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ENRICHMENT LIABILITY AND ESTOPPEL
VERRYKINGSAANSPREEKLIKHEID EN ESTOPPEL

Duration 2 Hours
Tydsduur 2 Uur

100 Marks
100 Punte

EXAMINERS / EKSAMINATORE

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

Closed book examination
Toeboekeksamen

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This paper consists of 29 pages **plus instructions for the completion of a mark-reading sheet**
Hierdie vraestel bestaan uit 29 bladsye **plus instruksies vir die voltooiing van 'n merkleesblad.**

STUDENT NUMBER **STUDENTENOMMER**				-				-	

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INSTRUCTIONS
1 **This paper consists of Section A Multiple-choice questions (to be answered on the mark-reading sheet) and Section B Fill-in questions (to be answered on the fill-in question paper)** You will not receive an examination book
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 **495838**
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

INSTRUKSIES
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
2 U moet die hele vraestel inlewer, asook die merkleesblad
3 Die unieke nommer wat op die merkleesblad ingevul moet word, is **495838**
4 Beantwoord al die vrae net in die ruimtes daarvoor aangedui Antwoorde buite sodanige ruimtes sal nie gelees word nie
5 **Moenie in die kantlyne skryf nie** - die ruimte is vir gebruik deur die eksaminatore
6 **Doen u rofwerk op bladsy 2** Die bladsy sal nie deur die eksaminatore gelees word nie
7 Die Afrikaanse weergawe van elke vraag volg direk na die Engelse weergawe
8 Die vraestel tel **100 punte** Deel u tyd daarvolgens in
9 Beplan elke antwoord deeglik voordat u dit neerskryf en verwys waar nodig na relevante gesag

[TURN OVER]
[BLAAI OM]

ROUGH WORK / **ROFWERK**

Do all your rough work on this page This page will not be read by the examiners

Doen al u rofwerk op hierdie bladsy. Hierdie bladsy sal nie deur die eksaminatore gelees word nie.

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.

READ EACH QUESTION FAREFULLY BEFORE ANSWERING
LEES ELKE VRAAG NOUKEURIG VOORDAT U ANTWOORD.

QUESTION 1

A has demanded payment from B of an amount of R50 000 which he believes B is owing B has checked his records and has paid the amount in the *bona fide* belief that the amount is owing in terms of their contract Unbeknown to B, his bookkeeper, C had already paid the amount a week earlier by way of an electronic funds transfer into the account of A At the time of the second payment A's account was overdrawn in the amount of R30 000 and was therefore in credit of R20 000 after the payment A has taken R15 000 out of his account to pay his employees their monthly wages He has also paid R10 000 for a luxury weekend after realising that his account was in credit Which statement best explains the nature of the claim against A?

1 B has a claim against A based on delict for a fraudulent misstatement
2 B has a contractual claim against A based on their contract
3 B has an enrichment claim against A based on the *condictio causa data causa non secuta*
4 B has an enrichment claim against A based on the *condictio indebiti*
5 B has an enrichment claim against A based on the *actio negotiorum gestorum utilis* (2)

VRAAG 1

A het vereis dat B 'n bedrag van R50,000 aan hom betaal wat hy van mening was B aan hom verskuldig is. B het sy rekords nagegaan en het die bedrag betaal in die *bona fide* geloof dat die bedrag verskuldig is ingevolge hulle kontrak. B was onbewus daarvan dat C, sy boekhouer, alreeds die bedrag 'n week van tevore betaal het by wyse van 'n elektroniese fondsoordrag na A se rekening. Ten tye van die tweede betaling was A se rekening oortrokke met 'n bedrag van R30,000 en was dit gevolglik met R20,000 in krediet na die betaling. A het R15,000 uit die rekening onttrek om sy werknemers se maandelikse lone te betaal. Hy het ook R10,000 betaal vir 'n luukse naweek nadat hy ontdek het dat sy rekening in krediet is. Watter stelling beskryf die aard van B se eis teen A die beste?

