

Quasi-Contract Claims: Illinois

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A Q&A guide to understanding quasi-contract claims available under Illinois common law.

Promissory Estoppel

1. What are the elements of promissory estoppel in your jurisdiction?

To prevail on a promissory estoppel claim under Illinois law, the plaintiff must plead and prove that:

- The defendant made an unambiguous promise to the plaintiff.
- The plaintiff relied on the promise.
- The plaintiff's reliance was expected and foreseeable by the defendant.
- The plaintiff relied on the promise to its detriment.

(*Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 233 Ill. 2d 46, 51 (2009); *Quake Constr., Inc. v. Am. Airlines, Inc.*, 141 Ill. 2d 281, 310 (1990); *Centro Medico Panamericano, Ltd. v. Benefits Mgmt. Grp., Inc.*, 2016 IL App (1st) 151081, ¶ 25.)

2. How, if at all, is promissory estoppel different from a breach of contract claim?

Under Illinois law, promissory estoppel is different from a breach of contract claim in that consideration, a necessary element for the formation of a contract, is absent. The plaintiff's detrimental reliance on the defendant's promise substitutes for consideration and creates the conditions necessary to recover damages (*Matthews v. Chicago Transit Auth.*, 2016 IL 117638, ¶ 91; *Bank of Marion v. Robert "Chick" Fritz, Inc.*, 57 Ill. 2d 120, 124 (1974)). Also, courts may limit recovery for promissory estoppel to damages the plaintiff suffers as a result of justifiably relying on the defendant's promise, rather than expectation damages available in breach of contract actions (*Newton Tractor Sales, Inc.*, 233 Ill. 2d at 58; see Question 5).

3. What are the most common defenses to a promissory estoppel claim in your jurisdiction?

The most common defenses to a promissory estoppel claim under Illinois law are that:

- The plaintiff's reliance was not reasonable and justifiable (*Quake Constr., Inc.*, 141 Ill. 2d at 309-10; *Centro Medico Panamericano, Ltd.*, 2016 IL App (1st) 151081, ¶ 34).
- An enforceable contract exists that covers the parties' dispute (*Wagner Excello Foods, Inc. v. Fearn Int'l, Inc.*, 235 Ill. App. 3d 224, 237 (1992)).
- The defendant did not make a clear and unambiguous promise to the plaintiff (*Newton Tractor Sales, Inc.*, 233 Ill. 2d at 51; *Centro Medico Panamericano, Ltd.*, 2016 IL App (1st) 151081, ¶ 33).
- The statute of frauds applies (see Question 4).
- The promise induced the plaintiff to do something it was already legally bound to do (*Prentice v. UDC Advisory Servs., Inc.*, 271 Ill. App. 3d 505, 514 (1995)).

4. Please describe, if applicable, how the statute of frauds affects a promissory estoppel claim in your jurisdiction.

Under Illinois law, the statute of frauds, where it applies, generally bars recovery under promissory estoppel (*Dickens v. Quincy Coll. Corp.*, 245 Ill. App. 3d 1055, 1062 (1993)).

5. What is the measure of damages for a promissory claim?

Under Illinois law, courts typically limit the measure of damages for promissory estoppel to those damages

suffered as a result of justifiably relying on the defendant's promise (*Newton Tractor Sales, Inc.*, 233 Ill. 2d at 58).

6. How, if at all, does pleading a breach of contract claim affect a party's ability to bring a promissory estoppel claim?

