FINAL / FINALE %

UNISA university of south africa

PVL3704 (494946)

OCTOBER/NOVEMBER 2016
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UNJUSTIFIED ENRICHMENT AND ESTOPPEL
ONGEREGVERDIGDE VERRYKING EN ESTOPPEL

STUDENT NUMBER / STUDENTENOMMER									

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UNISA university of south africa

PVL3704 (494946) October/November 2016
Oktober/November 2016

ENRICHMENT LIABILITY AND ESTOPPEL
VERRYKINGSAANSPREEKLIKHEID EN ESTOPPEL

Duration 2 Hours — 100 Marks
Tydsduur 2 Uur — 100 Punte

EXAMINERS / EKSAMINATORE

FIRST / EERSTE	PROF GTS EISELEN	MR/MNR KA SEANEGO
SECOND / TWEEDE	PROF JC KNOBEL	

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This paper consists of 30 pages **plus instructions for the completion of a mark-reading sheet.**
Hierdie vraestel bestaan uit 30 bladsye ***plus instruksies vir die voltooiing van 'n merkleesblad.***

STUDENT NUMBER *STUDENTENOMMER*				-				-	

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2 You must hand in the complete examination paper plus the mark-reading sheet
3 The unique number to be filled-in on the mark-reading sheet is **494946**
4 Answer all the questions in the designated spaces only Answers outside such spaces will not be read
5 **Do not write in the margins** - this space is reserved for the examiners
6 **Do your rough work on page 2** This page will not be read by the examiners
7 The English version of each question is followed by the Afrikaans version
8 This paper counts **100 marks** Divide your time accordingly
9 Plan each answer carefully before you write it down and refer to the relevant authority whenever possible

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1 **Hierdie vraestel bestaan uit Afdeling A Multikeusevrae (wat op die merkleesblad beantwoord word) en Afdeling B Invulvrae (wat op die invulvraestel beantwoord word)** U ontvang geen eksamenboek nie
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4 Beantwoord al die vrae net in die ruimtes daarvoor aangedui Antwoorde buite sodanige ruimtes sal nie gelees word nie
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7 Die Afrikaanse weergawe van elke vraag volg direk na die Engelse weergawe
8 Die vraestel tel **100 punte** Deel u tyd daarvolgens in
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SECTION A / ***AFDELING A***

CHOOSE THE MOST CORRECT OPTION IN EVERY INSTANCE
KIES DIE MEES KORREKTE OPSIE IN ELKE GEVAL.

ALSO CIRCLE YOUR ANSWERS ON THE QUESTION PAPER.
SIRKEL OOK U ANTWOORDE OP DIE VRAESTEL SELF.

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)

Vraag 1

Wat is die geskikte aksie om prestasie terug te eis wat gemaak is ooreenkomstig 'n kontrak onderhewig aan 'n opskortende voorwaarde wat nie vervul is nie?

1 Die *condictio causa data causa non secuta.*

2 Die *condictio sine causa specialis.*

3 Die *condictio ob finitam causam.*

4 Die *condictio indebiti.*

5 Die *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)

Vraag 2

Watter een van die volgende stellings behels nie verryking nie?

1 'n Vermeerdering in bates wat nie sou plaasgevind het, was dit nie vir die verrykingsfeit nie.

2 'n Nievermindering in bates waar 'n vermindering sou plaasgevind het was dit nie vir die verrykingsfeit nie.

3 'n Vermindering van laste wat nie sou plaasgevind het was dit nie vir die verrykingsfeit nie.

4 'n Nievermindering van laste wat nie sou plaasgevind het was dit nie vir die verrykingsfeit nie.

5 'n Nievermeerdering van laste wat nie sou plaasgevind het was dit nie vir die verrykingsfeit nie. (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)

Vraag 3

Watter een van die volgende stellings met betrekking tot indirekte verryking is verkeerd?