1. **B het 'n eis teen A gebaseer op delik as gevolg van 'n bedrieglike wanvoorstelling.**
2. **B het 'n kontraktuele eis teen A gebaseer op hulle kontrak.**
3. **B het 'n verrykingseis teen A gebaseer op die *condictio causa data causa non secuta*.**
4. **B het 'n verrykingseis teen A gebaseer op die *condictio indebiti*.**
5 **B het 'n verrykingseis teen A gebaseer op die *actio negotiorum gestorum utilis*.** **(2)**

QUESTION 2

Assume the same facts as in question (1) Which statement regarding the requirements for an enrichment action is correct?

1 A has been enriched at the expense of B
2 A has been enriched at the expense of C, who made the payment
3 A's enrichment is not unjustified as there was a contract between A and B
4 A's enrichment is unlawful because he made a demand for payment at a time that it was not due
5 B has been impoverished at the expense of the bank (2)

Veronderstel dieselfde feite as in vraag (1) Watter stelling ten opsigte van die vereistes vir 'n verrykingseis is korrek?

VRAAG 2

1. A is verryk ten koste van B.
2. A is verryk ten koste van C wat die betaling gemaak het.
3. A se verryking is nie ongeregverdig nie omdat daar 'n kontrak tussen A en B bestaan.
4. A se verryking is onregmatig omdat hy 'n aanmaning vir betaling gestuur het op 'n tydstip toe betaling nie verskuldig was nie.
5. B is verarm ten koste van die bank (2)

QUESTION 3

Assume the same facts as in question (1) Which statement best explains the calculation of the enrichment claim?

1 B can only claim R20 000 from A because his account was overdrawn and the bank received the benefit of the other R30 000
2 B can claim nothing as A has not been unjustifiably enriched at his expense
3 B can claim only R25 000 because the rest of the enrichment amount has been spent on the wages and A's holiday
4 B can claim only R40 000 because the rest of the enrichment amount has been lost on the luxury holiday
5 B can claim only R35 000 because the rest of the enrichment has been lost on the wages paid (2)

VRAAG 3

Veronderstel dieselfde feite as in vraag (1) Watter stelling beskryf die berekening van die omvang van die verrykingseis die beste?

1. B kan slegs R20 000 van A eis omdat sy rekening by die bank oortrokke was en die bank die voordeel van die ander R30 000 ontvang het.
2. B kan niks eis nie omdat A nie ongeregverdig verryk is ten koste van B nie.
3 B kan slegs 'n bedrag van R25 000 eis omdat die res van die verrykingsbedrag uitgegee is op die lone en A se vakansie.
4. B kan slegs R40 000 eis omdat die res van die verrykingsbedrag verlore gegaan het op die luukse vakansie.
5 B kan slegs R35 000 eis omdat die res van die verrykingsbedrag verlore gegaan het op die lone wat betaal is. (2)

QUESTION 4

In order to be successful with a claim based on the *condictio indebiti*, the plaintiff must prove the following fact(s) or requirement(s)

1 That the impoverished party made a payment that was not due
2 That the enrichment was unlawful
3 That the mistake of the impoverished party was excusable
4 1 and 2 are correct
5 1 and 3 are correct (2)

VRAAG 4

Om met 'n eis gebaseer op die *condictio indebiti* te kan slaag, moet die eiser die volgende feit(e) of vereiste(s) kan bewys.

1. Dat die verarmde party 'n onverskuldigde betaling gemaak het.
2. Dat die verryking onregmatig was.
3. Dat die dwaling van die verarmde party verskoonbaar was.
4. 1 en 2 is korrek.
5 1 en 3 is korrek. (2)

QUESTION 5

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

1 Where a bank has made payment in terms of a countermanded cheque
2 Where a party knowingly makes a payment that is not due, but under duress and protest
3 Where a contract is rescinded due to a breach of contract
4 Where a party has made an undue payment in terms of an illegal contract
5 Where a party has made payment which is due but where the cause for the payment later falls away (2)

