

<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>	: Special examination 2022

<u>DATE</u>	: 18 January 2022	<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 15h30 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

True or False questions

1. The case of *LMS Electrical Engineers (PvT) Ltd v Tassburg Screw Industries (PvT) Ltd* formulated the rule estoppel may not be upheld in competition with the norms of unjustified enrichment.
2. Unjustified enrichment provides a basis for a claim where there has been a transfer of property or value from the impoverished party to the enriched party without a sufficient legal ground.
3. A deliberate transfer entails that there was an aim with the transfer, and if that aim fails, there is no justification for the defendant retaining the enrichment (i.e. there is an absence of a *causa retenendi*).
4. The South African law of Unjustified Enrichment provides that *actio negotiorum gestorum* has 3 distinct forms.
5. Plea of estoppel cannot be upheld if the maintenance of representation will be in conflict with statutory law.
6. The rules of the law of property necessitate the law of unjustified enrichment.

7. The abstract approach determines that the actual facts underlying the enforcement of the personal right should be taken into account when calculating the patrimony to determine the enrichment and impoverishment of the parties.
8. Estoppel by conduct refers to instances where the representation did consists of words.
9. The general principle of estoppel in respect of legally relevant misrepresentation is that the representee must have been misled.
10. Only legally relevant representation find successful reliance on estoppel.

[10]

Question 2

Jasmin and Thomas had been married for 10 years. A son, Peter, had been born during the marriage. Unfortunately, Jasmin and Thomas' relationship did not last and they divorced each other. During the subsequent years Thomas paid maintenance in respect of Peter to Jasmin. Peter was involved in a serious motor vehicle accident and both his parents were requested to donate blood as he urgently needed a blood transfusion. It transpired that Thomas is in actual fact not Peter's father. After learning the truth of Peter's paternity, Thomas approached you for legal advice. Thomas wants to know what his chances of success would be in claiming back the maintenance paid in respect of Peter due to Thomas not being his paternal father. Thomas specifically wants to know if he would be successful with an unjustified enrichment claim against Jasmin for the return of the maintenance paid in respect of Peter.

- 2.1. Advise Thomas with reference to relevant case law. Do not discuss the facts of the case. (5)
- 2.2. Assume for this question only that Peter's biological father could be located. Would Thomas have any success if he institutes an enrichment action against Peter's biological father for repayment of the maintenance paid in respect of Peter to date? Briefly motivate your answer. (4)
- 2.3. Refer to **question 2.2** above and assume Thomas is successful with his claim, which *condictiones* would most likely be used in this regard. Briefly motivate your answer. (2)

[11]

Question 3

- 3.1. 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. (4)
- 3.2. On the 20th July 2021, Kay and his wife recently bought a vacant plot in Springs. They are currently not occupying the plot and they rarely visit. A month later, Benjamin and his family bought the adjacent vacant plot and built a house. Soon after, Benjamin crosses Kay's farm on a daily basis from the main road as a short-cut to reach his own property. Benjamin does this without Kay's permission or knowledge. Benjamin is adamant that he is causing no damage to Kay's farm by crossing it but, over a few months, admits that he has saved money on petrol. With reference to South African law and other legal systems. Briefly discuss whether Kay has a claim against Benjamin. (4)
- 3.3. Discuss critically, with reference to case law, the question whether the value of a *factum* (*services rendered*) can be reclaimed with the *condictio indebiti* in South African law. (6)

[14]

Question 4

Graham Dumas submitted false income tax claims to the South African Revenue Services ('SARS'). SARS consequently paid out the fictitious claims into the designated account as indicated by Graham. This designated account was however the Standard Bank business account of Fitness Express CC. Graham contacted Fitness Express and convinced them that the amount had been inadvertently paid into their account and that they should transfer the funds back into Graham's Absa account.

After issuing a cheque and instructing their bank (Standard Bank) to make the necessary payment to Graham, Fitness Express is contacted by SARS and informed

of the alleged fraudulent activities of Graham. Fitness Express contacts their bank immediately to inform them of the situation after which Standard Bank contacts Absa to inform them of the situation and obtain an interdict against them as the funds had already been transferred to Absa.

What can be done in order for the funds to be restored to its rightful owner? Motivate your answer with reference to relevant case law. Do not discuss the facts of the case. Your answer should not exceed **one (1) page**. [7]

Question 5

- 5.1. Explain the relaxation of the *par delictum* rule and the test for a *turpis persona* with reference to the decision in *Jajbhay v Cassim*. (5)
- 5.2. The *sine causa* is one of the four generic requirements evidenced in the *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 3 SA 482 (SCA). Discuss the approaches of various legal system to the following question: 'from whose perspective should the sine causa requirement be considered'?. (10)
- 5.3. Regarding legally relevant misrepresentation, what must the representee prove? (3)
- 5.4. An objective reasonable man's test is used to determine whether the misrepresentation was legally relevant. What is O'Brien's formulation of the reasonable man's test. Briefly discuss. (6)
- 5.5. Critically discuss ***Van der Molen v Fagan* 2013 203 (SCA)** within the context of the law of estoppel. Your answer should not exceed **half a page**. (4)
- [28]
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TOTAL [70]