1 **'n Eis om indirekte verryking was nie in *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T) toegestaan nie.**

2 **'n Eis om indirekte verryking was in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A) toegestaan.**

3 **'n Eis om indirekte verryking was in *ABSA Bank Ltd v Stander* 1998 (1) SA 929 (K) toegestaan.**

4 **'n Eis om indirekte verryking het nie in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A) ter sprake gekom nie.**

5 **'n Eis om indirekte verryking was in *Hubby's Investments (Pty) Ltd v Lifetime Properties (Pty) Ltd* 1998 (1) SA 289 (W) *obiter* erken.** **(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)

Vraag 4

Watter verrykingsaksie is moontlik van toepassing op gevalle van indirekte verryking waar verbeterings aangebring is?

1 **Die *condictio sine causa specialis.***

2 **Die *condictio causa data causa non secuta.***

3 **Die *condictio ob turpem vel iniustam causam.***

4 **Die *actio negotiorum gestorum contraria.***

5 **Die *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)

Vraag 5

In watter een van die volgende omstandighede kan die *condictio indebiti* aangewend word?

1 Waar 'n persoon betaling gemaak het ingevolge 'n kontrak wat onderhewig was aan 'n opskortende voorwaarde, en die kontrak nou beëindig is as gevolg van die nie-vervulling van die voorwaarde.

2 Waar 'n persoon betaling gemaak het ingevolge 'n kontrak wat onderhewig was aan 'n ontbindende voorwaarde, en die kontrak nou beëindig is as gevolg van die vervulling van die voorwaarde.

3 Waar 'n onverskuldigde betaling gemaak is onder omstandighede waar die dwaling nie verskoonbaar is nie.

4 Waar 'n eksekuteur wat *functus officio* is, betaling aan erfgename gemaak het wat onverskuldig was omdat 'n krediteur sy eis te laat ingedien het.

5 Waar 'n bank 'n betaling gemaak het op grond van 'n vervalsde tjek. (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

Die volgende feite het betrekking op vrae 6-10:

S het sy perd Witblits aan P verkoop vir stoetdoeleindes teen 'n prys van R 150 000, onderhewig daaraan dat P 'n lening vir die volle koopprys van sy bank sal bekom.

S lewer die perd aan P maar dit blyk dat die bank slegs bereid is om 'n lening vir die helfde van die koopprys toe te staan en dat P die restant self moet bydra.

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)

Vraag 6

Hierdie is 'n geval waar

1 lewering onder 'n valse veronderstelling gemaak is.

2 lewering ongeoorloof is.

3 'n opskortende voorwaarde nie nagekom is nie.

4 'n ontbindende voorwaarde nie nagekom is nie.

5 daar onmoontlikheid van prestasie is. (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)

Vraag 7

Watter aksie moet S instel om sy perd terug te eis?

1 Die *condictio causa data causa non secuta.*

2 Die *condictio sine causa specialis.*

3 Die *condictio indebiti.*

4 Die *condictio ob turpem vel iniustam causam.*

5 Die *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)

Vraag 8

Indien P kontant vir die perd betaal het, maar die perd sonder die kennis van die partye voor die sluiting van die kontrak gesteel is, is dit 'n geval waar

1 prestasie onder 'n valse siening gemaak is.

2 'n modus verontagsaam is.

3 daar 'n toekomstige veronderstelling is wat nie nagekom kan word nie.

4 'n ontbindende voorwaarde nie nagekom is nie.

5 'n opskortende voorwaarde nie nagekom is nie. (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)

Vraag 9

Veronderstel dieselfde feite as in vraag 8. Watter aksie sal P instel om sy geld terug te eis?

1 Die *condictio causa data causa non secuta.*

2 Die *condictio sine causa specialis.*

3 Die *condictio indebiti.*

4 Die *condictio ob turpem vel iniustam causam.*

5 Die *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)

Vraag 10

Veronderstel dieselfde feite as in vraag 8. Indien S, nadat hy besef het dat sy perd gesteel is, die koopprys gebruik het om 'n ander perd ter waarde van R100 000 te koop en die res van die geld weggedobbel het, sal P

1 die waarde van die perd wat S gekoop het (R100 000), kan eis.

