Tutorial Letter 201/1/2018

Undue Enrichment and Estoppel

PVL3704

Semester 1

Department of Private Law

This tutorial letter contains important information about your module.

Bar code

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Dear Student

1 COMMENTARY ON THE ASSIGNMENTS

This tutorial letter contains the memorandum, as well as a discussion, of the answers to the two assignments. **Please note that only question 2 of assignment 1 was marked. If you did not answer question 2 you will receive 0 for the assignment.**

1.1 ANSWERS TO ASSIGNMENT 1

Question 1

Discuss in general (without reference to a specific enrichment action) how the extent of enrichment liability (or the *quantum* of the enrichment claim*)* will be calculated. (10)

Answer

In principle the plaintiff is allowed to claim the amount he has been impoverished, or the amount the defendant has been enriched, whichever is the lesser. (1) See Study Guide 1, par 1.1.4 and 2.3. The *quantum* of the enrichment claim is calculated at the time the claim is instituted. (1) That means that the defendant is not liable for benefits that he due to his enrichment could have gained, but didn't. (1) If the defendant's enrichment has been reduced or extinguished before the claim has been instituted, his liability will also be reduced or extinguished. (1) The onus to prove non-enrichment lies with the defendant. (1) In four instances the *quantum* will be calculated sooner, meaning before the date of institution of the action: (a) at the moment the defendant becomes aware of enrichment (1); (b) at an earlier stage if the defendant should have known that the benefit wasn't justified (1); (c) when the defendant fell into *mora* (1); and an earlier date if the defendant acted *mala fide* (1). These exceptions do not apply in the case of minors. (1)

In quantifying the claim all positive and negative side-effects should be taken into account. (1) Interest earned on money in the hands of the defendant before *litis contestatio* cannot be claimed by the plaintiff, (1) but after *mora* the plaintiff can claim *mora* interest. (1) See Study Guide 1, par 3.4. If the defendant spent the money on something he would not have done if it wasn't for the enrichment, he can raise the defence of non-enrichment. (1) However, if all or part of what he spent the money on (eg goods) is still of value and in his hands, he must offer the goods or the value of the goods to the plaintiff. (1) If the goods are more valuable than the impoverishment, the difference should be paid to the defendant. (1)

[max 10]

Question 2

A owns a factory manufacturing steel in a continuous process. His monthly electricity bill averages R100 000. He just received a letter from the Johannesburg Municipality in which it threatens to cut his electricity if he doesn't immediately pay his "arrear account of R300 000". A knows that there must be a mistake, because his account is paid in full, but also knows that if there is a disruption in his electricity supply he will suffer severe losses. He pays the amount immediately and sends a

letter of complaint. Advise A whether he will be able to reclaim the R300 000 he paid, and with which remedy? In your answer discuss the requirements for this remedy. (10)

Answer

If you receive a similar type of question in the exams, you should follow the following steps in answering the question:

(a) You first need to identify the correct unjustified enrichment action. If necessary explain why another enrichment claim cannot be used. (2)
(b) Then discuss the relevant requirements for a successful claim under the action and any defences against such claim. It is important here to refer to any relevant case law. (6)
(c) Apply the requirements of the claim to the facts provided. (1)
(d) Make a definite conclusion on the question asked. (1)

(a) Identifying the correct action

The correct action to be instituted by A is the *condictio indebiti*. (1) This action is available in instances where a debt not owing was paid. (1/2) Incidentally no unlawful, *ultra vires* or void contract is relevant here and therefore it seems as if no other *condictiones* could be applicable. (1/2)

(b) Requirements for the action and defences against it

See Study guide 1, par 3.4 for the requirements. State each of the requirements:

(i) Transfer of ownership in the form of payment of money or delivery of a specific object (1/2)
(ii) Payment has to take place under the mistaken belief that the performance was due. (1/2)
(iii) The mistake, either a legal or factual mistake (1/2), must have been reasonable in the circumstances (*iustus error*). (1/2)

