

Quasi-Contract Claims: Texas

EVAN A. MOELLER AND TIMOTHY J. ANZENBERGER, ADAMS AND REESE LLP,
WITH PRACTICAL LAW COMMERCIAL LITIGATION

Search the [Resource ID numbers in blue](#) on Westlaw for more.

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

PROMISSORY ESTOPPEL

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

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

- The defendant made a promise to the plaintiff that is not covered by a valid contract.
- The plaintiff's reliance was foreseeable to the defendant.
- The plaintiff reasonably and substantially relied on defendant's promise to its detriment.

(*English v. Fischer*, 660 S.W.2d 521, 524 (Tex. 1983); *Trevino & Assocs. Mech., L.P. v. Frost Nat. Bank*, 400 S.W.3d 139, 146 (Tex. App.—Dallas 2013, no pet.); *Frost Crushed Stone Co., Inc. v. Odell Geer Const. Co., Inc.*, 110 S.W.3d 41, 44 (Tex. App.—Waco 2002, no pet.).)

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

In Texas, promissory estoppel differs from a breach of contract claim in that consideration, generally a necessary element for the formation of a contract, may be absent (*Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 659 (Tex. 2006) (a promise must be enforceable by consideration to be enforceable)). Under promissory estoppel, the plaintiff's reliance on the defendant's promise creates the conditions necessary to recover damages (*Krupka v. U.S. Videotel & Encode Intern.*, 1993 WL 46571, at *3 (Tex. App.—Houston [14th Dist.] Feb. 25, 1993, no writ); *Okemah Const., Inc. v. Barkley-Farmer, Inc.*, 583 S.W.2d 458, 460-61 (Tex. Civ. App.—Houston [1st Dist.] 1979, no writ)). Also, recovery for promissory estoppel is limited to reliance damages, where recovery for breach of contract includes expectation damages (*Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 734

(Tex. 1981) (citing *Wheeler v. White*, 398 S.W.2d 93 (Tex. 1965)); *Parkway Dental Assocs., P.A. v. Ho & Huang Props., L.P.*, 391 S.W.3d 596, 607-08 (Tex. App.—Houston [14th Dist.] 2012, no pet.)).

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

Defenses commonly pleaded in response to a promissory estoppel claim under Texas law include:

- The plaintiff is asserting an affirmative claim for promissory estoppel in a district or county court that only recognizes it as a defensive response or as a claim only in limited cases (see *Robbins v. Payne*, 55 S.W.3d 740, 747 (Tex. App.—Amarillo 2001, pet. denied); *Stanley v. CitiFinancial Mortg. Co.*, 121 S.W.3d 811, 820 (Tex. App.—Beaumont 2003, pet. denied); *Lotito v. Knife River Corp.-S.*, 391 S.W.3d 226, 227 (Tex. App.—Waco 2012, no pet.)).
- It was unreasonable for the plaintiff to have relied on the defendant's alleged promise (*Frost Crushed Stone Co.*, 110 S.W.3d at 44-45).
- An enforceable contract exists that covers the parties' dispute and there was no separate promise independent of that contract (*BP Am. Prod. Co. v. Zaffirini*, 419 S.W.3d 485, 507 (Tex. App.—San Antonio 2013, pet. denied); *Doctors Hosp. 1997*, 154 S.W.3d at 636).
- The defendant did not make a clear and unambiguous promise to the plaintiff (*Esty v. Beal Bank S.S.B.*, 298 S.W.3d 280, 305 (Tex. App.—Dallas 2009, no pet.)).
- The statute of frauds applies and there was not an existing written agreement (see Question 4).

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

Under Texas law, the statute of frauds does not bar a properly pleaded affirmative claim for promissory estoppel (*Blackstone Med., Inc. v. Phoenix Surgicals, L.L.C.*, 470 S.W.3d 636, 656 (Tex. App.—Dallas 2015, no pet.); *Medistar Corp. v. Schmidt*, 267 S.W.3d 150, 163 (Tex. App.—San Antonio 2008, pet. denied); *Frost Crushed Stone*, 110 S.W.3d at 46-47).

