on the facts and circumstances of each case. In many instances, for example, "reasonable value" might be equivalent to "fair market value." However, there are many cases where there is no "market" for the service rendered or good delivered, such as where the service is one not normally performed for pay, or the good is custom crafted and unique. In such circumstances, the proof of "reasonable value" will depend upon evidence other than that of the usual "fair market value."

North Carolina case law has not developed any definitive guidelines for ascertainment of "reasonable value." Two cases do illustrate, however, the flexible approach that has been taken in dealing with "reasonable value." *In Cline v. Cline*, 258 N.C. 295, 128 S.E.2d 295 (1962), a personal services case, the Supreme Court took the "fair market value" approach and stated that "[m]any factors serve to fix the market value of an article offered for sale. Supply, demand and quality (which is synonymous with skill when the thing sold is personal services) are prime factors. The jury, when called upon to fix the value, must base its evidence upon the value of the thing sold." *Id*. at 300. *Turner v. Marsh Furniture Company*, 217 N.C. 695, 9 S.E.2d 379 (1940), was also a personal services case but, by contrast, did not employ a "fair market value" approach: "The general rule is that when there is no agreement as to the amount to be paid for services, the person performing them is entitled to recover what they are reasonably worth, based upon the time and labor expended, skill, knowledge and experience involved, and other attendant circumstance. . . ." *Id*. at 697. Both *Cline and Turner* were recently endorsed by the Court of Appeals in *Harrell v. Construction Company*, 41 N.C. App. 593, 255 S.E.2d 280 (1979).

It should be noted that "price" will be equivalent to "reasonable value" only in the rarest of circumstances. "Price" is a contractual measure, while *quantum meruit* is a restitutionary measure. In proving the reasonable value of goods delivered, for example, N.C. Gen. Stat. § 25-2-305 should never be used.