In general a party cannot reclaim performance with the *condictio indebiti* if he was aware that the performance wasn't due. (1) Such conduct will be regarded as a donation (1/2), unless it was made under threat or protest. (1/2) (See Study guide 1, par 4.6)

Case law

In *CIR v First National Industrial Bank Ltd* 1990 3 SA 641 (A) (1/2) FNB paid stamp duties to the Commissioner for Inland Revenue which in fact were not due under protest. The court a quo held that the payment could be reclaimed on the basis of unjustified enrichment. (1/2) The appellate division found by majority that the money could be reclaimed on the basis of a tacit contract (1/2), but the minority found that where there is payment in such circumstances, the presumption of a donation falls away. (1/2)

(c) Applying the requirements to the facts

A made a payment under threat and protest, knowing that the debt wasn't due. (1) The requirements for the *conditio indebiti* have thus been complied with.

(For A to succeed with the condictio indebiti against the Johannesburg Municipality in these circumstances he, firstly, had to prove that he didn't owe the Municipality the R300 000. Secondly, that the payment was made involuntarily under the threat that the electricity supply will be suspended if payment wasn't made. Thirdly, that A protested against the amount to be paid at the time of payment by sending a letter of complaint with.)

(d) Conclusion

A will be able to prove all three requirements under this exception and will therefore be successful with this enrichment action against the Johannesburg Municipality. (1)

[max 10]

1.2 ANSWERS TO ASSIGNMENT 2

The correct answer to each of the questions below is the one that is blocked and highlighted. Brief explanations are given as to why each choice is right or wrong. Revert back to that part of the Study Guide if you still do not understand why a certain choice is right and the others wrong.

Choose the most correct option in every instance. If there is more than one correct option, choose the appropriate combined option.

Question 1

Answer: *See Study guide 1, par 14.3.*

Indicate which one of the following statements most correctly describes the existence of a general enrichment action in South African law:

1. In *Nortjé v Pool* 1966 (3) SA 96 (A) the Appellate Division recognised the existence of a general enrichment action in South African law.
2. **In *Nortjé v Pool* 1966 (3) SA 96 (A) the Appellate Division rejected the existence of a general enrichment action in South African law.**
3. In *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue* 1992 (4) SA 202 (A) the Appellate Division recognised the existence of a general enrichment action in South African law.
4. In *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue* 1992 (4) SA 202 (A) the Appellate Division rejected the existence of a general enrichment action in South African law.
5. Although the Appellate Division rejected the existence of a general enrichment action in South African law in *Nortjé v Pool* 1966 (3) SA 96 (A), the existence of such an action has since been recognised in the case law.

(1)

Question 2

Answer : *The* condictio ob turpem vel iniustam causam *is used in cases of unlawful contracts (see Study guide 1, par 5.4). The* condictio causa data causa non secuta *is used in cases where the contract of sale was entered into subject to a condition (see Study guide 1, par 6.4). The* condictio sine causa specialis *is used in instances where performance was due, but the causa for performance fell away at a later stage (see Study guide 1, par 7.4). The* condictio indebiti *is used in instances where performance is rendered in the mistaken belief that it was due or owing at the time it is done (see Study guide 1, par 3.4). The* actio negotiorum gestorum utilis *is used in instances where a person is managing someone else's affairs (see Study guide 1, par 8.4). In this instance the contract of sale is not unlawful, but void due to initial impossibility. It is thus <u>not</u> a case of performance that was due at the time of performance and the causa fell away later, but rather a case of mistaken belief that performance was owing at the time it was made. The correct option is therefore 4.*

S has concluded a contract with P for the sale of his horse, Big Boy, at a price of R50,000. P immediately paid the purchase price to S. Unknown to both parties at the time of the conclusion of

the contract, Big Boy had died the day before the conclusion of the contract when he was kicked by another horse. S immediately used the purchase price to buy a new young foal for R15,000, to pay his workers weekly wages of R8,000, to pay his overdraft of R10,000 and to pay for a luxury weekend away of R12,000. There remains R5,000 of the money in his savings account with the bank. This contract of sale is, however, void due to initial impossibility.