Promissory estoppel asserted as a counter-defense defeats a statute of frauds defense if a party:

- Proves the elements of promissory estoppel.
- Shows that there is an existing written contract that the defendant promised to sign.

(*Blackstone Med.*, 470 S.W.3d at 654-55; *Carpenter v. Phelps*, 391 S.W.3d 143, 149-50 (Tex. App.—Houston [1st Dist.] 2011, no pet.))

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

The measure of damages for promissory estoppel under Texas law is the amount necessary to restore the plaintiff to its former position, also known as reliance damages (*Fretz Constr. Co. v. S. Nat'l Bank*, 626 S.W.2d 478, 483 (Tex.1981); *Range v. Calvary Christian Fellowship*, 530 S.W.3d 818, 831 (Tex. App.—Houston [14th Dist.] 2017, pet. denied); see also *Sun Oil Co. (Delaware) v. Madeley*, 626 S.W.2d 726, 734 (Tex. 1981) (a plaintiff is not entitled to expectation damages or lost profits for a promissory estoppel claim)). A prevailing plaintiff also may recover:

- Attorneys' fees (Tex. Civ. Prac. & Rem. Code Ann. § 38.001; *Corpus Christi Day Cruise, LLC v. Christus Spohn Health Sys. Corp.*, 398 S.W.3d 303, 314-15 (Tex. App.—Corpus Christi 2012, pet. denied); *Traco, Inc. v. Arrow Glass Co., Inc.*, 814 S.W.2d 186, 194-95 (Tex. App.—San Antonio 1991, writ denied)).
- Prejudgment interest on the money damages award, computed as simple interest from the earlier of:
 - 180 days after the date the defendant receives written notice of the claim; or
 - the date suit is filed.
 (Tex. Fin. Code Ann. § 304.104; *Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc.*, 962 S.W.2d 507, 528 (Tex. 1998); *Traco*, 814 S.W.2d at 194-95.)
- Post-judgment interest (Tex. Fin. Code Ann. §§ 304.003 and 304.005).
- Costs (Tex. R. Civ. P. 131 (prevailing party to be awarded court costs)).

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

Under Texas law, a plaintiff may bring both breach of contract and promissory estoppel claims in the same petition (Tex. R. Civ. P. 47, 48, and 51(a); *Trevino & Assocs. Mech., L.P.*, 400 S.W.3d at 146). However, a party cannot recover under both theories. A valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under promissory estoppel. (*Doctors Hosp.* 1997, 154 S.W.3d at 636.) When drafting the petition, counsel must allege one of the claims in the alternative (Tex. R. Civ. P. 48; see also *Lyons v. Lindsey Morden Claims Mgmt., Inc.*, 985 S.W.2d 86, 92 (Tex. App.—El Paso 1998, no pet.)).

When pleading promissory estoppel in the alternative to a breach of contract claim counsel should:

- Plead promissory estoppel as a separate cause of action, separate and apart from the breach of contract claim.

- Not incorporate by reference, in the promissory estoppel cause of action, any allegation elsewhere in the petition that alleges a valid and enforceable contract.
- Affirmatively allege that the plaintiff is entitled to recover under promissory estoppel if the court later determines that:
 - the existing contract does not govern the dispute; or
 - the contract is for some reason invalid or unenforceable.

(See for example, *Adams v. H & H Meat Prods., Inc.*, 41 S.W.3d 762, 777 (Tex. App.—Corpus Christi 2001, no pet.))

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

LIMITATIONS PERIOD

In Texas, the statute of limitations for a promissory estoppel claim is four years (Tex. Civ. Prac. & Rem. Code Ann. § 16.051; *Prestige Ford Garland Ltd. P'ship v. Morales*, 336 S.W.3d 833, 836-37 (Tex. App.—Dallas 2011, no pet.)).

ACCRUAL DATE

A promissory estoppel claim typically accrues when the promisor (the person making the promise) breaches its promise to the promisee (the person to whom the promise is made) (*Prestige Ford Garland*, 336 S.W.3d at 836-37). The date on which the promise is breached generally is a question of law (*Provident Life & Acc. Ins. Co. v. Knott*, 128 S.W.3d 211, 221 (Tex. 2003)).

