



<u>FACULTY</u>	: Law
<u>DEPARTMENT</u>	: Private Law
<u>CAMPUS</u>	: APK
<u>MODULE</u>	: PRA0021/CPA41B0 CAPITA SELECTA: PRIVATE LAW A
<u>SEMESTER</u>	: Second
<u>Exam</u>	: November examination 2021

<u>DATE</u>	: 4 November 2021	<u>DURATION</u>	: 4 hours
<u>ASSESSOR(S)</u>	: DR A MUNYAI	<u>TOTAL</u>	: 70
<u>MODERATOR</u>	: PROF S CORNELIUS (UP)		

INSTRUCTIONS:

1. You may not seek assistance of a fellow student or the tutor. You are also prohibited from cutting-and-pasting material, not limited to, the study-guide or the internet, other than your own work as answers.
2. You may not use any part of another students' answers to complete this assessment.
3. You are reminded that all relevant rules and policies of the University and the Faculty applies to this test. Should you be found to be in contravention of these rules and policies, your submission will not be marked and you will face severe consequences.
4. ONLY USE THE FOLLOWING OPTION IF YOU ARE UNABLE TO TYPE YOUR ANSWERS IN THE SPACE PROVIDED ON BLACKBOARD.
5. Please type your answers in a Word document (Arial 12, spacing 1,5) and submit your answers by using the link which had been provided under the exam paper on Blackboard. The link will be titled "SUBMIT HERE IF YOU ARE UNABLE TO



TYPE YOUR ANSWERS ON BLACKBOARD". If you do not manage to submit your answers by using the link, as a last resort you can then email your answers to Dr Munyai at amunyai@uj.ac.za. Be sure to number your answers carefully.

6. Write in full sentences where applicable. Do NOT make use of "SMS speak".
7. ALL students have to submit their answers no later than 20h30 on the day of the exam.
8. If you experience any problems with regards to either writing or submitting your examination, please contact Dr Munyai immediately either via email (amunyai@uj.ac.za) or call (0614424382)
9. By undertaking this online exam, you will be deemed to have made the following declaration: *"I certify that my submitted answers are entirely my own work and that I have neither given nor received any unauthorized assistance in this assessment."*

Question 1

1. In the case of _____ the court effectively extended the direct claim of the unpaid creditor of a deceased estate against the heirs/legatees to the unpaid creditor of a company (in liquidation), who is now allowed to claim direct from a shareholder who received a liquidation dividend.
 - a. *Kommissaris van Binnelandse Inkomste and Another v Willers and Others* 1994 2 ALL SA 265 (A)
 - b. *Pretorius v Van Zyl* 1927 226 (O)
 - c. *Buzzard Electrical v 158 Jan Smuts Avenue* 1996 4 SA 19 (A)
 - d. *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue & Another* 1992 4 SA 202 (A)
 - e. *McCathy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA)
2. In *McCathy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA), the Court did not recognise the following general requirement(s) for liability arising from unjustified enrichment:
 - a. The enrichment of the defendant
 - b. The impoverishment of the plaintiff
 - c. The lack of a causa for the enrichment.
 - d. Whether the impoverishment was reasonable.
 - e. Reasonableness of *causa retenendi*
3. Authority for the view that the value of services (a *factum*) is recoverable through the institution of a *condictio* can be found in:



- a. *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 563 (T);
 - b. *Frame v Palmer* 1950 3 SA 340 (C);
 - c. *Wilken v Kohler* 1913 AD 135
 - d. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA)
 - e. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA).
4. When calculating the quantum of an enrichment claim the application of the “*double cap rule*” will have the following consequences –
- a. The defendant will be entitled to claim the smaller amount of the enrichment or impoverishment from the plaintiff.
 - b. The plaintiff will be entitled to claim the larger amount of the enrichment or impoverishment from the defendant.
 - c. The defendant will be entitled to claim the smaller amount of his/her loss of enrichment from the plaintiff.
 - d. The plaintiff will be entitled to claim the smaller amount of the enrichment or impoverishment from the defendant.
 - e. The plaintiff has an obligation to pay 50% of the reasonable expenses incurred by the defendant.
5. Enrichment and impoverishment for purposes of the law of unjustified enrichment refers to the –
- a. patrimony, only assets, of the plaintiff and defendant;
 - b. patrimony, only liabilities, of the plaintiff and defendant;
 - c. patrimony, assets minus liabilities, of the plaintiff;
 - d. patrimony, assets minus liabilities, of the plaintiff and defendant
 - e. Patrimony, only assets of the defendant
6. _____ interpreted *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA) as altering the consequences of the “*double cap rule*” in that an impoverished party can no longer insist on the return of property as the claim should be restricted to a monetary award in respect of the net surviving gain of the enriched party.
- a. Visser
 - b. O'Brien
 - c. Sonnekus
 - d. Scholtens
 - e. De Vos
7. The court in _____ held that restitution following cancellation of a contract as a result of breach takes place in terms of a contractual remedy and not in terms of the *condictio causa data causa non secuta*.
- a. *Standard Bank Financial Services Ltd v Taylam* 1979 (2) SA 383 (C)
 - b. *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 563 (T)
 - c. *First National Bank of Southern Africa Ltd v Perry NO & Others* 2001 (3) All SA 331 (A)
 - d. *Baker v Probert* 1985 3 SA 429 (A)



e. *McCathy Retail Ltd v Shortdistance Carriers* CC 2001 3 SA 482 (SCA)

8. According to _____ is it possible for a plaintiff to have not only an enrichment claim against the defendant but also a contractual or delictual claim against the defendant simultaneously.
- Visser
 - O'Brien
 - Sonnekus
 - Scholtens
 - De Wet
9. In *Klug & Klug v Penkin* (1932) (CPP) the plaintiff succeeded with their claim in terms of the *actio negotiorum gestorum utilis* because the following requirement of the *actio negotiorum gestorum contraria* was not met:
- It was a result of indirect enrichment;
 - The *gestor* administered the affairs of another under the *bona fide* belief that it was theirs;
 - The *gestor* acted against the express wishes of the *dominus*;
 - The *gestor* acted *mala fide* in his own interests
 - The *gestor* has a moral obligation toward the *dominus*
10. Which of the following statements is correct? In *John Bell & Company v Esselen* 1954 1 SA 147 (A):
- The Appellate Division held that the *condictio indebiti* was available to the company against the defendant (Esselen);
 - The Appellate Division held that the company had made a conscious payment to Esselen;
 - A company secretary had fraudulently issued a company cheque to Esselen and therefore no conscious payment was made to Esselen;
 - The Appellate Division held that the *actio negotiorum gestorum utilis* is applicable
 - None of the above statements is correct.
11. Van der Walt levelled severe criticism against the availability of the *condictio indebiti* to unpaid creditors against heirs/legatees. Which one of the following is not one of his criticisms –
- He doubts the historical foundations for such remedy;
 - He points out that there was no undue payment by the creditor, but that his impoverishment arises from the depreciation of his personal right to claim payment from the deceased estate;
 - He argues that payments are made to heirs and legatees in terms of liquidation and distribution accounts pursuant to the provisions of sections 34 and 35 of the Administration of Estates Act 66 of 1965 and therefore their enrichment is not *sine causa*, but *cum causa*;



- d. All of the above;
 - e. None of the above.
12. Francis approaches Marcus, a contractor at Deep Blue Pools (Pty) Ltd, to build a swimming pool. Francis however fails to inform Marcus that the property on which the pool is to be built is owned by Sarah. Marcus builds the pool but before receiving payment from Francis, Francis disappears. Choose the **correct** statement –
- a. If the abstract approach is followed then Marcus will have a contractual claim against Sarah for payment;
 - b. If the concrete approach is followed then Marcus will have a contractual claim against Francis for payment;
 - c. If the abstract approach is followed then Marcus will have a claim based on unjustified enrichment against Francis for payment;
 - d. If the concrete approach is followed then Marcus will have a claim based on unjustified enrichment against Sarah for payment;
 - e. If the abstract approach is followed then Deep Blue Pools (Pty) Ltd will have a delictual claim against Sarah
13. Which of the following does not serve as an argument in support of the abolition of the unique requirement of excusable error / mistake for the application of the *condictio indebiti*?
- a. The requirement is of sound heritage, finding its origin in Roman Dutch law;
 - b. The requirement is necessary as other defences have not yet been developed to protect the recipient of the value;
 - c. The requirement is discriminatory as it punishes the claimant where the recipient may have been just as careless / negligent;
 - d. Statement (a) and statement (b);
 - e. Statement (b) and statement (c).
14. In the case of _____, the court did not recognise a general enrichment action but adopted a new approach in respect of unjustified enrichment actions.
- a. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA);
 - b. *Blesbok Eiendomsagentskap v Cantamessa* 1991 2 SA 712 (T);
 - c. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA);
 - d. *Nortje v Pool NO* 1966 3 SA 96 (A);
 - e. *Willis Faber Enthoven v Receiver of Revenue* 1992 4 SA 202 (A).
15. In the case of _____, the court held that no general enrichment action could be recognised in South Africa owing to a fear of an “unbridled and uncontrolled” form of liability.