Which statement best explains the basis of P's claim against S?

1. P has an enrichment claim against S for repayment of the purchase price based on the *condictio ob turpem vel iniustam causam*.
2. P has an enrichment claim against S for repayment of the purchase price based on the *condictio causa data causa non secuta.*
3. P has an enrichment claim against S for repayment of the purchase price based on the *condictio sine causa specialis*.
4. **P has an enrichment claim against S for repayment of the purchase price based on the *condictio indebiti*.**
5. P has an enrichment claim against S for repayment of the purchase price based on the *actio negiotiorum gestorum utilis*.

(1)

Question 3

Answer : *P will claim the full R50 000, but S could raise the defence that part of the enrichment has fallen away. If S used the money to pay debts and wages, the defence will not succeed, because he saved expenses he would have had in any event. If S used the money to buy something he will be regarded as enriched to the extent of the value of the goods. If S spend the money on something that has no market value anymore, and it is not something he would have done if he was aware of the true facts, his defence will succeed. In this case S has been enriched*

by the R5 000 left in his savings account, the R15 000 paid for the foal if we assume that the value of the foal is still R15 000, the weekly wages of R8 000 and the R10 000 of the overdraft. The luxury weekend has no market value afterwards and S will succeed with the defence that the enrichment has fallen away in this respect, unless he booked and planned the holiday irrespective of whether he sold Big Boy or not. The correct option is thus 5.

Assume the same facts as in Question 2. Indicate which statement best explains the quantum of P's enrichment claim:

1. P has an enrichment claim for the full R50,000 paid.
2. P has an enrichment claim **only** for the R5,000 left in the savings account, the R 15,000 paid for the foal and the weekly wages paid of R8,000.
3. P has an enrichment claim **only** for the R5,000 left in S's savings account.
4. P has an enrichment claim only for the R5,000 left in the savings account and the R15,000 paid for the foal.
5. **P has an enrichment claim only for the R5,000 left in the savings account, the R15,000 paid for the foal, the weekly wages paid of R8,000 and the R10,000 paid on the overdraft.**

(1)

Question 4

Answer : *Options 2, 3 and 4 are correct – see Study Guide 1, par 5.4 and* Jajhbay v Cassim*. Option 1 is incorrect because of the word "never". In instances where the* par delictum *rule is relaxed, a party who acted with knowledge of the unlawfulness of the contract may still succeed if the court decides that the turpitude on the part of the plaintiff was less than that on the part of the defendant.*

Indicate which one of the following is not a correct statement in respect of the *condictio ob turpem vel iniustam causam*:

1. **A party who acted with knowledge of the unlawfulness of the contract can never have an enrichment claim against the other party.**
2. Performance by the plaintiff must have taken place as a result of an unlawful agreement.
3. The plaintiff must offer to return any performance received when lodging this enrichment action.
4. The court has an equitable discretion to "do justice between man and man" when dealing with claims based on this enrichment action.
5. 1 and 4 are both wrong.

(1)

Question 5

Answer : *L is a lessee and thus a lawful occupier. A bona fide and mala fide occupier are both unlawfully on the premises and that is not the case here. A possessor is someone that acts as if he is the owner, which is also not the case here. The correct option is thus 1.*

L is renting a farm from O for an amount of R10,000 per month. Without notifying O, L concludes a contract with R to build a new storeroom at a cost of R100,000 and to make repairs to the roof of the house on the farm at a cost of R15,000 because the roof is leaking and causing damage to the interior of the house.

Indicate which statement best explains L's presence on O's land:

1. L is a lawful occupier of the farm.
2. L is a *bona fide* occupier of the farm.
3. L is a *bona fide possessor* of the farm.
4. L is a *mala fide* occupier of the farm because he did not have the permission of O to effect the improvements and repairs.
5. 1 and 3 are both correct.

