



SUBJECT NAME : **CAPITA SELECTA: PRIVATE LAW**

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EXTERNAL EXAMINER : **MS MM KOEKEMOER (UNISA)**

NUMBER OF PAGES : **5 PAGES**

INSTRUCTIONS :

- 1) Read all questions carefully and answer only what is asked.
 - 2) Do not waste time by providing unnecessary information that was not specifically asked for.
 - 3) Answer **Section A** and **Section B** in one booklet.
 - 4) Answer **Section C** (Consumer Protection) in a separate booklet.
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SECTION A: Law of Enrichment

QUESTION 1

Indicate the option that correctly corresponds with each question set out below by selecting the letter pertaining to the option that you believe to be correct. There is only **one correct** answer to each question.

- 1.1 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).
- (2)
- 1.2 Which of the following statements is correct? In *John Bell & Company v Esselen* 1954 1 SA 147 (A):
- a) the Appellate Division held that the *condictio indebiti* was available to the company against the defendant (Esselen);
 - b) the Appellate Division held that the company had made a conscious payment to Esselen;
 - c) a company secretary had fraudulently issued a company cheque to Esselen and therefore no conscious payment was made to Esselen;
 - d) None of the above statements is correct.
 - e) More than one of the above statements is correct.
- (2)
- 1.3 The *condictio ob turpem vel iniustam causam* can be instituted where:
- a) money or property has been transferred to another in terms of an illegal agreement;
 - b) money or property has been transferred to another under the mistaken belief that such transfer was due;
 - c) money or property has been transferred to another under circumstances where there is no cause for the transfer, but the transferee makes the transfer with the aim of illicitting a response from the transferor which response will create a cause for the transfer;
 - d) money or property has been transferred to another in terms of an unenforceable contract.
- (2)
- 1.4 Marcus steals Julia's watch and gives the watch to Marcus' sister, Maria, as a gift for Maria's birthday. Maria, of course, is unaware of the fact that the watch was stolen from Julia. One of Maria's children accidentally drops the watch and steps on it and the watch is destroyed. Which of the following statements is correct?
- a) Maria acquired the watch *ex titulo onerosa*.
 - b) Maria did not acquire the watch *ex titulo onerosa*.
 - c) Maria is not liable to Julia because, owing to the destruction of the watch, Maria has not been enriched.
 - d) According to *Van der Westhuizen v MacDonald and Mundel* 1907 TS 933, Maria has no obligation to Julia under the circumstances.
 - e) Options (a) and (c) are correct.
- (2)
- 1.5 According to Visser, the *condictio* found by the Supreme Court of Appeal to be available to Nissan in *Nissan South Africa (Pty) Ltd v Marnitz NO and Others (Stand 186 Aeroport (Pty) Ltd intervening)* 2005 1 SA 441 (SCA) was the:
- a) *condictio indebiti*;
 - b) *condictio sine causa specialis*;
 - c) *condictio ob turpem vel iniustam causam* (as extended in *First National Bank of Southern Africa Ltd v Perry NO and Others* 2001 3 All SA 331 (A));
 - d) *condictio causa data causa non secuta*.
- (2)

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QUESTION 2

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 has died. Gerry wishes to claim back the money he spent from his neighbour.

2.1 Identify the unjustified enrichment action which Gerry can use to claim the money back from his neighbour. (1)

2.2 Refer to your answer in question 2.1 above. Discuss the nature of the action as well as the legal relief to which Gerry will be entitled if he successfully institutes the action against his neighbour. (7)

[8]

(SUB-TOTAL: Section A)

[18]

SECTION B: Law of Estoppel

QUESTION 1

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)

[4]

QUESTION 2

Mary, was the owner of a racehorse. She leases it to Peter, who wished to race the horse and in order to overcome certain difficulties which he may have with the Jockey Club, a form of sale relating to the horse was 'concluded' between Mary and Peter. Accordingly Mary gave Peter a fictitious receipt for a fictitious purchase price of R25 000, the aim being to enable Peter to represent himself to the Jockey Club as the owner of the horse which in turn would enable himself to race the horse. Peter however offered the horse for sale to Mike and showed the receipt as proof that Peter was the owner of the horse. Mike, believing the document to be authentic purchased the horse for R20 000 and paid the amount in cash. Peter disappeared with the cash and Mary cannot get hold of him. Mary now wishes to claim the horse back from Mike. Discuss Mike's chance of succeeding with raising estoppel as a defence against Mary's ownership claim in respect of the horse with reference to the case of ***Van der Molen v Fagan 2013 203 (SCA)***. Do not discuss the facts of the case. Your answer should not exceed one page. (11)

[11]

(SUB-TOTAL: Section B)

[15]

SECTION C: Consumer Protection

All questions are to be answered with reference to the **Consumer Protection Act, 68 of 2008** ('CPA'), the regulations promulgated under the CPA and the facts given below.