2 die perd wat S gekoop het, kan eis.

3 R50 000 kan eis.

4 die perd wat S gekoop het en R50 000 kan eis.

5 niks kan eis nie. (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)

Vraag 11

Watter stelling beskryf die regsposisie met betrekking tot die erkenning van 'n algemene verrykingsaksie in die Suid-Afrikaanse reg die beste?

1. **In *Nortje v Pool* 1966 3 SA 96 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie in die Suid-Afrikaanse reg erken sonder enige voorbehoude.**
2. **In *Nortje v Pool* 1966 3 SA 96 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie in die Suid-Afrikaanse reg erken maar met sekere voorbehoude.**
3. **In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie in die Suid-Afrikaanse reg erken.**
4. **In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie in die Suid-Afrikaanse reg ontken, maar toegegee dat die howe in geskikte omstandighede verrykingsaanspreeklikheid kan uitbrei indien nodig.**
5. **In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) het die Appèlafdeling die bestaan van 'n subsidiêre, algemene verrykingsaksie in die Suid-Afrikaanse reg erken. (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)

Vraag 12

A, 'n Amerikaanse toeris, huur 'n voertuig van B. Terwyl op reis in die Noord-Kaap raak die voertuig **onklaar. A kontrakteer met C, 'n werkswinkel in Springbok, om die voertuig te herstel teen 'n koste van R12 000. Na twee dae huur A 'n ander voertuig van X om sy reis te voltooi. A keer terug na Amerika. C wil nou 'n eis instel teen B vir R12 000. Watter stelling beskryf die vraag of C 'n retensiereg het en die gesag waarop dit gebaseer is die beste?**

1. Ingevolge **die beslissing in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 3 SA 264 (A) het C geen retensiereg ten opsigte van die voertuig nie.**
2. Ingevolge **die beslissing in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 3 SA 264 (A) het C 'n retensiereg teenoor B ten opsigte van die voertuig.**
3. Ingevolge **die beslissing in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 3 SA 264 (A) het C 'n retensiereg teenoor A ten opsigte van die voertuig.**
4. Ingevolge **die beslissing in *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) het C 'n retensiereg teenoor B ten opsigte van die voertuig.**
5. Ingevolge **die beslissing in *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) het C 'n retensiereg teenoor A ten opsigte van die voertuig.** **(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)

Vraag 13

Watter aksie kan gebruik word om prestasie wat oorspronklik verskuldig was, maar die *causa* vir die prestasie daarna weggeval het, te eis?

1 Die *condictio causa data causa non secuta.*

2 Die *condictio sine causa generalis.*

3 Die *condictio indebiti.*

4 Die *condictio ob turpem vel iniustam causam.*

5 Die *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

Vraag 14

Watter stelling(s) verskaf die mees korrekte verduideliking van die huidige regsposisie?

1. Estoppel en afstanddoening van regte is een en dieselfde.
2. Estoppel kan nie gebruik word om 'n indruk te handhaaf dat van 'n reg afstand gedoen is nie.
3. Estoppel kan nie op afstanddoening van regte toegepas word nie omdat afstanddoening betrekking het op bestaande regte terwyl estoppel slegs 'n verweer is.
4. 'n Persoon kan in sekere omstandighede deur die werking van estoppel verhoed word om afstanddoening van regte te ontken.
5. 2 en 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)

Vraag 15

Watter stelling is die mees korrek?

1. Die beskerming van goeie trou is die grondslag van estoppel.
2. Die grondslag van estoppel is te vinde in 'n deliktuele eis vir wanvoorstelling.
3. Die grondslag van estoppel is die *exceptio doli*
4. Estoppel word dikwels gesien as 'n leerstuk van die bewysreg.
5. Die grondslag van estoppel is die stelreël *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)

Vraag 16

'n Plaaslike owerheid het gefouteer en in stryd met sy eie beleid 'n handelslisensie met betrekking tot sekere gebiede aan X verleen. Wanneer dit daarna die lisensie wou intrek, het X estoppel opgewerp om dit te verhoed. Watter stelling is die mees korrek met betrekking tot X se beroep op estoppel?