(1)

Question 6

Answer : *Because L is a lawful occupier, not a bona fide occupier, option 2 is incorrect immediately. As a lessee of rural land the Placaaten will apply (see Study guide 1, par 10.2.1) and L will not have a claim for his necessary and useful improvements because it was made without the permission of the owner. The correct option is thus 4.*

Assume the same facts as in Question 5. Indicate which statement best explains L's possible claim:

1. L as lawful occupier has an enrichment action against O for the value of all of the improvements affected to the farm.
2. L as *bona fide* occupier has an enrichment action against O to the extent that the improvements increased the value of the farm.
3. L as lawful occupier has an enrichment action against O for only the value of the necessary improvements effected to the farm, i.e. the repairs to the roof.
4. **L as lessee of rural land has no claim against O in terms of the Roman-Dutch Placaaten that still applies in South African law.**
5. L as lessee of rural land has a claim against O in terms of the Roman-Dutch Placaaten that still applies in South African law.

(1)

Question 7

Answer : *See Study guide 1, par 2.2.3. Options 2 and 4 are both correct.*

Assume the same facts as in Question 5. Assume further that L has absconded after the improvements were effected and cannot be found as he has apparently emigrated.
Indicate which statement best explains the case law on whether R will have a claim against O under these circumstances:

1. In *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A) it was held that under these circumstances R has a claim against O for the value of the improvements made to the farm.
2. In *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A) the question on whether R has a claim against O for the value of the improvements made to the farm under these circumstances, was left undecided.
3. In *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T) it was held that under these circumstances R has a claim against O for the value of the improvements made to the farm.
4. In *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T) it was held that under these circumstances R has **no** claim against O for the value of the improvements made to the farm.
5. **2 and 4 are both correct.**

(1)

Question 8

Answer : *B's payment is not in terms of an unlawful, void or conditional contract. B also does not have the intention to manage X's affairs. B is paying a debt owed to X and therefore B has no enrichment claim against X.*

B has bought an operating business from S for R1.5 million. After B had taken over the running of the business, X, a major supplier to the business, refuses to supply B with any product until S has settled a debt owed to X for goods delivered in an amount of R50,000. B pays S's debt with X because he cannot operate the business without the product supplied by X. S refuses to repay the amount to B.

Indicate which statement best explains which enrichment action, if any, is available to B against X:

1. **B has no claim against X in terms of any enrichment action.**
2. B has a claim against X based on the *condictio indebiti*.
3. B has a claim against X based on the *condictio sine causa specialis*.
4. B has a claim against X based on the *actio negiotiorum gestorum utilis* (extended management of affairs action).
5. B has a claim against X based on the *actio negiotiorum gestorum contraria* (true management of affairs action).

(1)

Question 9

Answer : *As already stated, B's payment is not in terms of an unlawful, void or conditional contract. B is paying a debt owed by S knowing that he (B) doesn't owe the debt and therefore the* condictio indebiti *will not be available. B's payment is made to advance his own interests and therefore the true management of affairs action will not be available to him. In* Odendaal v Van Oudtshoorn *1968 3 SA 433 (T) the court held that the extended management of affairs action will be available in these circumstances. See Study guide 1, par 8.4.2. The correct option is thus 3.*

Assume the same facts as in question 8. Indicate which statement best explains which enrichment action, if any, is available to B against S.

1. B has a claim against S based on the *condictio indebiti*.
2. B has a claim against S based on the *condictio sine causa specialis*.
3. **B has a claim against S based on the *actio negiotiorum gestorum utilis* (extended management of affairs action).**
4. B has a claim against S based on the *actio negiotiorum gestorum contraria* (true management of affairs action).
5. B has no claim against S because he is not entitled to meddle in the affairs of S without the permission of S.

(1)

Question 10

Answer : *B will claim the full R50 000. S will raise the defence that his enrichment was for a lesser amount, because he had a valid claim for the reduction of the purchase price.*

Assume the same facts as in Question 8. Further assume that the reason why S refused to pay X was because the goods delivered were defective. S had a valid claim for the reduction of the purchase price of those goods in an amount of R13,000.

