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UNISA university of south africa

# PVL3704 (477310)

## OCTOBER/NOVEMBER 2017
## OKTOBER/NOVEMBER 2017

## UNJUSTIFIED ENRICHMENT AND ESTOPPEL
## ONGEREGVERDIGDE VERRYKING EN ESTOPPEL

| STUDENT NUMBER / STUDENTENOMMER | | | | | | | | | |
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# PVL3704 (477310) October/November 2017 Oktober/November 2017

## 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 32 pages **plus instructions for the completion of a mark-reading sheet.**
*Hierdie vraestel bestaan uit 32 bladsye **plus instruksies vir die voltooiing van 'n merkleesblad.***

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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 **495023**
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 **495023**
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

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
**MAAK OOK 'N SIRKEL OM U ANTWOORDE OP DIE VRAESTEL SELF**

THERE MAY BE QUESTIONS DEALING WITH UNJUSTIFIED ENRICHMENT AND ESTOPPEL

**DAAR MAG VRAE WEES WAT HANDEL MET ONGEREGVERDIGDE VERRYKING EN ESTOPPEL.**

QUESTION 1

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 without any qualifications

2 In *Nortje v Pool* 1966 3 SA 96 (A) the Appellate Division recognised the existence of a general enrichment action, 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

4 In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) the Appellate Division recognised the existence of a general enrichment action, but with certain qualifications

5 In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) the Appellate Division rejected the existence of a general enrichment action but recognised that courts can extend enrichment liability in circumstances where it is deemed necessary (2)

**VRAAG 1**

**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 erken sonder enige voorbehoude.**

**2 In *Nortje v Pool* 1966 3 SA 96 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie 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 erken**

**4 In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie erken maar met sekere voorbehoude.**

**5 In *Kommissaris van Binnelandse Inkomste v Willers* 1994 3 SA 283 (A) het die Appèlafdeling die bestaan van 'n algemene verrykingsaksie ontken, maar toegegee dat die howe in geskikte omstandighede verrykingsaanspreeklikheid kan uitbrei indien nodig.**

QUESTION 2

Which statement best describes the basis of unjustified enrichment liability in South African law

1 Unjustified enrichment provides an alternative claim to contractual and *delictual claims* in cases where a party simultaneously has a contractual or delictual claim

2 Unjustified enrichment provides a basis for a claim where the enrichment of the enriched person has been obtained in an unlawful manner

3 Unjustified enrichment provides a basis for a claim where there has been a transfer of property or value from the impoverished party to the enriched party without an obligation existing between them

4 Unjustified enrichment provides a basis for a claim where the enriched party obtained its enrichment through the use of unfair contract terms

5 Unjustified enrichment provides a basis for a claim where there has been a transfer of property or value from the impoverished party to the enriched party without a sufficient legal ground (2)

**VRAAG 2**

**Watter stelling beskryf die grondslag van ongeregverdigde verryking in die Suid-Afrikaanse reg die beste.**

**1 Ongeregverdigde verryking bied 'n alternatiewe eis tot kontraktuele en deliktuele eise in gevalle waar 'n party terselfdertyd ook 'n kontraktuele of deliktuele eis het.**

**2 Ongeregverdigde verryking bied 'n alternatiewe eis tot kontraktuele en deliktuele eise in gevalle waar 'n party terselfdertyd ook 'n kontraktuele of deliktuele eis het**

**3 Ongeregverdigde eise in g evalle waar 'n p arty terselfdertyd ook 'n kontraktuele of deliktuele eis het. Vermoensverskuiwing vand die verarmde na die verrykte plaasvind het sonder 'n verbintenis tussen die partye.**

**4 Ongeregverdigde verryking bied die grondslag vir 'n eis waar die verrykte persoon sy verryking deur onbillike kontraksbedinge bewerkstellig het**

**5 Ongeregverdigde verryking bied die gro ndslag v ir ' n eis waar d aar 'n vermoensverskuiwing van die verarmde na die verrykte plaasgevind het sonder 'n afdoende regsgrond**

QUESTION 3

Which one of the following does not amount to enrichment in terms of the positive law? (you may assume that there is no contract between the parties)

1 A discovers valuable minerals on B's property

2 A stores B's car

3 A pays money to B

4 A pays B's debt

5 A repairs B's car (2)

**VRAAG 3**

**Watter een van die volgende behels nie verryking ingevolge die positiewe reg nie? (u mag aanvaar dat daar geen kontrak tussen die partye is nie)**

**1 A ontdek waardevolle minerale op B se grond**

**2 A stoor B se kar.**

**3 A betaal geld aan B.**

**4 A betaal B se skuld**

**5 A herstel B se kar. (2)**

QUESTION 4

Which case would you use to substantiate the answer to question 3?

