



<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>	: November 2018

<b><u>DATE</u></b>	: 14 November 2018	<b><u>SESSION</u></b>	: 08:30-11:30
<b><u>ASSESSOR(S)</u></b>	: MS ME ROSTOLL		
<b><u>MODERATOR</u></b>	: PROF S CORNELIUS (UP)		
<b><u>DURATION</u></b>	: 2 HOURS	<b><u>MARKS</u></b>	: 80

---

NUMBER OF PAGES: 5 PAGES

INSTRUCTIONS:

1. Read the questions carefully.
  2. Only answer what is asked.
  3. Write legibly.
-

## QUESTION 1

- 1.1 Name the two broad categories of unjustified enrichment from which enrichment liability may arise. (2)
- 1.2 Briefly explain the main goal or outcome to be achieved when instituting an unjustified enrichment action. (2)
- 1.3 Identify the principle that should be applied when calculating the quantum of an enrichment action **and** explain the operation of this principle. (3)
- 1.4 List the effects/consequences of a successful reliance on the defence of estoppel? (5)
- 1.5 List and compare two differences between the reasonable person test for purposes of establishing the legal relevance of the misrepresentation and the reasonable person test for purposes of determining negligence of the estoppel denier. (4)

[16]

## QUESTION 2

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.

- 2.1 Which *condictiones* can be instituted by Jacob to recover the debt due to him? (1)
- 2.2 Name the case that extended the *condictiones* identified in **question 2.1** above to be applicable to the given circumstances. (1)
- 2.3 Who would be liable to settle the debt due to Jacob? Briefly motivate your answer. (2)
- 2.4 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. (2)

[6]

### QUESTION 3

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.

- 3.1 Identify the action which Gerry can use to claim the money back from his neighbour. (1)
- 3.2 Refer to your answer in **question 3.1** above. Advise Gerry on the following:
- 3.2.1 the requirements that should be met to rely on this action; (2)
- 3.2.2 the nature of this action; and (3)
- 3.2.3 the relief to which Gerry will be entitled to if he successfully institutes the action against his neighbour. (2)
- [8]**

### QUESTION 4

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.

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

### QUESTION 5

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 6

Thandi buys herself a new pair of custom-made bright pink rollerblades with her initials on the side. Unfortunately, she accidentally leaves the rollerblades outside two days later, and they are stolen by Julie. Julie uses the rollerblades herself for a day or two, but then decides to sell them as she wants to buy herself a new bright yellow skateboard with the money she receives from selling the rollerblades. Julie sells the rollerblades to Joanne for R900, after telling Joanne that she (Julie) owns the rollerblades. Thandi spots Joanne the following day with the rollerblades on and demands that Joanne returns the rollerblades to her (Thandi). Does Thandi have a claim against Joanne or against Julie based on unjustified enrichment? Discuss your answer with reference to the following:

- 6.1 The *mala fide* party (2)
  - 6.2 The *bona fide* party (2)
  - 6.3 Case law (1)
  - 6.4 Prof Sonnekus's view (1)
- [6]

## QUESTION 7

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 buyer 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]

### QUESTION 8

Peter has concluded an agreement with Jason for the sale of his second-hand car at a price of R80 000. The market value of the car is only R 45 000. Can Jason claim the difference from Peter by using unjustified enrichment as the basis of liability for the claim? Discuss and motivate your answer by applying the unjustified enrichment requirements as identified in *McCarthy Retail Ltd v Short Distance Carriers CC* 2001 (3) SA 482 (SCA). Your answer should not exceed one (1) page. [10]

### QUESTION 9

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.

- 9.1 Briefly discuss 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*. (3)
- 9.2 Refer to **question 9.1** above. Assume that the estoppel assertor who successfully relied on estoppel against the owner's *rei vindicatio* now sells the *res* to a third party. Briefly list the implications for all the parties involved in said situation. (2)
- 9.3 With reference to the case of *Van der Molen v Fagan* 2013 203 (SCA) discuss whether Vanessa will be successful in raising the defence of estoppel against Frans's ownership claim in respect of the vehicle. (7)

[12]

**TOTAL:**

[80]