[TURN OVER]
[BLAAI OM]

VRAAG 5

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

1 **Waar 'n bank betaling gemaak het ingevolge 'n tjek wat gestop is**
2 **Waar 'n party bewustelik 'n betaling gemaak het wat nie verskuldig was nie, maar onder dwang en protes.**
3. **Waar 'n kontrak beëindig is op grond van kontrakbreuk.**
4. **Waar 'n party 'n onverskuldigde bedrag betaal het ooreenkomstig 'n ongeoorloofde kontrak.**
5. **Waar 'n party 'n verskuldigde betaling gemaak het, maar waar die regsgrond later wegval.** **(2)**

QUESTION 6

X has concluded a contract with Y, in which Y is to build a tennis court at a cost of R40 000 on the property X is renting from Z It can be shown that the value of the property has increased by R20 000 due to the improvement X has disappeared before paying Y for the work done Y now wants to lodge a claim for the work done Indicate which statement best explains the ground upon which, and the amount that Y can claim

1 Y has an enrichment claim against Z for an amount of R40 000
2 Y has an enrichment claim against Z for an amount of R20 000
3 Y has an enrichment claim against X for an amount of R20 000
4 Y has a contractual claim against X for R40 000
5 Y has an enrichment claim against X for R 20 000 (2)

VRAAG 6

X het 'n kontrak met Y gesluit om 'n tennisbaan teen 'n koste van R40 000 te bou op die eiendom van Z, van wie hy die eiendom huur. Dit kan aangetoon word dat die waarde van die eiendom met R20 000 verhoog is as gevolg van die verbetering. X het nou verdwyn voordat hy Y betaal het vir die werk wat gedoen is. Y wil nou 'n eis instel vir die werk wat gedoen is. Watter stelling beskryf die grond waarop en die bedrag wat Y kan eis die beste.

1 **Y het 'n verrykingseis teen Z vir 'n bedrag van R40 000.**
2. **Y het 'n verrykingseis teen Z vir 'n bedrag van R20 000**
3. **Y het 'n verrykingseis teen 'n bedrag van R20 000.**
4 **Y het 'n kontraktuele eis teen X vir R40 000.**
5. **Y het 'n verrykingseis teen X vir R 20 000** **(2)**

QUESTION 7

Assume the same facts as in question (6) Which statement best explains the authority for the answer to question 6?

1 In terms of the decision in *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 63 (T) it was held that Y has no claim against Z because Z had not been enriched at his expense
2 In terms of the decision in *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 63 (T) it was held that Y has a claim against Z because Z had been enriched at his expense
3 The decision in the *Gouws* case was confirmed in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)
4 The decision in the *Gouws* case was rejected in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)
5 The decision in the *Gouws* case was confirmed in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A) (2)

VRAAG 7

Veronderstel dieselfde feite as in vraag (6). Watter stelling beskryf die gesag waarop die antwoord in Vraag (6) gebaseer is die beste?

1. Ingevolge die beslissing in *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) is beslis dat Y geen eis teen Z het nie omdat Z nie ten koste van Y verryk is nie.
2. Ingevolge die beslissing in *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) is beslis dat Y 'n eis teen Z het omdat Z ten koste van Y verryk is
3. Die beslissing in die *Gouws* saak is bevestig in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 4 SA 19 (A).
4. Die beslissing in die *Gouws* saak is verwerp in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 4 SA 19 (A).
5. Die beslissing in die *Gouws* saak is bevestig in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 3 SA 264 (A). (2)

QUESTION 8

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 8

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 9

G has noticed that his neighbour H's bull is seriously ill The neighbour is currently on a hiking trip in Nepal and cannot be reached G 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 G is a meddlesome neighbour and H has previously warned him not to do anything on his farm under any circumstances, but rather to call his brother K, if G should notice any problem G did not bother to call K Which statement best explains the basis of G's possible claim against H?