Under Illinois law, a plaintiff can bring both breach of contract and promissory estoppel claims in the same complaint (735 ILCS 5/2-613(a); 735 ILCS 5/2-613(b) (permitting alternative pleading); see *Wagner Excello Foods, Inc.*, 235 Ill. App. 3d at 235). However, a party cannot recover under both theories. Therefore, counsel must allege the breach of contract and promissory estoppel claims in the alternative (735 ILCS 5/2-613(b); see, for example, *Boswell v. City of Chicago*, 2016 IL App (1st) 150871, ¶ 34). When pleading promissory estoppel in the alternative to a breach of contract claim, counsel should:

- Plead promissory estoppel in its own count, separate from the breach of contract claim (735 ILCS 5/2-613).
- Not include allegations that a contract exists in the promissory estoppel count (*Guinn v. Hoskins Chevrolet*, 361 Ill. App. 3d 575, 604 (2005)).
- Allege that the plaintiff is entitled to recover under promissory estoppel if the court determines that:
 - the existing contract does not govern the dispute; or
 - the contract is invalid or unenforceable.

(*Doyle v. Holy Cross Hosp.*, 186 Ill. 2d 104, 120 (1999).)

7. What is the statute of limitations for promissory estoppel claims in your jurisdiction?

Limitations Period

In Illinois, the statute of limitations for a promissory estoppel claim is five years (735 ILCS 5/13-205 (five-year statute of limitations for oral and implied contracts); see *Molina v. First Line Solutions LLC*, 566 F. Supp. 2d 770, n. 14 (N.D. Ill. 2007) (applying Illinois law) (promissory estoppel claims are subject to a five-year statute of limitations); see generally *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (1995) (a five-year statute of limitations applies to all civil actions not otherwise provided by statute)).

Accrual Date

While there is little guidance under Illinois law, the accrual date for a promissory estoppel claim generally is when

all the elements of the claim exist (see *Draper v. Frontier Ins. Co.*, 265 Ill. App. 3d 739, 744 (1994) (the statute of limitations begins to run when the right to institute and maintain suit arises); *MC Baldwin Fin. Co. v. DiMaggio, Rosario & Veraja, LLC*, 364 Ill. App. 3d 6, 14 (2006) (the statute of limitations begins to run when all of the elements of the claim are present)).

Quantum Meruit

8. What are the elements of a quantum meruit claim in your jurisdiction?

To prevail on a *quantum meruit* claim under Illinois law, the plaintiff must plead and prove:

- The plaintiff performed a service that was of some measurable benefit to the defendant.
- The plaintiff did not perform the service gratuitously.
- The defendant accepted the service.
- No written contract exists to prescribe payment for the service.
- It would be inequitable and unjust for the defendant to retain the benefit it received from the plaintiff without paying for it.
- The reasonable value of the service.

(*Jameson Real Estate, LLC v. Ahmed*, 2018 IL App (1st) 171534, ¶ 61; *Archon Constr. Co. v. U.S. Shelter, L.L.C.*, 2017 IL App (1st) 153409, ¶ 31; *Bernstein & Grazian, P.C. v. Grazian & Volpe, P.C.*, 402 Ill. App. 3d 961, 979 (2010); *Installco Inc. v. Whiting Corp.*, 336 Ill. App. 3d 776, 781 (2002); see also *Karen Stavins Enters., Inc. v. Cmty. Coll. Dist. No. 508*, 2015 IL App (1st) 150356, ¶ 7.)

9. How, if at all, is quantum meruit different from a breach of contract claim?

The primary differences between a *quantum meruit* claim and a breach of contract claim under Illinois law are that:

- *Quantum meruit* generally arises only where the plaintiff provided services to the defendant (*Restore Constr. Co. v. Bd. of Educ. of Proviso Twp. High Sch. Dist. 209*, 2020 IL 125133, ¶ 28).
- The damages available in *quantum meruit* are different than the damages available for breach of contract. In *quantum meruit*, a plaintiff cannot obtain the damages that generally are available when a party breaches a contract, such as expectation or consequential

damages. The measure of damages is the reasonable value of the services provided (*Jameson Real Estate, LLC*, 2018 IL App (1st) 171534, ¶ 61; *Rohter v. Passarella*, 246 Ill. App. 3d 860, 866-67 (1993)).