Indicate which statement best explains the quantum of B's claim, if any:

1. B has a claim against S for the full amount of R50,000.
2. **B has a claim against S for only R37,000.**
3. B has a claim against X for the full amount of R50,000.
4. B has no claim against S because he is not entitled to meddle in the affairs of S without the permission of S.
5. 3 and 4 are both correct.

(1)

2 COMMENTS ON THE EXAMINATION

At the end of the semester you will write **one two-hour paper** on this module. The paper counts 100 marks. The paper will consist of 50 per cent multiple choice questions and 50 per cent essay type questions. To pass you need to obtain at least 40 percent for the paper and a final mark of at least 50 per cent after your year mark has been taken into account.

Use the mark allocation at each question to determine how much time you may spend on that question.

For the examination you will need a thorough knowledge of Study Guides 1 and 2 and the relevant cases contained in the study guides and tutorial letters.

The essay part of the examination paper is a so-called fill in paper, in other words you must answer all those questions on the examination paper itself, and then hand in the completed paper. Space for your answer is supplied directly below each question. Short as well as longer questions may be asked. **The answers to the multiple choice questions must be completed on the mark reading sheet that will be provided to you and which you must also hand in after completion.** See further point 8 of Tutorial Letter 101/3 in this regard.

Please note that it is your responsibility to find out whether you have gained examination admission and on which day the examination will take place.

Please note further that you will not directly be questioned on Roman and Roman-Dutch Law.

3 EXAMPLES OF PREVIOUS EXAMINATION QUESTIONS

Question 1

Which is the appropriate action for reclaiming performance made in terms of a contract subject to a suspensive condition that has not been fulfilled?

1 The condictio causa data causa non secuta.

2 The condictio sine causa specialis.

3 The condictio ob finitam causam.

4 The condictio indebiti.

5 The condictio ob turpem vel iniustam causam. (2)

Question 2

Which one of the following statements does not constitute enrichment?

1 An increase in assets which would not have taken place was it not for the enriching fact.

2 A non-decrease in assets where a decrease would have taken place was it not for the enriching fact.

3 A decrease in liabilities which would not have taken place was it not for the enriching fact.

4 A non-decrease in liabilities which would not have taken place was it not for the enriching fact.

5 A non-increase in liabilities which would not have taken place was it not for the enriching fact. (2)

Question 3

Which one of the following statements relating to indirect enrichment is incorrect?

1 A claim for indirect enrichment was not allowed in Gouws v Jester Pools (Pty) Ltd 1968 (3) SA 563 (T).

2 A claim for indirect enrichment was allowed in Brooklyn House Furnishers Ltd v Knoetze & Sons 1970 (3) SA 264 (A).

3 A claim for indirect enrichment was allowed in ABSA Bank Ltd v Stander 1998 (1) SA 929 (C).

4 A claim for indirect enrichment did not arise in Buzzard Electrical v 158 Jan Smuts Avenue Investments 1996 (4) SA 19 (A).

5 A claim for indirect enrichment was recognised obiter in Hubby's Investments (Pty) Ltd v Lifetime Properties (Pty) Ltd 1998 (1) SA 289 (W). (2)

Question 4

Which enrichment action potentially applies to indirect enrichment situations where improvements are effected?

1 The condictio sine causa specialis.

2 The condictio causa data causa non secuta.

3 The condictio ob turpem vel iniustam causam.

4 The actio negotiorum gestorum contraria.

5 The actio negotiorum gestorum utilis. (2)

Question 5

In which one of the following circumstances can the condictio indebiti be used?

1 Where a person has made a payment in terms of a contract subject to a suspensive condition, and the contract has now been extinguished due to the condition not being fulfilled.

2 Where a person has made a payment in terms of a contract subject to a resolutive condition, and the contract has now been extinguished due to the condition being fulfilled.

3 Where an undue payment has been made in circumstances where the mistake is not excusable.

4 Where an executor, who is functus officio, made payments to heirs which were not due because a creditor lodged its claim late.