1 G has no claim against H because the bull has died and the expenses have been wasted
2 G has an enrichment claim against H for his expenses as necessary expenses
3 G has a claim against H in terms of the *actio negotiorum gestorum contraria* for R12 000
4 G has a claim against H in terms of the *actio negotiorum gestorum utilis* for R12 000
5 G's claim against H in terms of the *actio negotiorum gestorum contraria* will fail because the bull died (2)

VRAAG 9

G merk op dat sy buurman (H) se bul ernstig siek is. H is tans op 'n staptog in Nepal en kan nie bereik word nie. G het 'n veearts ingeroep om na die bul om te sien en het sy rekening en vir die medikasie betaal Die totale koste was R12 000. Ten spyte van die behandeling het die bul nogtans gevrek. G is 'n bemoeisieke buurman en H het hom van te vore gewaarsku om niks op sy plaas te doen onder enige omstandighede nie, maar om eerder sy broer, K, te bel indien G 'n probleem sou opmerk. G het nie die moeite gedoen om K te bel nie. Watter stelling beskryf die basis van G se eis teen H die beste?

1. **G het geen eis teen H nie omdat die bul gevrek het en die uitgawes vermorste uitgawes was.**
2. **G het 'n verrykingseis teen H vir sy uitgawes, synde noodsaaklike uitgawes.**
3. **G het 'n eis teen H ingevolge die *actio negotiorum gestorum contraria* vir R12 000.**
4. **G het 'n eis teen H ingevolge die *actio negotiorum gestorum utilis* vir R12 000.**
5. **G se eis teen H ingevolge die *actio negotiorum gestorum contraria* sal faal omdat die bul gevrek het.** **(2)**

QUESTION 10

Which statement correctly explains the possession or occupation of another's property?

1 A *bona fide* occupier is someone who lawfully occupies the immovable property of another person
2 A *bona fide* occupier is someone who lawfully occupies the immovable property of another person as if he is the owner thereof
3 A *bona fide possessor* is someone who lawfully occupies the property of another person as if he is the owner thereof
4 A *bona fide possessor* is someone who unlawfully occupies the property of another person as if he is the owner thereof
5 A *mala fide possessor* is someone who unlawfully occupies the property of another person temporarily as if he is entitled to occupy the property as a lessee (2)

VRAAG 10

Watter stelling beskryf die besit of okkupasie van 'n ander persoon se eiendom op die mees korrekte wyse?

1. 'n *Bona fide* okkupeerder is iemand wat regmatig die eiendom van 'n ander persoon okkupeer.
2 'n *Bona fide* okkupeerder is iemand wat regmatig die eiendom van 'n ander persoon okkupeer asof hy die eienaar daarvan is.
3. 'n *Bona fide possessor* is iemand wat regmatig die eiendom van 'n ander persoon okkupeer asof hy die eienaar daarvan is.
4. 'n *Bona fide possessor* is iemand wat onregmatig die eiendom van 'n ander persoon okkupeer asof hy die eienaar daarvan is.
5. 'n *Mala fide possessor* is iemand wat onregmatig die eiendom van 'n ander persoon tydelik okkupeer asof hy geregtig is om die eiendom as huurder te okkupeer. (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 claim against B and the authority on which it is based?

1 In terms of the decision in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (C) C has no claim against B because B has not been enriched at C's expense
2 In terms of the decision in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (C) C has no claim against B because there was no impoverishment
3 In terms of the decision in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (C) C has a claim against B based on the extended management of affairs action
4 In terms of the decision in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 1 SA 939 (C) C has a claim against B based on the *condictio causa data causa non secuta*
5 In terms of the decision in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (C) C has a claim against B based on the *condictio sine causa* (2)

[TURN OVER]
[BLAAI OM]

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 eis teen B het en die gesag daarvoor die beste?

