



<b><u>FACULTY</u></b>	: Law
<b><u>DEPARTMENT</u></b>	: Private Law
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: PRA0021/CPA41B0 CAPITA SELECTA: PRIVATE LAW A
<b><u>SEMESTER</u></b>	: Second
<b><u>EXAM</u></b>	: Special Examination 2021

<b><u>DATE</u></b>	: 4 February 2021	<b><u>SESSION</u></b>	: 11:30-14:30
<b><u>ASSESSOR(S)</u></b>	: MS ME ROSTOLL		
<b><u>MODERATOR</u></b>	: DR MM KOEKEMOER		
<b><u>DURATION</u></b>	: 3 HOURS	<b><u>MARKS</u></b>	: 50

## GENERAL INSTRUCTIONS TO STUDENTS

Please read the following instructions *carefully*:

- 1) Please note that this is a **CLOSED** book examination and you are not allowed to find assistance in any other sources like your textbook, lecturer's notes, slides and your own notes or summaries.
- 2) NB - The Faculty of Law takes a zero-tolerance approach towards issues like plagiarism, sharing of examination questions, and unauthorised assistance by anyone else, in writing the exam. Dishonest conduct will have severe consequences for your academic and professional careers.
- 3) Answer all questions.
- 4) Submit your answers in the space provided under each question in Blackboard.
- 5) If you are unable to type your answers in the space provided on Blackboard, please type your answers in a Word document, alternatively, write your answers on paper and take a photo thereof and email it to Mrs Rostoll at [merostoll@uj.ac.za](mailto:merostoll@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 14h30 on the day of the exam.
  - 8) If you experience any problems with regards to either writing or submitting your examination, please contact Mrs Rostoll immediately either via email (merostoll@uj.ac.za) or WhatsApp (0828536819).
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### QUESTION 1

In Serfontein’s 2015 article titled “What is wrong with modern unjustified enrichment law in South Africa?” *De Jure* 48 2, the author proposes two main changes that should be focused on in the reform of modern unjustified enrichment law within South Africa.

Answer the following questions in relation to the above article.

- 1.1 Identify the two main changes proposed. (2)
  - 1.2 Explain the essence of each suggested reform. (4)
  - 1.3 Comment on whether you agree or disagree with the author. Motivate your answer. (4)
- [10]**
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### QUESTION 2

Arnold Botha is the owner of his own corporate shuttle services. Arnold agreed in terms of a contract concluded with Master Mechanics (Pty) Ltd to render shuttle services to the company for their year-end function taking place at Gold Reef City. Master Mechanics paid Arnold with a cheque for the services to be rendered. Arnold arrived on the agreed date and at the agreed place to render his services, but no one was there. Master Mechanics had unilaterally decided to use someone else’s services, without informing Arnold of their change of plans. Arnold accordingly deposited the cheque. Nedbank however overlooked a stop-payment instruction issued by Master Mechanics and paid the check into Arnold’s bank account.

Is Arnold Botha enriched? Discuss your answer with reference to relevant case law. Do not discuss the facts of the case. **[10]**

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### QUESTION 3

A contract of sale contains the following provision:

*“This contract of sale is subject to the purchaser obtaining a home loan within 60 days of signature.”*

The purchaser paid a 10% deposit to the seller in anticipation of obtaining the loan, but the bank unfortunately did not grant the loan to the purchaser. Assume that no contractual remedies had been provided for in the agreement. Can an enrichment action be instituted for the recovery of the 10% deposit paid by the purchaser to the buyer prior to the non-fulfillment of the condition? [5]

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#### QUESTION 4

Gerry has noticed that his neighbour's stud bull is seriously ill. The neighbour is currently on a hiking trip in Nepal and cannot be reached. Gerry has called out a veterinary doctor to attend to the bull and has paid all his bills as well as for the medication. The total cost was R12 000. Despite the treatment the bull still died. Gerry wishes to claim back the money he spent in this regard from his neighbour.

- 4.1 Identify the action which Gerry can use to claim the money back from his neighbour. (1)
- 4.2 Refer to your answer in **question 4.1** above. Advise Gerry on the following:
- 4.2.1 the requirements that should be met to rely on this action; (1/2x4=2)
- 4.2.2 the nature of the action; and (3)
- 4.2.3 the extent of relief (including quantum) to which Gerry will be entitled to if he successfully institutes the action against his neighbour. (2)
- [8]
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#### QUESTION 5

Jacob Mpedi has his own business and installs filtered water stations at corporate businesses. One of his biggest clients is Satellite Connexions (Pty) Ltd and they currently owe him R178 000 for services and goods rendered. Due to the tough economic times Satellite Connexions has been struggling to meet their financial obligations and consequently had been declared insolvent. After instituting and finalising the formal liquidation proceedings, Jacob realised that his claim had inadvertently not been paid out, even though he had submitted his claim to the liquidators timeously. The liquidators have already been discharged and Jacob is considering instituting an unjustified enrichment action to recover the outstanding debt owed to him.

- 5.1 Which *condictiones* can be instituted by Jacob to recover the debt due to him?(1)
- 5.2 Name the case that extended the *condictiones* identified in **question 2.1** above to be applicable to the given circumstances. (1)

5.3 Who would be liable to settle the debt due to Jacob? Briefly motivate your answer. (2)

5.4 Would Jacob be able to claim the debt that is due to him from one of the other creditors of Satellite Connexions who had been paid as per the liquidation process? Briefly motivate your answer. (3)

[7]

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## QUESTION 6

Anton Kruger and Mike du Preez entered into a sale agreement in terms of which Anton will buy Mike's car for R250 000 in cash. However, Anton did not pay for the car, as he apparently left his cheque book at home in Welkom. On the pretence that he, Anton, needed a note to protect him "in case of any queries" whilst in possession of the car, Anton asked Mike for a signed note stating that he had sold the car to Anton. A representative of Mike took the car to Welkom and delivered it to Anton against receipt of a cheque, which was worthless, as Anton had no account at the bank and did not intend to pay for the car.

Before Mike could trace the car, Anton had sold it to Gold Motors (Pty) Ltd, showing the sales manager the note, which Mike had given him, and telling him that he was not in possession of the registration documents, as they were sent to Kimberley to have the vehicle registered in his name. Gold Motors now wants to hold Mike liable for the amount paid by them to Anton in respect of the car, as Anton has disappeared. Gold Motors further contends that Mike should be estopped from claiming that he did not sell the motor to Anton by giving him the note.

With reference to the given set of facts discuss Gold Motors' chance of success with reference to the approach of the Supreme Court of Appeal to the causation requirement in the context of the law of estoppel as set out in the case of *Stellenbosch Farmers' Winery Ltd v Vlachos t/a Liquor Den* 2001 3 All SA 577 (A). Do not discuss the facts of the case. Your answer should not exceed **one page**. [10]