QUANTUM MERUIT

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

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

- The plaintiff provided valuable services or materials, or both, to the defendant.
- The plaintiff provided valuable services or materials for the defendant.
- The defendant accepted the services or materials and used and enjoyed them.
- The defendant had reasonable notice that the plaintiff providing services or materials expected to be paid by the defendant.

(*Hill v. Shamoun & Norman, LLP*, 544 S.W.3d 724, 732-33 (Tex. 2018); *Bashara v. Baptist Mem'l Hosp. Sys.*, 685 S.W.2d 307, 310 (Tex. 1985); *LTS Grp., Inc. v. Woodcrest Capital, L.L.C.*, 222 S.W.3d 918, 921 (Tex. App.—Dallas 2007, no pet.); *Pepi Corp. v. Galliford*, 254 S.W.3d 457, 460 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).)

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 Texas law are that:

- Breach of contract is the appropriate remedy if a party substantially performs under a contract, while *quantum meruit*

may be the appropriate remedy for a party that only partially performs under a contract (*Vance v. My Apartment Steak House of San Antonio, Inc.*, 677 S.W.2d 480, 482 (Tex. 1984); *Pepi Corp.*, 254 S.W.3d at 462-63). Whether performance was substantial or partial generally is a question of fact (see, for example, *Walker & Assocs. Surveying, Inc. v. Roberts*, 306 S.W.3d 839, 856-57 (Tex. App.—Texarkana 2010, no pet.); *Smith v. Smith*, 112 S.W.3d 275, 279 (Tex. App.—Corpus Christi 2003, pet. denied)).

- 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 or materials provided (*Hill*, 544 S.W.3d at 733). A plaintiff is not entitled to anything greater than the reasonable value of the services rendered even where the plaintiff's effort resulted in a windfall to the defendant (*PIC Realty Corp. v. Southfield Farms, Inc.*, 832 S.W.2d 610, 616 (Tex. App.—Corpus Christi 1992, no writ)).

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

Defenses commonly pleaded in response to a *quantum meruit* claim under Texas law include:

- The services were not undertaken or the materials were not provided for the defendant, such as where the defendant was only an incidental beneficiary (*Bashara*, 685 S.W.2d at 310; *LTS Grp.*, 222 S.W.3d at 921).
- There was no expectation between the parties that compensation was to be paid (*Peko Oil USA v. Evans*, 800 S.W.2d 572, 578 (Tex. App.—Dallas 1990, writ denied)).
- The dispute in issue is covered by an enforceable contract (*Hill*, 544 S.W.3d at 733). Under limited circumstances, however, a party may recover under *quantum meruit* even if an enforceable contract exists. This includes where, for example:
 - a nonbreaching plaintiff partially performs under a contract but is prevented from completing because of the defendant's breach;
 - a nonbreaching plaintiff partially performs under a unilateral contract; or
 - a breaching plaintiff partially performs under a construction contract.

(*Truly v. Austin*, 744 S.W.2d 934, 936-37 (Tex. 1988); *Pepi Corp.*, 254 S.W.3d at 462-63; *Gulf Liquids New River Project, LLC v. Gulsby Eng'g, Inc.*, 356 S.W.3d 54, 69-70 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

- The doctrine of unclean hands (*Truly*, 744 S.W.2d at 938).

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

Under Texas law, the statute of frauds does not bar a *quantum meruit* claim (*Hill*, 544 S.W.3d at 735-36).

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

The measure of damages for a *quantum meruit* claim under Texas law is the reasonable value of the services or materials provided (*Hill*, 544 S.W.3d at 733; *Walker & Assocs.*, 306 S.W.3d at 859 (to determine reasonable compensation, courts take into account all the evidence and circumstances)). A prevailing plaintiff also may recover:

- Attorneys' fees (Tex. Civ. Prac. & Rem. Code Ann. § 38.001(8); *Cordova v. Sw. Bell Yellow Pages, Inc.*, 148 S.W.3d 441, 446 (Tex. App.—El Paso 2004, no pet.)).
- Prejudgment interest, computed as simple interest on the money damages awarded from the earlier of:
 - 180 days after the date the defendant receives written notice of the claim; or
 - the date suit is filed.
 (Tex. Fin. Code Ann. § 304.104; *Johnson & Higgins of Texas*, 962 S.W.2d at 528; *Williams v. Roberts*, 621 S.W.2d 427, 429-30 (Tex. Civ. App.—San Antonio 1981, no writ).)
- Post-judgment interest (Tex. Fin. Code Ann. §§ 304.003 and 304.005).
- Costs (Tex. R. Civ. P. 131 (prevailing party to be awarded court costs)).