1. **Ingevolge die beslissing in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K) het C geen eis teen B nie omdat B nie ten koste van C verryk is nie**
2. **Ingevolge die beslissing in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K) het C geen eis teen B nie omdat daar geen verarming was nie.**
3. **Ingevolge die beslissing in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K) het C 'n eis teen B gebaseer op die uitgebreide saakwaarnemingsaksie.**
4. **Ingevolge die beslissing in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K) het C 'n eis teen B gebaseer op die *condictio causa data causa non secuta*.**
5. **Ingevolge die beslissing in *ABSA Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K) het C 'n eis teen B gebaseer op die *condictio sine causa*. (2)**

QUESTION 13

Assume the same facts as in question (12) 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 13

Veronderstel dieselfde feite as in vraag (12). 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 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)

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 stelreel *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)

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 vermoensskade 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 vermoenskade 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)**

[TURN OVER]
[BLAAI OM]

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) S A 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

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 Discuss the following

VRAAG 1

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 wat vir 'n geruime tyd oorsee is. A belowe om vir B R20 000 te betaal wanneer die werk voltooi is. B voltooi die werk denkende dat die huis aan A behoort, maar A verdwyn sonder om die kontrakprys aan B te betaal. Bespreek die volgende:

1 1 Can B claim anything from A or C? Explain in full (10)

1.1 Kan B enigiets van A of C eis? Verduidelik volledig. (10)

(10)

[TURN OVER]
[BLAAI OM]

1 2 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)

1 2 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 van B wat C sou kon opper (10)

(10)

[TURN OVER]
[BLAAI OM]

QUESTION 2

Briefly discuss the field of application of the *condictio sine causa specialis* (5)

VRAAG 2

Bespreek kortliks die aanwendingsgebied van die *condictio sine causa specialis*. (5)

(5)

QUESTION 3

Write a critical discussion on prejudice as a requirement in the South African law of estoppel In your answer you must refer to relevant case law (10)

VRAAG 3

Skryf 'n kritiese bespreking oor nadeel as 'n vereiste vir estoppel in die Suid-Afrikaanse reg. In u antwoord moet u na toepaslike regspraak verwys (10)

(10)

[TURN OVER]
[BLAAI OM]

QUESTION 4

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)

VRAAG 4

A neem sy motor na B wat tweedehandse motors verkoop om waardeer te word. Terwyl dit in B se besit is, word die kar gesteel sonder enige skuld aan B se kant. 'n Kort ruk daarna woon A 'n openbare veiling van voertuie by en herken sy gesteelde voertuig. Die kar word aan C verkoop en C betaal kontant daarvoor. A eis nou die motor terug met die *rei vindicatio*. Adviseer C met verwysing na relevante regspraak (10)

(10)

[TURN OVER]
[BLAAI OM]

VRAAG 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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2. MERK AS VOLG ●
3. KONTROLEER DAT U VOORLETTERS EN VAN REG INGEVUL IS
4. VUL U STUDENTENOMMER VAN LINKS NA REGS IN
5. KONTROLEER DAT U DIE KORREKTE STUDENTENOMMER VERSTREK HET
6. KONTROLEER DAT DIE UNIEKE NOMMER REG INGEVUL IS
7. MAAK SEKER DAT NET EEN ALTERNATIEF PER VRAAG GEMERK IS
8. MOENIE VOU NIE