5 Where a bank has made payment in terms of a forged cheque. (2)

The following facts apply to questions 6-10:

S sells his horse, White Lightning, to P for stud purposes at a price of R 150 000, subject to P obtaining a loan for the full purchase price from his bank. S delivers the horse to P, but it transpires that the bank is prepared to grant P a loan for only half the full purchase price and that P must contribute the balance himself.

Question 6

This is a case where

1 Delivery has been made under a false assumption.

2 Delivery is illegal.

3 A suspensive condition has not been met.

4 A resolutive condition has not been met.

5 There is impossibility of performance. (2)

Question 7

Which action must S institute to reclaim his horse?

1 The condictio causa data causa non secuta.

2 The condictio sine causa specialis.

3 The condictio indebiti.

4 The condictio ob turpem vel iniustam causam.

5 The condictio ob finitam causam. (2)

Question 8

If P paid cash for the horse but unbeknown to the parties the horse had actually been stolen prior to conclusion of the contract, it would be a case where

1 Performance has been made under a false belief.

2 A modus has been disregarded.

3 There is a future supposition which cannot be fulfilled.

4 A resolutive condition has not been met.

5 A suspensive condition has not been met. (2)

Question 9

Assume the same facts as in question 8. Which action would P institute to reclaim his money?

1 The condictio causa data causa non secuta.

2 The condictio sine causa specialis.

3 The condictio indebiti.

4 The condictio ob turpem vel iniustam causam.

5 The condictio ob finitam causam. (2)

Question 10

Assume the same facts as in question 8. If after realising that his own horse had been stolen S used the purchase price to buy another horse to the value of R100 000 and gambled away the rest of the money, P would be able to recover

1 The value of the horse that S purchased (R100 000).

2 The horse that S purchased.

3 R50 000.

4 The horse that S purchased and R50 000.

5 Nothing. (2)

Question 11

Which statement best explains the legal position on the recognition of a general enrichment action in South African law?

1. In Nortje v Pool 1966 3 SA 96 (A) the Appellate Division recognised the existence of a general enrichment action in South Africa without any qualifications.

2. In Nortje v Pool 1966 3 SA 96 (A) the Appellate Division recognised the existence of a general enrichment action in South Africa, but with certain qualifications.

3. In Kommissaris van Binnelandse Inkomste v Willers 1994 3 SA 283 (A) the Appellate Division recognised the existence of a general enrichment action in South Africa.

4. In Kommissaris van Binnelandse Inkomste v Willers 1994 3 SA 283 (A) the Appellate Division rejected the existence of a general enrichment action in South Africa but recognised that courts can extend enrichment liability to circumstances where it is deemed necessary.

5. In Kommissaris van Binnelandse Inkomste v Willers 1994 3 SA 283 (A) the Appellate Division recognised the existence of a subsidiary, general enrichment action in South Africa. (2)

Question 12

A, an American tourist, has leased a vehicle from B. While travelling in the Northern Cape, the vehicle breaks down. A, contracts with C, a garage in Springbok, to repair the vehicle at a cost of R12 000. After two days A leases another vehicle from X and completes his trip. A departs for America. C wants to claim the R12 000 from B. Which statement best explains whether C has a right of retention and the authority on which it is based?

1. In terms of the decision in Brooklyn House Furnishers Ltd v Knoetze & Sons 1970 3 SA 264 (A) C has no right of retention in respect of the vehicle.

2. In terms of the decision in Brooklyn House Furnishers Ltd v Knoetze & Sons 1970 3 SA 264 (A) C has a right of retention against B in respect of the vehicle.

3. In terms of the decision in Brooklyn House Furnishers Ltd v Knoetze & Sons 1970 3 SA 264 (A) C has a right of right retention against A in respect of the vehicle.

4. In terms of the decision in Gouws v Jester Pools (Pty) Ltd 1968 3 SA 63 (T) C has a right of retention against B in respect of the vehicle.

5. In terms of the decision in Gouws v Jester Pools (Pty) Ltd 1968 3 SA 63 (T) C has a right of retention against A in respect of the vehicle. (2)

Question 13

Which action can be used to claim performance that was originally due but subsequently the causa for the performance fell away?