- a. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA);
 - b. *Blesbok Eiendomsagentskap v Cantamessa* 1991 2 SA 712 (T);
 - c. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA);
 - d. *Nortje v Pool NO* 1966 3 SA 96 (A);
 - e. *Willis Faber Enthoven v Receiver of Revenue* 1992 4 SA 202 (A).
16. In.....it was held that, in assessing whether the defendant has been enriched by the payment, account must be taken of any performance rendered by the defendant which was juridical connected with his receipt of the money.
- a. *Govender v Standard Bank of South Africa Ltd* 1984 4 SA 392 (A)
 - b. *Nortje en 'n Ander v Pool NO* 1966 3 SA 96 (A)
 - c. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA)
 - d. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA)
 - e. *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (C).
17. In..... the Court held that the maxim in *pari delicto potior condition defendentis* cannot be applied in all cases, and that it is subject to excerpptions which in each case must be found to exist only with regard to the principle of public policy.
- a. *Jajbhay v Cassim* 1939 AD 537.
 - b. *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (C).
 - c. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA)
 - d. *Le Roux v Van Bijon and Another* 1956 2 SA 17 (T)
 - e. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA)
18. In..... the Court held that *condictio indebiti* rules are not identical in all situations, therefore there is scope for deviation including the requirement excusable error.
- a. *Bowman, De Wet and Du Plessis NNO and Others v Fidelity Bank Ltd* 1997 1 All SA 317 (A)
 - b. *Le Roux v Van Bijon and Another* 1956 2 SA 17 (T).
 - c. *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA)
 - d. *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (C)
 - e. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA)
19. In the Court held that an unpaid creditor of a company in liquidation can claim directly from a shareholder who received a liquidation dividend.
- a. *Kommissaris van Binnelandse Inkomste en 'n Ander v Willers en Andere* 1994 2 All SA 268 (A)
 - b. *Rapp and Maister Holdings Ltd v Rufflex Holdings (Pty) Ltd* 1972 3 SA 835 (T).
 - c. *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (C)



- d. *Le Roux v Van Bijon and Another* 1956 2 SA 17 (T)
- e. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA)

20. In this case, the Court held that *condictio ob turpem vel iniustam causam* can include claims against someone who has received money or property without knowledge of illegality and later learns of it while he is in possession of the money or property.

- a. *First National Bank of Southern Africa Ltd v Perry NO and Others* 2001 3 All SA 331 (A)
- b. *Visser en 'n Ander v Rousseau en Andere NNO* 1990 1 SA 139 (A)
- c. *Lobo Properties (Pty) Ltd v Express Lift Co (SA) (Pty) Ltd* 1961 1 SA 704 (C)
- d. *Le Roux v Van Bijon and Another* 1956 2 SA 17 (T)
- e. *Kudu Granite Operations (Pty) Ltd v Caterna Ltd* 2003 5 SA 193 (SCA)

[20]

Question 2

1. Name the two broad categories of unjustified enrichment from which enrichment liability may arise. (2)
2. Briefly explain the main goal or outcome to be achieved when instituting an unjustified enrichment action. (2)
3. Briefly discuss the following statement:
South African Courts are reluctant and very careful to refrain from defining the scope the *condictio sine causa specialis*. (4)
4. What is the current position adopted by South African courts regarding the recognition of a general unjustified enrichment action? Discuss your answer with reference to case law. (5)

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Question 3

Frans sold a vehicle to Amber and the agreement of sale provided that payment must be made by Amber to Frans a month after delivery of the vehicle. Frans gave Amber the registration papers for the vehicle to enable her to secure finance but then Amber did not pay Frans in terms of the contract. Frans then discovered that the address given by Amber was a vacant stand and that he had been the victim of fraud. In fact Amber's associate, Peter, had registered the vehicle in his own name and thereafter had sold the vehicle to a car dealership. That dealership registered the vehicle in its name and sold it to Vanessa who in turn registered the vehicle in her name. Frans asked the court to order the return of the vehicle from Vanessa claiming that he was still the owner.