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

Under Texas law, a plaintiff can plead both breach of contract and *quantum meruit* claims in the same petition (Tex. R. Civ. P. 47, 48, and 51(a)). However, a party cannot recover under both theories. A valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under *quantum meruit* (*Hill*, 544 S.W.3d at 733; *H2O Sols., Ltd. v. PM Realty Grp., LP*, 438 S.W.3d 606, 624 (Tex. App.—Houston [1st Dist.] 2014, pet. denied)). When drafting the petition, therefore, counsel must allege one of the claims in the alternative (Tex. R. Civ. P. 47 and 48; *Celmer v. McGarry*, 412 S.W.3d 691, 708 (Tex. App.—Dallas 2013, pet. denied)).

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

- Plead *quantum meruit* as a separate cause of action, separate and apart from the breach of contract claim.
- Not incorporate by reference, in the *quantum meruit* cause of action, any allegation elsewhere in the petition that alleges a valid and enforceable contract, unless the plaintiff is alleging it partially performed under an express contract.
- Affirmatively allege that the plaintiff is entitled to recover under *quantum meruit* if the court later determines that:
 - the existing contract does not govern the dispute; or
 - the contract is for some reason invalid or unenforceable.

(Tex. R. Civ. P. 47 and 48; *Celmer*, 412 S.W.3d at 708.)

A plaintiff also may plead *quantum meruit* in certain limited instances:

- Where a valid contract exists between the parties but additional services or materials are provided that are not covered by the contract, *quantum meruit* is available for those additional services or materials (*Brown*, 35 S.W.3d at 101).

- Where a party partially performs a contract but was prevented from completing performance due to the other party's breach.
- Where a party partially performs a unilateral contract.
- In construction cases, a breaching plaintiff can recover the reasonable value of services less any damages suffered by the defendant if the defendant accepts and retains the benefits arising as a direct result of the plaintiff's partial performance.

(*Walker & Assocs.*, 306 S.W.3d at 859; *Pepi Corp.*, 254 S.W.3d at 462-63.)

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

LIMITATIONS PERIOD

The statute of limitations for a *quantum meruit* claim under Texas law is four years (Tex. Civ. Prac. & Rem. Code Ann. § 16.004; *Quigley v. Bennett*, 256 S.W.3d 356, 361 (Tex. App.—San Antonio 2008, no pet.)).

ACCRUAL DATE

Under Texas law, a *quantum meruit* claim generally accrues on the last date the plaintiff provided compensable services or materials to the defendant (*Quigley*, 256 S.W.3d at 361; *Thomason v. Freberg*, 588 S.W.2d 821, 827 (Tex. Civ. App.—Corpus Christi 1979, no writ)).

UNJUST ENRICHMENT

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

To prevail on an unjust enrichment claim in Texas, the plaintiff must plead and prove that:

- There is no enforceable contract covering the subject matter of the dispute (*Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000); *Eun Bok Lee v. Ho Chang Lee*, 411 S.W.3d 95, 111 (Tex. App.—Houston [1st Dist.] 2013, no pet.)).
- The plaintiff provided a benefit to the defendant (*Villarreal v. Grant Geophysical, Inc.*, 136 S.W.3d 265, 270 (Tex. App.—San Antonio 2004, pet. denied); *Freeman v. Harleton Oil & Gas, Inc.*, 528 S.W.3d 708, 736-37 (Tex. App.—Texarkana 2017, pet. denied)).
- The defendant's benefit was obtained by:
 - fraud;
 - duress; or
 - the taking of an undue advantage.

(*Heldenfels Bros., Inc. v. City of Corpus Christi*, 832 S.W.2d 39 (Tex. 1992).)