1. **X sal nie slaag met 'n beroep op estoppel nie omdat estoppel nie regtens opgewerp kan word waar daar 'n statutêre plig op 'n stadsraad rus nie.**
2. **X sal nie slaag met 'n beroep op estoppel nie omdat X nie tot sy nadeel gehandel het nie.**
3. **X sal waarskynlik slaag met 'n beroep op estoppel.**
4. **X sal nie slaag met 'n beroep op estoppel nie omdat die stadsraad nie 'n wanvoorstelling gepleeg het nie.**
5. **Estoppel sal altyd slaag waar 'n statutêre liggaam poog om sy eie besluit terug te trek.** **(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)

Vraag 17

Op watter element van estoppel het die feite in vraag (16) spesifiek betrekking?

1. Wanvoorstelling.
2. Skuld.
3. Nadeel.
4. Kousaliteit.
5. Regtens toelaatbaar. **(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)

Vraag 18

Kies die mees korrekte stelling.

1. In *Van Ryn Wine and Spirit Co v Chandos Bar* 1928 TPD 417 het estoppel geslaag.
2. In *Van Ryn Wine and Spirit Co v Chandos Bar* 1928 TPD 417 het estoppel nie geslaag nie.
3. In *Van Ryn Wine and Spirit Co v Chandos Bar* 1928 TPD 417 was een van die partye nie verhoed om *dissensus* te bewys nie want sy optrede was redelik en sonder skuld.
4. 1 en 3.
5. 2 en 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)

Vraag 19

Estoppel is die naaste aan watter teorie?

1. **Die verklaringsteorie.**
2. **Die wilsteorie.**
3. **Die vertrouensteorie.**
4. **Die ontvangsteorie.**
5. **Geeneen van bogenoemde nie.** **(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)

Vraag 20

A verkoop sy televisiestel aan B vir R2,000. Die kontrak bepaal dat eiendomsreg van die stel eers op B oorgaan nadat die laaste paaiement van R200 aan A betaal is. A gee 'n briefie aan B waarin die volgende staan: "Hiermee bevestig ek, A, dat ek Sony TV-stel no 123321 aan B verkoop het." Na verloop van 6 maande en betaling van R1,200 wil B die stel aan C verkoop. Hy wys die briefie wat A aan hom gegee het aan C. C wat baie versigtig is, bel vir A en A bevestig dat hy die stel aan B verkoop het. C koop die stel by B vir R1,500. Daarna versuim B om enige verdere paaiemente aan A te betaal. A eis nou die TV-stel van C terug met die *rei vindicatio*. Watter stelling gee die mees korrekte uiteensetting van die huidige regsposisie?

1. **A het 'n wanvoorstelling teenoor C gepleeg deur die briefie wat misleidend is aan B te oorhandig terwyl hy moes besef het dat B die briefie kan misbruik ingevolge die beslissing in *Grosvenor Motors (Potchefstroom) Ltd v Douglas* 1956 3 SA 420 (A).**
2. **A het 'n wanvoorstelling teenoor C gepleeg deur die briefie aan B te oorhandig.**
3. **A het 'n wanvoorstelling teenoor C gepleeg deur die briefie aan B te oorhandig en te**

versuim om vir C in te lig dat die TV-stel nog nie afbetaal is nie op die tydstip toe C hom gebel het.

4. **'n Wanvoorstelling kan nie deur stilswye gemaak word nie.**
5. **'n Wanvoorstelling kan nie deur gedrag veroorsaak word nie.** **(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)

Vraag 21

Veronderstel dieselfde feite as in vraag (20). Dui aan watter stelling die posisie ten opsigte van die skuldvereiste die beste uiteensit.