PART 2 (ANSWERS/ANTWOORDE) DEEL 2

10

1	c1 c2 c3 c4 c5	36	c1 c2 c3 c4 c5	71	c1 c2 c3 c4 c5	106	c1 c2 c3 c4 c5								
2	c1 c2 c3 c4 c5	37	c1 c2 c3 c4 c5	72	c1 c2 c3 c4 c5	107	c1 c2 c3 c4 c5								
3	c1 c2 c3 c4 c5	38	c1 c2 c3 c4 c5	73	c1 c2 c3 c4 c5	108	c1 c2 c3 c4 c5								
4	c1 c2 c3 c4 c5	39	c1 c2 c3 c4 c5	74	c1 c2 c3 c4 c5	109	c1 c2 c3 c4 c5								
5	c1 c2 c3 c4 c5	40	c1 c2 c3 c4 c5	75	c1 c2 c3 c4 c5	110	c1 c2 c3 c4 c5								
6	c1 c2 c3 c4 c5	41	c1 c2 c3 c4 c5	76	c1 c2 c3 c4 c5	111	c1 c2 c3 c4 c5								
7	c1 c2 c3 c4 c5	42	c1 c2 c3 c4 c5	77	c1 c2 c3 c4 c5	112	c1 c2 c3 c4 c5								
8	c1 c2 c3 c4 c5	43	c1 c2 c3 c4 c5	78	c1 c2 c3 c4 c5	113	c1 c2 c3 c4 c5								
9	c1 c2 c3 c4 c5	44	c1 c2 c3 c4 c5	79	c1 c2 c3 c4 c5	114	c1 c2 c3 c4 c5								
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15	c1 c2 c3 c4 c5	50	c1 c2 c3 c4 c5	85	c1 c2 c3 c4 c5	120	c1 c2 c3 c4 c5								
16	c1 c2 c3 c4 c5	51	c1 c2 c3 c4 c5	86	c1 c2 c3 c4 c5	121	c1 c2 c3 c4 c5								
17	c1 c2 c3 c4 c5	52	c1 c2 c3 c4 c5	87	c1 c2 c3 c4 c5	122	c1 c2 c3 c4 c5								
18	c1 c2 c3 c4 c5	53	c1 c2 c3 c4 c5	88	c1 c2 c3 c4 c5	123	c1 c2 c3 c4 c5								
19	c1 c2 c3 c4 c5	54	c1 c2 c3 c4 c5	89	c1 c2 c3 c4 c5	124	c1 c2 c3 c4 c5								
20	c1 c2 c3 c4 c5	55	c1 c2 c3 c4 c5	90	c1 c2 c3 c4 c5	125	c1 c2 c3 c4 c5								
21	c1 c2 c3 c4 c5	56	c1 c2 c3 c4 c5	91	c1 c2 c3 c4 c5	126	c1 c2 c3 c4 c5								
22	c1 c2 c3 c4 c5	57	c1 c2 c3 c4 c5	92	c1 c2 c3 c4 c5	127	c1 c2 c3 c4 c5								
23	c1 c2 c3 c4 c5	58	c1 c2 c3 c4 c5	93	c1 c2 c3 c4 c5	128	c1 c2 c3 c4 c5								
24	c1 c2 c3 c4 c5	59	c1 c2 c3 c4 c5	94	c1 c2 c3 c4 c5	129	c1 c2 c3 c4 c5								
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26	c1 c2 c3 c4 c5	61	c1 c2 c3 c4 c5	96	c1 c2 c3 c4 c5	131	c1 c2 c3 c4 c5								
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28	c1 c2 c3 c4 c5	63	c1 c2 c3 c4 c5	98	c1 c2 c3 c4 c5	133	c1 c2 c3 c4 c5								
29	c1 c2 c3 c4 c5	64	c1 c2 c3 c4 c5	99	c1 c2 c3 c4 c5	134	c1 c2 c3 c4 c5								
30	c1 c2 c3 c4 c5	65	c1 c2 c3 c4 c5	100	c1 c2 c3 c4 c5	135	c1 c2 c3 c4 c5								
31	c1 c2 c3 c4 c5	66	c1 c2 c3 c4 c5	101	c1 c2 c3 c4 c5	136	c1 c2 c3 c4 c5								
32	c1 c2 c3 c4 c5	67	c1 c2 c3 c4 c5	102	c1 c2 c3 c4 c5	137	c1 c2 c3 c4 c5								
33	c1 c2 c3 c4 c5	68	c1 c2 c3 c4 c5	103	c1 c2 c3 c4 c5	138	c1 c2 c3 c4 c5								
34	c1 c2 c3 c4 c5	69	c1 c2 c3 c4 c5	104	c1 c2 c3 c4 c5	139	c1 c2 c3 c4 c5								
35	c1 c2 c3 c4 c5	70	c1 c2 c3 c4 c5	105	c1 c2 c3 c4 c5	140	c1 c2 c3 c4 c5								

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