10. What are the most common defenses to a *quantum meruit* claim in your jurisdiction?

The most common defenses to a *quantum meruit* claim under Illinois law are:

- The plaintiff provided the services gratuitously (see, for example, *In re Estate of Walsh*, 2012 IL App (2d) 110938, ¶¶ 60-63).
- The parties had no expectation that the defendant would pay for the services rendered (*Paradise v. Augustana Hosp. & Health Care Ctr.*, 222 Ill. App. 3d 672, 677 (1991)).
- An express contract covers the subject matter of the dispute (*Archon Constr. Co.*, 2017 IL App (1st) 153409, ¶ 33).

11. Please describe, if applicable, how the statute of frauds affects a *quantum meruit* claim in your jurisdiction.

Under Illinois law, the statute of frauds does not bar recovery under *quantum meruit*. A plaintiff may recover in *quantum meruit* the value of the services the plaintiff conferred on the defendant even if the statute of frauds applies and there is no writing. (*Fischer v. First Chicago Capital Mkts., Inc.*, 195 F.3d 279, 283-85 (7th Cir. 1999) (applying Illinois law) (where the statute of frauds renders a contract unenforceable, the plaintiff can seek recovery under *quantum meruit*); *Roti v. Roti*, 364 Ill. App. 3d 191, 201 (2006) (same); see also *In re Rowell*, 606 B.R. 329, 344 (Bankr. N.D. Ill. 2019) (applying Illinois law) (where a contract is unenforceable based on the statute of frauds, Illinois courts have recognized the existence of a claim in quasi-contract); *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 491 (1997) (the part-performance exception to the statute of frauds resembles a claim in restitution).)

12. What is the measure of damages for a *quantum meruit* claim?

The measure of damages in a *quantum meruit* claim under Illinois law is the reasonable value of the services provided (*Jameson Real Estate, LLC*, 2018 IL App (1st) 171534, ¶ 61).

13. How, if at all, does pleading a breach of contract claim affect a party's ability to bring a *quantum meruit* claim?

Under Illinois law, a plaintiff can bring both breach of contract and *quantum meruit* claims in the same complaint (735 ILCS 5/2-613(a); 735 ILCS 5/2-613(b) (permitting alternative pleading); *Weydert Homes, Inc. v. Kammes*, 395 Ill. App. 3d 512, 522 (2009)). However, a party cannot recover under both theories. Therefore, counsel must allege the breach of contract and *quantum meruit* claims in the alternative (see *Stephen L. Winternitz, Inc. v. Nat'l Bank of Monmouth*, 289 Ill. App. 3d 753, 759 (1997)).

When pleading *quantum meruit* in the alternative to a breach of contract claim, counsel should:

- Plead *quantum meruit* in its own count, separate from the breach of contract claim (735 ILCS 5/2-613).
- Not include allegations that a contract exists in the *quantum meruit* count (*Archon Constr. Co.*, 2017 IL App (1st) 153409, ¶ 45).
- Allege that the plaintiff is entitled to recover under *quantum meruit* if the court determines that:
 - the existing contract does not govern the dispute; or
 - the contract is invalid or unenforceable.

(See *Stark Excavating, Inc. v. Carter Constr. Servs., Inc.*, 2012 IL App (4th) 110357, ¶¶ 38-39.)

14. What is the statute of limitations for a *quantum meruit* claim?

Limitations Period

The statute of limitations for a *quantum meruit* claim under Illinois law is five years (735 ILCS 5/13-205; *Rohter*, 246 Ill. App. 3d at 868).

Accrual Date

Under Illinois law, a *quantum meruit* claim accrues on the date the plaintiff completes the services (*Rubin & Norris, LLC v. Panzarella*, 2016 IL App (1st) 141315, ¶ 45).

Unjust Enrichment

15. What are the elements of an unjust enrichment claim in your jurisdiction?

To prevail on an unjust enrichment claim under Illinois law, the plaintiff must plead and prove that:

- The defendant unjustly retained a benefit to the plaintiff's detriment.
- The defendant's retention of the benefit violates fundamental principles of justice, equity, and good conscience.
- Either:
 - no enforceable contract governs the dispute; or
 - if there is an enforceable contract, tortious behavior gave rise to the claim (see *Peddinghaus v. Peddinghaus*, 295 Ill. App. 3d 943, 949 (1998)).