QUESTION 1

Briefly explain each of the following terms:

1.1 Consumer (1/2 x 4 = 2)

1.2 Supply chain (2)

1.3 Negative option marketing (2)

1.4 Supply in relation to goods (2)

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1.5 Person

(2)
[10]

QUESTION 2

- 2.1 What is the main aim of the CPA? (1)
- 2.2 List four reasons which, amongst other things, prompted the South African legislature to enact a comprehensive piece of consumer legislation resulting in the promulgation of the CPA. (4)
- 2.3 The CPA makes provision for the protection of 'vulnerable consumers'. How is this term defined in terms of the CPA? (1/2 x 4 = 2)
[7]

QUESTION 3

Consider the following set of facts and briefly discuss the implications of the CPA on each situation.

Sarah was at a local gift store shopping for a birthday present for her best friend. She noticed that some of the items had sticker price tags on with the price written on them. The bracelet she really wanted to get her friend did not have any price attached to it.

- 3.1 Should all items in a shop, which are being offered to consumers for purchase, have a price tag on? Briefly motivate your answer. (2)
- 3.2 Assume for this question that the bracelet had a price tag on showing that it costs R399. When Sarah presented the bracelet for payment the cashier charged her R599. When she objected the cashier said that an incorrect price tag had been placed on the bracelet and then peeled the top price away to display the price tag below showing R599. What price should Sarah pay for the bracelet? Briefly motivate your answer. (3)
- 3.3 Assume for this question that Sarah is broke, but she really wants to buy the bracelet for her friend. So, instead of paying the correct displayed price for the bracelet she peels the price tag sticker off and switches it with that of another item that was R250 cheaper. She took the bracelet, with the new price tag on it, up to the till to pay for it. Is the supplier obliged to charge Sarah the cheaper price? Briefly motivate your answer. (1)
- 3.4 Assume for this question that Sarah noticed an advertisement in the local newspaper that these bracelets are being sold at a discounted price of R200. The advertisement further states that stock is limited and consumers should hurry to avoid disappointment. That afternoon Sarah goes to the shop and enquires about the bracelet. The salesperson informs her that all the bracelets are sold out, but that there are lovely affordable earrings she should consider purchasing. Is this type of conduct of the supplier allowed? Briefly motivate your answer. (3)
- 3.5 Refer to your answer in question 3.4 above. Would your answer be different if the supplier offered to contact their other branch and find out whether they still have any stock available of the bracelet? Briefly motivate your answer. (2)
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QUESTION 4

Consider the following set of facts and briefly discuss the implications of the CPA on each situation.

Jason Ryder bought a brand new mountain bike and was planning to ride on some rugged trails, and maybe enter some races. Jason mentioned to the salesperson at Mountain Ed's Bike Shop what he intended to use the bike for and the salesperson told him it was a solid, well-made bike that would be well-suited for trail riding. Two days after purchasing the bike, during Jason's first trip with his new bike, one of the pedals came loose and flew off. Then the front wheel came loose, causing Jason to fall and suffer some minor bruises and scrapes. Jason contacted Ed's Bike Shop after the accident and informed them of what happened.

- 4.1 Should Jason get a new bike from the dealer? Briefly motivate your answer. (4)
- 4.2 Refer to your answer in question 4.1 above. Assume for this question that Ed's Bike Shop refuses to provide Jason with any assistance following his bike accident. What steps can Jason take to resolve the dispute and at the same time ensure the enforcement of his rights? (3)
- 4.3 Refer to your answer in question 4.2 above. Would Jason be able to go directly to the Johannesburg Magistrates' court and issue summons against Ed's Bike Shop for the patrimonial damages suffered by him? Briefly motivate your answer. (2)

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QUESTION 5

Consider the following set of facts and briefly discuss the implications of the CPA on each situation.

Thandi bought a vacuum cleaner from a door-to-door salesperson. The salesperson came by her house on a Monday evening at 18h00. After a long day at work she just wanted to get rid of the salesperson and agreed that she would buy the vacuum cleaner. The cost of the vacuum cleaner is R3999. Thandi has not yet used the vacuum cleaner and now wishes to return it the next day as she never really wanted it in the first place.

- 5.1 How should Thandi cancel the agreement? Discuss in detail. (7)
- 5.2 One of the provisions of the above contract stated that the supplier could terminate the contract at will and alter the contract at any time, without any limitation or protection of the consumer. Will this qualify as a valid term of a consumer contract? Motivate your answer. (3)
- 5.3 Assume for this question that Thandi is not interested in purchasing the vacuum cleaner as hers is still in good working order. The salesperson becomes extremely irritated with Thandi for not wanting to buy the vacuum cleaner after which Thandi requests that he leaves her house. However in a final attempt to persuade Thandi to purchase the vacuum cleaner the sales person leaves it at the front door on his way out. In terms of the CPA the vacuum cleaner will be considered as what type of goods? Briefly motivate your answer. (2)
- 5.4 Refer to your answer in question 5.3 above. What legal implications will follow for both Thandi and the supplier with regards to the vacuum cleaner? (3)

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(SUB-TOTAL: Section C)

[52]

TOTAL

[85]