With reference to case law, discuss whether Vanessa will be successful in raising the defence of estoppel against Frans's ownership claim in respect of the vehicle. In the discussion, outline the position of the owner (estoppel denier) of a *res* when estoppel is successfully raised against that owner's *rei vindicatio* by the estoppel assertor in respect of that specific *res*. **Answer must not exceed one page**

[10]

Question 4

On 24 August 2018, Mr Ndlovu passes away intestate. Mr Lucas is appointed executor of Mr Ndlovu's deceased estate. Mr Lucas proceeds to settle all the apparent debts of the deceased estate and then undertakes the full distribution of the estate's assets to Mr Ndlovu's intestate heirs. Shortly after completion of the distribution process, Mrs London contacts Mr Lucas and informs Mr Lucas that her valid claim against the deceased estate of Mr Ndlovu remains unpaid.

4.1. Assume that Mr Lucas has not yet been discharged from his duties as executor.

Is there anything that Mr Lucas can do in order to ensure the settlement of Mrs London's unpaid claim? (3)

4.2. Assume that Mr Lucas was discharged from his duties as executor the day before

Mrs London contacted him in relation to her unpaid claim. Is there anything that Mrs London can do to ensure settlement of her unpaid claim? (2)

4.3. Refer to your answer given in **question 4.2** above. Would Mrs London be able to claim the money due to her from any of the creditors which had already been paid in terms of the deceased estate? Motivate your answer. (2)

[7]

Question 5

Allan Jones wants to sell his house in Fourways as he is relocating to Cape Town. Thandi Ndlovu is interested in Allan's house and had made an offer to him on a previous occasion. Allan however first wants to make a few improvements to the property, to be in a more advantageous position and negotiate a better price with Thandi. One of the improvements to be made is to install a solar water-heating system which will make the house more environmentally-friendly.

Allan contacts Enviro-Sol (Pty) Ltd ('Enviro-Sol') in this regard and concludes an agreement with them to do the necessary installation. Enviro-Sol provides the equipment and parts for the installation and in turn concludes an agreement with Plumlink CC ('Plumlink'), in terms of which Plumlink will attend to the installation thereof. Plumlink does the installation, but before they could claim payment for their



services rendered, Enviro-Sol is liquidated. Allan has not yet paid Enviro-Sol for the solar water-heating system. Accordingly, Plumlink institutes a claim based on unjustified enrichment against Allan for payment of the services rendered by them.

With reference to case law, advise Plumlink whether they will be successful with their unjustified enrichment claim against Allen. **Answer must not exceed one page.**

[10]

Question 6

Joseph Mayer was involved in a serious motor vehicle accident in the Johannesburg area on 25 September 2018. Emergency services responded to a call from John Johnson, a motorist who witnessed the accident, and who also requested medical assistance. The ambulance transported Joseph to the Milpark Hospital in Auckland Park. Upon his arrival at the hospital they required an admittance deposit of R20 000, which applies to all patients irrespective of whether they have medical aid cover or not. John accompanied Joseph to the hospital to make sure that he is attended to. John also offered to pay the admittance deposit on behalf of Joseph, considering that Joseph was unconscious and his condition required urgent medical attention.

After Joseph recovered and received the necessary medical attention John requested repayment of the R20 000 hospital admittance deposit. Joseph however refuses to pay the said amount. John informs you, his attorney, of the situation and wants to know whether he can institute a claim against Joseph based on unjustified enrichment?

Answer John Johnson on the following:

- 6.1. What remedy can John Johnson use to claim the money back from Joseph Mayer? (1)
- 6.2. List the requirements that should first be met before John Johnson will be successful with the remedy identified in **question 6.1** above (4)
- 6.3. Discuss the principles applicable to the remedy identified in **question 6.1**. (5)

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Total [70]