1 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)

2 *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)

3 *Absa Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (C)

4 *Nortjé v Pool* 1966 (3) SA 96 (A)

5 *First National Bank of SA Ltd v B & H Engineering* 1993 (2) SA 41 (T) (2)

**VRAAG 4**

**Watter saak sou u gebruik om die antwoord op vraag 3 te staaf?**

1 Buzzard Electrical v 158 Jan Smuts Avenue Investments 1996 (4) SA 19 (A)

2 ***Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)**

3 ***Absa Bank t/a Bankfin v Stander t/a CAW Paneelkloppers* 1998 (1) SA 939 (K).**

4 ***Nortjé v Pool* 1966 (3) SA 96 (A).**

5 ***First National Bank of SA Ltd v B & H Engineering* 1993 (2) SA 41 (T).**

(2)

QUESTION 5

In which decision was an enrichment lien granted in an 'indirect enrichment' situation?

1 *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T)

2 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)

3 *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)

4 *Hubby's Investments (Pty) Ltd v Lifetime Properties (Pty) Ltd* 1998 (1) SA 289 (W)

5 *CIR v Visser* 1959 (1) SA 452 (A) (2)

**VRAAG 5**

**In watter beslissing is 'n verrykingsretensiereg in 'n geval van 'indirekte verryking' toegestaan?**

**1 *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T).**

**2 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A).**

**3 *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)**

**4 *Hubby's Investments (Pty) Ltd v Lifetime Properties (Pty) Ltd* 1998 (1) SA 289 (W).**

**5 *CIR v Visser* 1959 (1) SA 452 (A).** **(2)**

QUESTION 6

Which element of enrichment liability did the court in *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A) find was lacking when a bank inadvertently paid out the value of a countermanded cheque?

1 Impoverishment

2 Enrichment

3 The *sine causa* requirement

4 The 'at the expense of' requirement

5 An appropriate action (2)

**VRAAG 6**

**Watter element van verrykingsaanspreeklikheid het die hof in *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A) bevind is nie aan voldoen nie, toe 'n bank per abuis die waarde van 'n afgelaste ('gestopte') tjek uitbetaal het?**

**1 Verarming.**

**2 Verryking**

**3 Die *sine causa* vereiste.**

**4 Die 'ten koste van' vereiste**

**5 'n Gepaste aksie (2)**

QUESTION 7

The element referred to in question 6 was absent because

1 an underlying debt had been extinguished

2 there is no enrichment action that can be applied in such circumstances

3 there was a contract between the parties

4 the bank was to blame for its own mistake

5 there was no causal connection between the payment of the money by the bank and its receipt by the beneficiary (2)

**VRAAG 7**

**Die element waarna in vraag 6 verwys word, was afwesig omdat:**

1 **'n onderliggende skuld uitgewis is**

2 **daar geen verrykingsaksie is wat in die omstandighede toepassing kan vind nie**

3 **Daar 'n kontrak tussen die partye was.**

4 **die bank die blaam moet dra van sy eie fout.**

5 **daar geen kousale verband was tussen die betaling van die geld deur die bank en die ontvangs daarvan deur die begunstigde nie.** (2)

The following facts are relevant for questions 8-10

**Die volgende feite is relevant vir vrae 8-10:**

A sells his car to B for R200 000,00 and B pays A with a cheque A pays the cheque into his account with C bank After a week C bank allows A to draw R100 000,00 of this money A uses the money to pay off the balance on his home loan with bank D Thereafter, it transpires that B had stolen the cheque from E and forged E's signature on the cheque C bank wants to claim the R100 000,00 that it paid out

**A verkoop sy kar aan B vir R200 000,00 en B betaal A met 'n tjek. A betaal die tjek by sy rekening by C bank in Na 'n week laat C bank vir A toe om R100 000,00 van hierdie geld te onttrek. A gebruik die geld om sy huislening by bank D af te betaal Daarna blyk dit dat B die tjek van E gesteel het en E se handtekening op die tjek vervals het C bank wil die R100 000,00 eis wat dit uitbetaal het.**

QUESTION 8

What would the appropriate enrichment action be for the bank (C) to use in terms of case law?

1 The *condictio sine causa*

2 The *condictio indebiti*

3 The *condictio causa data causa non secuta*

4 The *condictio ob turpem vel iniustam causam*

5 The *actio negotiorum gestorum utilis* (2)

**VRAAG 8**

**Wat sou die gepaste verrykingsaksie vir die bank (C) wees om te gebruik volgens regspraak?**

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

**2 Die *condictio indebiti***

**3 Die *condictio causa data causa non secuta***

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

**5 Die *actio negotiorum gestorum utilis*.** **(2)**

QUESTION 9

On which case are these facts based?

1 *CIR v Visser* 1959 (1) SA 452 (A)

2 *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A)

3 *Kommissaris van Binnelandse Inkomste v Willers* 1994 (3) SA 283 (A)

4 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (SCA)

5 *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue* 1992 (4) SA 202 (A) (2)

**VRAAG 9**

**Op watter saak is hierdie feite gebaseer?**

**1 *CIR v Visser* 1959 (1) SA 452 (A).**

**2 *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A).**

**3 *Kommissaris van Binnelandse Inkomste v Willers* 1994 (3) SA 283 (A)**

**4 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (HHA).**

**5 *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue* 1992 (4) SA 202 (A)** **(2)**

QUESTION 10

Which statement regarding the outcome of the bank's (C's) claim for enrichment is most correct?