1. **'n Estoppelopwerper moet ten minste nalatigheid beweer en bewys in gevalle waar die verlies van eiendomsreg ter sprake is.**
2. **'n Estoppelopwerper moet ten minste opset beweer en bewys in gevalle waar die verlies van eiendomsreg ter sprake is.**
3. **Skuld is nooit 'n vereiste vir 'n geslaagde beroep op estoppel nie.**
4. **Skuld is in alle gevalle 'n vereiste vir 'n geslaagde beroep op estoppel.**
5. **Geeneen van bogenoemde nie.** **(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)

[TURN OVER]
[BLAAI OM]

Vraag 22

Veronderstel dieselfde feite as in vraag (20). Dui aan watter een van die volgende stellings die regsposisie met betrekking tot kousaliteit die beste uiteensit.

1. **Die estoppelontkenner se wanvoorstelling moes die enigste oorsaak van die estoppelopwerper se nadelige optrede gewees het.**
2. **Ingevolge die "proximate cause" toets soos dit deur die howe toegepas word, moes die estoppelontkenner se wanvoorstelling die enigste oorsaak van die estoppelopwerper se nadelige optrede gewees het.**
3. **Ingevolge die "proximate cause" toets soos dit deur die howe toegepas word, is dit voldoende dat die wanvoorstelling van die estoppelontkenner 'n wesenlike bydrae tot die estoppelopwerper se nadelige optrede gemaak het.**
4. **Die "proximate cause" toets soos dit deur die howe toegepas word, sluit net feitelike kousaliteit in en nie juridiese kousaliteit nie.**
5. **Die howe gebruik die *conditio sine qua non*-toets om kousaliteit te bepaal in die algemeen.** **(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)

Vraag 23

Veronderstel dieselfde feite as in vraag (20). Dui aan watter een van die stellings die regsposisie met betrekking tot nadeel die beste weergee.

1. **Dit is voldoende om te bewys dat die estoppelopwerper sy regsposisie tot sy nadeel verander het selfs al kan konkrete skade nie bewys word nie.**
2. **Dit is nie voldoende om te bewys dat die estoppelopwerper sy regsposisie tot sy nadeel verander het indien konkrete skade nie bewys kan word nie.**
3. **Die estoppelopwerper moet in alle gevalle bewys dat hy reeds skade gely het as gevolg van die wanvoorstelling.**
4. **Die estoppelopwerper moet bewys dat hy óf vermoënsskade óf persoonlikheidsnadeel gely het.**
5. **Geeneen van bogenoemde nie.** **(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)

Vraag 24

Veronderstel dieselfde feite as in vraag (20). Dui aan watter een van die stellings die mees korrekte aanduiding gee of C se beroep op estoppel behoort te slaag.

1. **C het tot sy nadeel opgetree omdat hy die kontrak met B gesluit het en B betaal het terwyl hy nou die TV-stel moontlik moet prysgee.**
2. **C het nie tot sy nadeel opgetree nie omdat hy nie enige vermoënskade skade ly nie.**
3. **C het nie tot sy nadeel opgetree deur die kontrak met B te sluit nie, omdat hy steeds 'n eis vir kontrakbreuk teen B sal hê.**
4. **C kan hom hoegenaamd nie op estoppel beroep in gevalle waar eiendomsreg ter sprake is nie.**
5. **C kan hom nie op estoppel beroep waar hy 'n kontraktuele eis teen 'n derde het nie.**

(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)

Vraag 25

Kies die korrekte stelling.

