

CV2221 Implied contract or unjust enrichment.

[Name of contractor] claims additional [time/compensation] for extra work even though the contract does not provide for it. To succeed on this claim, [name of contractor] must prove that:

- (1) [name of owner] requested [name of contractor] to perform extra work; and
- (2) [name of contractor] expected additional [time/compensation] for the extra work;
- (3) [name of owner] knew or should have known that [name of contractor] expected additional [time/compensation];
- (4) [name of contractor] performed the extra work that benefited [name of owner]; and
- (5) it would be unjust for [name of owner] to benefit from the extra work without providing [name of contractor] additional [time/compensation].

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References

E&M Sales West, Inc.; v. *Diversified Metal Prods., Inc.*, *Bechtel Jacobs Company, LLC*, 2009 UT App 299, 221 P.3d 838.

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Uhrhahn Const. & Design, Inc. v. Hopkins, 2008 UT App 41, 179 P.3d 808 (Utah App. 2008).

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Gary Porter Const. v. Fox Const., Inc., 2004 UT App 354, 101 P.3d 371 (Utah App. 2004).

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ProMax Development Corp. v. Mattson, 943 P.2d 247 (Utah Ct. App. 1997).

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Davies v. Olson, 746 P.2d 264 (Utah Ct. App. 1987).

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Committee Notes

This instruction is designed for construction-contract claims for additional time/compensation based on extra work not expressly provided for in the contract. Case law in this area sometimes uses overlapping terminology for concepts that may arise under contract implied in fact and unjust enrichment/contract implied in law. See, e.g., *Davies v. Olson*, 746 P.2d 264, 268-69 (Utah Ct. App. 1987) (noting that “courts have used the terms *quantum meruit*, contract implied in fact, contract implied in law, quasi-contract, unjust enrichment, and/or restitution without analytical precision,” and explaining that “[q]uantum meruit has two distinct branches,” namely, (1) “contract implied in law, also known as quasi-contract or unjust enrichment” and (2) “contract implied in fact”). The court should modify this instruction as needed to fit the theory or theories supported by the pleadings and evidence. For general instructions on these doctrines, see CV2142-2145. The language of these general instructions may be of use in modifying this instruction as needed.

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