1 The condictio causa data causa non secuta.

2 The condictio sine causa generalis.

3 The condictio indebiti.

4 The condictio ob turpem vel iniustam causam.

5 The condictio ob finitam causam. (2)

Question 14

Which statement(s) provide(s) the most correct explanation of the current legal position?

1. Estoppel and waiver are one and the same.

2. Estoppel cannot be used to maintain an impression that a right has been waived.

3. Estoppel cannot apply to waiver because waiver relates to an existing right while estoppel is merely a defence.

4. A party may be estopped from denying waiver in certain circumstances.

5. 2 and 3. (2)

Question 15

Which statement is the most correct?

1. The protection of good faith is the basis of estoppel.
2. The basis of estoppel is to be found in a delictual action for misrepresentation.
3. The basis of estoppel is the exceptio doli.
4. Estoppel is often seen as a doctrine of the law of evidence.
5. The basis of estoppel is the maxim nemo contra suum factum venire debet. (2)

Question 16

A local authority mistakenly and in conflict with its own policy granted a trade licence in respect of certain areas to X. When, thereafter, it attempted to cancel the licence, X raised estoppel to prevent it from doing so. Which statement most correctly reflects the position in regard to X's reliance on estoppel?

1. X will not be successful with its reliance on estoppel because estoppel is not allowed by law in instances where a local authority must carry out a statutory duty.
2. X will not be successful with its reliance on estoppel because X did not act to its detriment.
3. X will probably be successful with its reliance on estoppel.
4. X will not be successful with its reliance on estoppel because the city council did not make a misrepresentation.
5. Estoppel will always succeed where a statutory body attempts to revoke its own decision. (2)

Question 17

Which element of estoppel do the facts in question (16) specifically relate to?

1. Misrepresentation.
2. Fault.
3. Prejudice.
4. Causation.
5. Permissible in law. (2)

Question 18

Choose the most correct statement.

1. In Van Ryn Wine and Spirit Co v Chandos Bar 1928 TPD 417 estoppel succeeded.
2. In Van Ryn Wine and Spirit Co v Chandos Bar 1928 TPD 417 estoppel did not succeed.
3. In Van Ryn Wine and Spirit Co v Chandos Bar 1928 TPD 417 one of the parties was not prevented from proving dissensus because his conduct had been reasonable and without fault.
4. 1 and 3.
5. 2 and 3. (2)

Question 19

Estoppel is most similar to which theory?

1. The declaration theory.
2. The will theory.
3. The reliance theory.
4. The reception theory.
5. None of the above. (2)

Question 20

A has sold his television set to B for R2 000. The contract stipulates that ownership will only pass to B after the last instalment of R200 has been paid. A has given a letter to B stating the following: “Herewith I, A, confirm that I have sold Sony TV set No 123321 to B.” After a period of six months and payment of R1,200 B wants to sell the set to C and shows C the letter from A. C who is very cautious, first phones A who again confirms the sale to B. C buys the set from B for R1,500. Thereafter B fails to make any further payments to A. A now claims back his TV set from C with a rei vindicatio. Which statement provides the most correct explanation of the current legal position?

1. A has committed a misrepresentation to C by giving the misleading letter to B while he should have realised that B could abuse the letter according to the decision in Grosvenor Motors (Potchefstroom) Ltd v Douglas 1956 3 SA 420 (A).

2. A has committed a misrepresentation to C by giving the letter to B.

3. A has committed a misrepresentation to C by giving the letter to B and failing to inform C at the time when C phoned him, that the TV set had not yet been paid in full.

4. A misrepresentation cannot be made by silence.

5. A misrepresentation cannot be made by conduct. (2)

Question 21

Assume the same facts as in question (20). Indicate which statement most correctly states the position in regard to the fault requirement?

1. The person relying on estoppel must at least allege and prove negligence in cases where a loss of ownership is involved.