1 **In *Fawden v Lelyfeld* 1937 TPD het 'n pleit van estoppel nie geslaag nie.**
2 **In *Grosvenor Motors (Potchefstroom) Ltd v Douglas* 1956 3 SA 420 (A) het 'n pleit van estoppel nie geslaag nie.**

3 In *Johaadien v Stanley Porter (Paarl) (Pty) Ltd* 1970 1 SA 394 (A) het 'n pleit van estoppel geslaag.
4 In *Morum Bros v Nepgen* 1916 CPD het 'n pleit van estoppel geslaag.
5 In *Adams v Mocke* 23 SC 722 het 'n pleit van estoppel geslaag. **(2)**

TOTAL SECTION A / TOTAAL AFDELING A **[50]**

*SECTION B / **AFDELING B***

ALWAYS REFER TO RELEVANT CASE LAW

VERWYS ALTYD NA RELEVANTE REGSPRAAK

QUESTION 1 / **VRAAG 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)

A sluit 'n kontrak met B ingevolge waarvan B die buitekant van die huis wat A okkupeer, moet verf. A pas egter die huis op vir C wie vir 'n geruime tyd oorsee is. A belowe om vir B R20,000 te betaal wanneer die werk voltooi is. B voltooi die werk dinkende dat die huis aan A behoort, maar A verdwyn sonder om die kontrakprys aan B te betaal. Indien aanvaar word dat B 'n eis teen C het, verduidelik volledig watter aksie gebruik sou word, hoe die eis bereken sal word en enige verwere teen die eis deur B wat C mag opper. (10)

(10)

[TURN OVER]
[BLAAI OM]

QUESTION 2 / **VRAAG 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)

C steel 'n tjek van D en vervals dit met E as die begunstigde. C kom met E ooreen dat E R100 000 se goedere aan C sal lewer sodra die tjek in sy bankrekening gedeponeer is. C deponeer die tjek by F, E se bank ten gunste van E. Die tjek word gehonoreer en die bedrag word uit D se bankrekening betaal. F krediteer E se rekening met die bedrag. Teen die tyd dat D uitvind dat die tjek gesteel is, het E alreeds die goedere gelewer aan C en ook reeds R50 000 van die geld gespandeer. Adviseer D daaroor of hy 'n verrykingseis teen E of F het, en indien wel wat die aard en vereistes van die aksie is. Adviseer D ook oor die omvang van die eis. (15)

(15)

[TURN OVER]
[BLAAI OM]

QUESTION 3 / **VRAAG 3**

Discuss the nature and extent of enrichment claims, including factors that could influence the amount of a claim (10)

Bespreek die aard en omvang van verrykingseise, insluitend faktore wat die bedrag van 'n eis kan beïnvloed. (10)

(10)

[TURN OVER]
[BLAAI OM]

QUESTION 4 / **VRAAG 4**

Write a critical discussion on whether the entrusting of property to another creates the impression that the receiver is entitled to dispose of it. In your answer you must refer to relevant case law. (10)

Skryf 'n kritiese bespreking oor of die laat van eiendom in die besit van 'n ander die indruk wek dat die ontvanger die saak mag vervreem. In u antwoord moet u na toepaslike regspraak verwys. (10)

(10)

[TURN OVER]
[BLAAI OM]

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1. GEBRUIK SLEGS 'N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
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PART 2 (ANSWERS/ANTWOORDE) DEEL 2

10 (1 2 3 4 5)

1	36	71	106
2	37	72	107
3	38	73	108
4	39	74	109
5	40	75	110
6	41	76	111
7	42	77	112
8	43	78	113
9	44	79	114
10	45	80	115
11	46	81	116
12	47	82	117
13	48	83	118
14	49	84	119
15	50	85	120
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17	52	87	122
18	53	88	123
19	54	89	124
20	55	90	125
21	56	91	126
22	57	92	127
23	58	93	128
24	59	94	129
25	60	95	130
26	61	96	131
27	62	97	132
28	63	98	133
29	64	99	134
30	65	100	135
31	66	101	136
32	67	102	137
33	68	103	138
34	69	104	139
35	70	105	140

Specimen only

QUESTION 5 / **VRAAG 5**

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

Skryf 'n kort aantekening oor die uitwerking van skuld aan die kant van die estoppelopwerper. **(5)**

(5)

TOTAL SECTION B / TOTAAL AFDELING B **[50]**

TOTAL PAPER/ TOTAAL VRAESTEL: **[100]**

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