- The defendant's retention of the benefit is unjust or, if passively received, unconscionable (*R.M. Dudley Const. Co., Inc. v. Dawson*, 258 S.W.3d 694, 703 (Tex. App.—Waco 2008, pet. denied); *Villarreal*, 136 S.W.3d at 270; *Barrett v. Ferrell*, 550 S.W.2d 138, 143 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.)). A benefit passively received may include overpayment under a contract (*Foley v. Daniel*, 346 S.W.3d 687, 690-91 (Tex. App.—El Paso 2009, no pet.)).

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 Texas 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 obtained 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 whether the defendant wrongfully obtained a benefit (such as by fraud) or passively obtained a benefit (such as an overpayment). (*Fortune Prod. Co.*, 52 S.W.3d at 684; *Sw. Elec. Power Co. v. Burlington N. R.R. Co.*, 966 S.W.2d 467, 469 (Tex. 1998); *Mary E. Bivins Found. v. Highland Capital Mgmt. L.P.*, 451 S.W.3d 104, 111-12 (Tex. App.—Dallas 2014, no pet.); *Villarreal*, 136 S.W.3d at 270.) The measure of damages for unjust enrichment also is different than the measure of damages for a breach of contract claim (see Question 19).

QUANTUM MERUIT CLAIMS

Under Texas 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:

- In unjust enrichment, the measure of damages typically is the value of the benefit conferred (restitution damages) (*Eun Bok Lee*, 411 S.W.3d at 111). In *quantum meruit*, the measure of damages typically is the reasonable value of the services or materials provided, taking into consideration fair market value and other factors (*Hill*, 544 S.W.3d at 732).
- *Quantum meruit* is widely recognized as a cause of action by Texas state courts. Although the Texas Supreme Court has indirectly recognized unjust enrichment as a separate claim (see, for example, *Fortune Prod. Co.*, 52 S.W.3d at 683-84), some Texas courts of appeal have specifically stated that unjust enrichment is not an independent cause of action (see, for example, *Spellmann v. Love*, 534 S.W.3d 685, 693 (Tex. App.—Corpus Christi 2017, pet. denied); *Argyle Indep. Sch. Dist. v. Wolf*, 234 S.W.3d 229, 246-47 (Tex. App.—Fort Worth 2007, no pet.)).

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

Defenses commonly pleaded in response to an unjust enrichment claim under Texas law include:

- The plaintiff did not confer a tangible benefit on the defendant (*Freeman v. Harleton Oil & Gas, Inc.*, 528 S.W.3d 708, 736-37 (Tex. App.—Texarkana 2017, pet. denied); *Texas Integrated Conveyor Sys., Inc. v. Innovative Conveyor Concepts, Inc.*, 300 S.W.3d 348, 367 (Tex. App.—Dallas 2009, pet. denied)).
- The benefit provided was not at plaintiff's expense (*Intermarque Auto. Prods., Inc. v. Feldman*, 21 S.W.3d 544, 551-52 (Tex. App.—Texarkana 2000, no pet.)).
- The plaintiff, with full knowledge, voluntarily paid on a claim of right even if later not liable for the claim (*BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 768-69 (Tex. 2005); *Berryman's S. Fork, Inc. v. J. Baxter Brinkmann Int'l Corp.*, 418 S.W.3d 172, 189 (Tex. App.—Dallas 2013, pet. denied)).
- The dispute in issue is covered by an enforceable contract (*Fortune Prod. Co.*, 52 S.W.3d at 684).

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

While no Texas case has specifically addressed whether the statute of frauds applies to a claim for unjust enrichment, under Texas law, whether the statute of frauds bars recovery generally depends on the type of damages the plaintiff is seeking for the noncontract claim (*Hill*, 544 S.W.3d at 734). As unjust enrichment seeks only restitution damages and does not rely on the existence of an express contract, the statute of frauds is not an automatic bar to a bona fide unjust enrichment claim (*Ludlow v. DeBerry*, 959 S.W.2d 265, 273–74 (Tex. App.—Houston [14th Dist.] 1997, no writ); *Hulen v. Hamilton*, 2008 WL 553812, at *6 (Tex. App.—Fort Worth Feb. 28, 2008, no pet.) (mem. op.); *Treener v. Reynolds*, 2000 WL 35729220, at *5 (Tex. App.—Corpus Christi Aug. 24, 2000, no pet.) (not designated for publication) (equating *quantum meruit* and unjust enrichment)).