2. The person relying on estoppel must at least allege and prove intent in cases where a loss of ownership is involved.

3. Fault is never required for a successful reliance on estoppel.

4. Fault is always required for a successful reliance on estoppel.

5. None of the above. (2)

Question 22

Assume the same facts as in question (20). Indicate which statement most correctly states the position in regard to the causality requirement.

1. The misrepresentation by the person denying estoppel must have been the only cause of the detrimental conduct of the person relying on estoppel.

2. In terms of the "proximate cause" as applied by the courts, the misrepresentation by the person denying estoppel must have been the only cause of the detrimental conduct of the person relying on estoppel.

3. In terms of the "proximate cause" as applied by the courts, it is sufficient that the misrepresentation by the person denying estoppel made a material contribution to the detrimental conduct of the person relying on estoppel.

4. The "proximate cause" as applied by the courts, includes only factual causality and not legal causality.

5 The courts use the conditio sine qua non test to determine causality in general. (2)

Question 23

Assume the same facts as in question (20). Indicate which statement most correctly states the position in regard to the detriment requirement.

1. It is sufficient to prove that the person relying on estoppel has changed his position to his detriment even if he cannot prove concrete damage suffered.

2. It is not sufficient to prove that the person relying on estoppel has changed his position to his detriment if he cannot prove concrete damage suffered.

3. The person relying on estoppel must prove that he has already suffered damage as a result of the misrepresentation in all instances.

4. The person relying on estoppel must prove that he has suffered either patrimonial damage or personal damage.

5 None of the above. (2)

Question 24

Assume the same facts as in question (20). Which statement most correctly indicates whether C's reliance on estoppel will be successful?

1. C has acted to his detriment because he has concluded the contract with B, made payment and now possibly stands to lose the TV set.

2. C has not acted to his detriment because he has not suffered any patrimonial damage.

3. C has not acted to his detriment by concluding the contract with B, because he still has a claim for breach of contract against B.

4. C cannot rely on estoppel at all in cases where ownership is at stake.

5 C cannot rely on estoppel when he has a contractual claim against a third party. (2)

Question 25

Choose the correct statement.

1. In Fawden v Lelyfeld 1937 TPD a plea of estoppel did not succeed.

2 In Grosvenor Motors (Potchefstroom) Ltd v Douglas 1956 3 SA 420 (A) a plea of estoppel did not succeed.

3 In Johaadien v Stanley Porter (Paarl) (Pty) Ltd 1970 1 SA 394 (A) a plea of estoppel succeeded.

4. In Morum Bros v Nepgen 1916 CPD a plea of estoppel succeeded.

5 In Adams v Mocke 23 SC 722 a plea of estoppel succeeded. (2)

SECTION B

Question 1

A has concluded a contract with B in terms of which B must paint the exterior of the house that A occupies. A is in fact looking after the house for C, who is overseas for an extended period. A promises to pay B R20 000 when the work is done. B completes the work thinking that the house belongs to A, but A absconds without paying the contract price to B. If it is assumed that B has a claim against C, explain in full which action would be used, how the claim should be quantified and any defences that C may raise against the claim by B. (10)

QUESTION 2

C steals a cheque from D and forges it with E as the payee. C agrees with E that E will deliver R100 000 worth of goods to C as soon as the amount has been deposited into his bank account. C deposits the cheque with F, E's bank in favour of E. The cheque is honoured and the money paid from D's account. F credits E's account with the amount. By the time that D finds out that the cheque has been stolen, E has already released the goods to C and has also spent R50 000 of the money. Advise D whether he has an enrichment claim against either E or F, and if so the nature and requirements for that action. Advise D also regarding the extent of the claim. (15)

QUESTION 3

A takes his car to B, who sells second-hand cars, to have his car valued. While in B's possession, the car is stolen through no fault of B. A short while later A attends a public auction of cars and recognises his stolen vehicle. The car is sold to C at the auction and C pays cash for it. A now claims the vehicle from C with a rei vindicatio. Advise C with reference to relevant case law. (10)

QUESTION 4

Write a brief note on the effect of fault on the part of the estoppel assertor. (5)

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