(*HPI Health Care Servs., Inc. v. Mt. Vernon Hosp., Inc.*, 131 Ill. 2d 145, 160 (1989); *Gagnon v. Schickel*, 2012 IL App (1st) 120645, ¶ 25; *Guinn*, 361 Ill. App. 3d at 604.)

In an unjust enrichment claim, the plaintiff typically seeks to recover a benefit that the plaintiff directly conferred on the defendant. However, the plaintiff also may seek to recover a benefit that a third party transferred to the defendant, which belongs to the plaintiff. (*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 161-62.) If the defendant received the benefit from a third party, the plaintiff usually must allege one of the following:

- The third party should have given the benefit to the plaintiff but mistakenly gave it to the defendant (see, for example, *Nat'l Union Fire Ins. Co. of Pittsburgh v. DiMucci*, 2015 IL App (1st) 122725, ¶¶ 67-72).
- The defendant obtained the benefit from a third party through wrongful conduct (see, for example, *City of Elgin v. Arch Ins. Co.*, 2015 IL App (2d) 150013, ¶ 31).
- The plaintiff had a better claim to the benefit than the defendant (see, for example, *Arch Ins. Co.*, 2015 IL App (2d) 150013, ¶ 31).

(*HPI Health Care Servs., Inc.*, 131 Ill. 2d at 161-62.)

16. Please describe how, if at all, unjust enrichment is different from:

- A breach of contract claim.
- A *quantum meruit* claim.

Breach of Contract Claims

Under Illinois law, unjust enrichment is different from a breach of contract claim in that an actionable wrong is not necessary for a plaintiff to recover under unjust enrichment. Unjust enrichment arises when the defendant obtains a

benefit from the plaintiff to which it is not entitled, and for which, in equity and good conscience, the plaintiff should be compensated. Unjust enrichment is available even if the defendant did not breach a contract or commit a recognized tort or other wrong. (See *Eighteen Invs., Inc. v. NationsCredit Fin. Servs. Corp.*, 376 Ill. App. 3d 527, 535-36 (2007) (unjust enrichment does not require illegal conduct or fault); *DiMucci*, 2015 IL App (1st) 122725, ¶ 67 (same); see, for example, *Salvati v. Streator Twp. High Sch. Dist. No. 40*, 51 Ill. App. 2d 1, 4-5 (1964) (unjust enrichment applied to recover a mistaken payment).)

The measure of damages for unjust enrichment and breach of contract are also different (see Question 19).

Quantum Meruit Claims

Under Illinois law, the same facts can support both unjust enrichment and *quantum meruit* claims. However, the two claims have different elements and can result in different damages. The most significant differences between the two are that:

- Unjust enrichment can extend to anything of value that the defendant receives from the plaintiff (see *HPI Health Care Servs., Inc.*, 131 Ill. 2d at 160). *Quantum meruit* typically applies only where the plaintiff provides services to the defendant (*Restore Constr. Co.*, 2020 IL 125133, ¶ 28).
- In unjust enrichment, the measure of damages typically is the value of the benefit received and retained by the defendant. The measure of damages in a *quantum meruit* claim, however, is the reasonable value of the services provided. (*Jameson Real Estate, LLC*, 2018 IL App (1st) 171534, ¶ 61; *Stark Excavating, Inc.*, 2012 IL App (4th) 110357, ¶ 37.)

17. What are the most common defenses to an unjust enrichment claim in your jurisdiction?

The most common defenses to an unjust enrichment claim under Illinois law are that:

- The plaintiff conferred the benefit gratuitously (*Midwest Emergency Assocs.-Elgin Ltd. v. Harmony Health Plan of Ill., Inc.*, 382 Ill. App. 3d 973, 982 (2008)).
- The defendant's retention of the benefit was not unjust (*A.P. Props., Inc. v. Rattner*, 2011 IL App (2d) 110061, ¶ 12).
- The plaintiff suffered no detriment (*Cleary v. Philip Morris Inc.*, 656 F.3d 511, 518-19 (7th Cir. 2011) (applying Illinois law)).