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

The measure of damages for an unjust enrichment claim under Texas law is the reasonable value of the benefit conferred. This typically is restitution, or the return of the benefit to the plaintiff, which most often is its equivalent in money. (*Bank of Am., N.A. v. Prize Energy Res., L.P.*, 510 S.W.3d 497, 514-15 (Tex. App.—San Antonio 2014, pet. denied); see also *City of Harker Heights, Tex. v. Sun Meadows*, 830 S.W.2d 313, 317 (Tex. App.—Austin 1992, no writ).) The plaintiff also may recover:

- Attorneys' fees (Tex. Civ. Prac. & Rem. Code Ann. § 38.001; *French v. Moore*, 169 S.W.3d 1, 17-18 (Tex. App.—Houston [1st Dist.] 2004, no pet.); *Amoco Prod. Co. v. Smith*, 946 S.W.2d 162, 165-66 (Tex. App.—El Paso 1997, no writ); but see *Mobil Producing Texas & New Mexico, Inc. v. Cantor*, 93 S.W.3d 916, 920 (Tex. App.—Corpus Christi 2002, no pet.).)
- Prejudgment interest on any money damages awarded, computed as simple interest from the earlier of:
 - 180 days after the date the defendant receives written notice of the claim; or
 - the date suit is filed.
 (*Johnson & Higgins of Texas*, 962 S.W.2d at 528; *Fortitude Energy, LLC v. Sooner Pipe LLC*, 564 S.W.3d 167, 188 (Tex. App.—Houston [1st Dist.] 2018, no pet.)).
- Post-judgment interest on any money damages awarded (Tex. Fin. Code Ann. §§ 304.003 and 304.005).
- Costs (Tex. R. Civ. P. 131 (prevailing party to be awarded court costs)).

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

Under Texas law, a plaintiff may plead both breach of contract and unjust enrichment claims in the same petition (Tex. R. Civ. P. 47, 48, and 51(a)). However, a party cannot recover under both theories. A valid and enforceable contract covering the subject matter of the dispute generally precludes recovery under unjust enrichment. (*Fortune Prod. Co.*, 52 S.W.3d at 684.) When drafting the petition, therefore, counsel should allege one of the claims in the alternative (Tex. R. Civ. P. 48; *Lyons*, 985 S.W.2d at 92).

When pleading unjust enrichment in the alternative to a breach of contract claim counsel should:

- Set out the unjust enrichment claim as a cause of action that is separate and apart from the breach of contract claim.
- Not incorporate by reference, in the unjust enrichment cause of action, any allegation elsewhere in the petition that alleges a valid and enforceable contract.
- Affirmatively allege that the plaintiff is entitled to recover under an unjust enrichment claim if the court later determines that:
 - the existing contract does not govern the dispute; or
 - the contract is for some reason invalid or unenforceable.

(Tex. R. Civ. P. 47 and 48; *Houle v. Casillas*, 2019 WL 4640082, at *19-20 (Tex. App.—El Paso Sept. 24, 2019, no pet.).)

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

LIMITATIONS PERIOD

The statute of limitations for an unjust enrichment claim under Texas law is two years (Tex. Civ. Prac. & Rem. Code Ann. § 16.003; *Elledge v. Friberg-Cooper Water Supply Corp.*, 240 S.W.3d 869, 871 (Tex. 2007)).

ACCRUAL DATE

Under Texas law, generally a claim accrues when the wrongful act occurs that gives rise to the injury (*Cohen v. Tour Partners, Ltd.*, 2017 WL 1528776 (Tex. App.—Houston [1st Dist.] April 27, 2017) (citing *Etan Indus., Inc. v. Lehmann*, 359 S.W.3d 620, 623 (Tex. 2011))). For an unjust enrichment claim, this typically is when the defendant obtains the benefit on which the claim is based (see, for example, *Clark v. Dillard's, Inc.*, 460 S.W.3d 714, 720-21 (Tex. App.—Dallas 2015, no pet.)).

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.