- The defendant did not accept or retain a benefit (*HPI Health Care Servs.*, 131 Ill. 2d at 160).
- An enforceable contract governs the dispute at issue (*Bd. of Managers of Hidden Lake Townhome Owners Ass'n v. Green Trails Imp. Ass'n*, 404 Ill. App. 3d 184, 193 (2010); but see *Peddingtonhaus*, 295 Ill. App. 3d at 949 (the existence of a contract between the parties did not defeat the plaintiff's unjust enrichment claim based in tort)).

18. Please describe, if applicable, how the statute of frauds affects an unjust enrichment claim in your jurisdiction.

Under Illinois law, the statute of frauds generally does not bar an unjust enrichment claim. In some circumstances, even if a contract is unenforceable because it violates the statute of frauds, the performing party may be entitled to a remedy in quasi-contract, such as unjust enrichment, to recover the value of their performance. (See *Rowell*, 606 B.R. at 344-46 (applying Illinois law) (allowing a claim based on unjust enrichment where the parties' agreement was unenforceable under the statute of frauds); see generally *McInerney*, 176 Ill. 2d at 491 (the part-performance exception to the statute of frauds resembles a claim in restitution); but see *Prodromos v. Poulos*, 202 Ill. App. 3d 1024, 1032 (1990) (affirming the dismissal of the plaintiff's unjust enrichment claim where the underlying contract violated the statute of frauds and the plaintiff had not fully performed).)

19. What is the measure of damages for an unjust enrichment claim?

The measure of damages for an unjust enrichment claim under Illinois law is the value of the benefit received and retained by the defendant (rather than plaintiff's losses or expenses) (*Stark Excavating, Inc.*, 2012 IL App (4th) 110357, ¶ 37; *Bd. of Managers of Hidden Lake Townhome Owners Ass'n*, 404 Ill. App. 3d at 193).

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20. How, if at all, does pleading a breach of contract claim affect a party's ability to bring an unjust enrichment claim?

Under Illinois law, a plaintiff can bring both breach of contract and unjust enrichment claims in the same complaint (735 ILCS 5/2-613(a); 735 ILCS 5/2-613(b) (permitting alternative pleading); *Gagnon*, 2012 IL App (1st) 120645, ¶ 25). However, a party cannot recover under both theories. Therefore, counsel must allege the breach of contract and unjust enrichment claims in the alternative (*Gagnon*, 2012 IL App (1st) 120645, ¶ 25). When pleading unjust enrichment in the alternative to a breach of contract claim counsel should:

- Plead unjust enrichment in its own count, separate from the breach of contract claim (735 ILCS 5/2-613).
- Not include allegations that a contract exists in the unjust enrichment count (*Guinn*, 361 Ill. App. 3d at 604).
- Allege that the plaintiff is entitled to recover under unjust enrichment if the court determines that:
 - the existing contract does not cover the dispute; or
 - the contract is invalid or unenforceable.

(*Stark Excavating, Inc.*, 2012 IL App (4th) 110357, ¶¶ 37-39; *Karimi v. 401 N. Wabash Venture, LLC*, 2011 IL App (1st) 102670, ¶ 14.)

21. What is the statute of limitations for an unjust enrichment claim?

Limitations Period

The statute of limitations for an unjust enrichment claim under Illinois law is five years (735 ILCS 5/13-205; *CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 40).

Accrual Date

While there is little guidance under Illinois law on when an unjust enrichment claim accrues, courts generally find that an unjust enrichment claim accrues when the benefit is provided (see *In re: IKO Roofing Shingle Prods. Liab. Litig.*, 2013 WL 12111182, at *5 (C.D. Ill. Apr. 12, 2013) (applying Illinois law)).