1 C will be successful with an enrichment claim against A, because A has been enriched at C's expense

2 C will be successful with an enrichment claim against B, because B has been enriched at C's expense

3 C will be successful with an enrichment claim against D, because D has been enriched at C's expense

4 C will be successful with an enrichment claim against E, because E has been enriched at C's expense

5 None of the above (2)

**VRAAG 10**

**Watter stelling met betrekking tot die uitkoms van die bank (C) se verrykingseis is die mees korrekte?**

**1 C sal slaag met 'n verrykingseis teen A omdat A ten koste van C verryk is**

**2 C sal slaag met 'n verrykingseis teen B omdat B ten koste van C verryk is**

**3 C sal slaag met 'n verrykingseis teen D omdat D ten koste van C verryk is.**

**4 C sal slaag met 'n verrykingseis teen E omdat E ten koste van C verryk is.**

**5 Geeneen van bogenoemde nie. (2)**

QUESTION 11

Assume further that the amount of the forged cheque (R200 000,00) is paid by E's bank (F) into A's account with C bank, and that C bank holds the money on behalf of A If E wants to claim the money from C bank, what would the appropriate enrichment action be in terms of case law?

1 The *condictio sine causa*

2 The *condictio indebiti*

3 The *condictio causa data causa non secuta*

4 The *condictio ob turpem vel iniustam causam*

5 The *actio negotiorum gestorum utilis* (2)

**VRAAG 11**

**Veronderstel verder dat die bedrag van die vervalste tjek (R200 000,00) deur E se bank (F) by A se rekening by C bank inbetaal word, en dat C bank the geld hou namens A. Indien E die geld van C bank wil eis, wat sou die gepaste verrykingsaksie ingevolge regspraak wees?**

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

**2 Die *condictio indebiti*.**

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

**4 Die *condictio ob turpem vel iniustam causam***

**5 Die *actio negotiorum gestorum utilis*.** **(2)**

QUESTION 12

Which case would you use to substantiate the answer to question 11?

1 *CIR v Visser* 1959 (1) SA 452 (A)

2 *Odendaal v Van Oudtshoorn* 1968 (3) SA 433 (T)

3 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)

4 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (SCA)

5 *First National Bank of SA Ltd v Perry* 2001 (3) SA 960 (SCA) (2)

**VRAAG 12**

**Watter saak sou u gebruik om die antwoord op vraag 11 te staaf?**

**1 *CIR v Visser* 1959 (1) SA 452 (A).**

**2 *Odendaal v Van Oudtshoorn* 1968 (3) SA 433 (T)**

**3 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)**

**4 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (HHA).**

**5 *First National Bank of SA Ltd v Perry* 2001 (3) SA 960 (HHA)** **(2)**

QUESTION 13

In which one of the following instances can the *condictio causa data causa non secuta* not be instituted?

1 A suspensive condition which is not fulfilled

2 A resolutive condition which is fulfilled

3 A *modus* which is disregarded

4 An assumption which is false

5 Breach of contract (2)

**VRAAG 13**

**In watter een van die volgende gevalle kan die *condictio causa data causa non secuta* nie ingestel word nie?**

**1 'n Opskortende voorwaarde wat nie vervul word nie.**

**2 'n Ontbindende voorwaarde wat vervul word**

**3 'n *Modus* wat verontagsaam word**

**4 'n Veronderstelling wat vals is**

**5 Kontrakbreuk (2)**

QUESTION 14

Which one of the following is not a requirement for the true management of affairs action (*actio negotiorum gestorum contraria*)?

1 The *gestor* must perform the service without instruction

2 The *gestor* must act reasonably

3 The *gestor* must intend to act in the interests of the *dominus*

4 The *gestor* must have intended to act free of charge

5 The *gestor* may not act contrary to an express prohibition of the *dominus* (2)

**VRAAG 14**

**Watter een van die volgende is nie 'n vereiste vir die egte saakwaarnemingsaksie (*actio negotiorum gestorum contraria*) nie?**

**1 Die *gestor* moet die diens sonder opdrag lewer.**

**2 Die *gestor* moet redelik optree**

**3 Die *gestor* moet bedoel om in belang van die *dominus* op te tree.**

**4 Die *gestor* moet bedoel om gratis op te tree.**

**5 Die *gestor* mag nie in stryd met die *dominus* se uidruklike verbod op tree nie (2)**

QUESTION 15

Which one of the following rights does the *mala fide possessor* definitely not have?

1 A claim for necessary expenses

2 A claim for useful expenses

3 A right of retention

4 A *ius tollendi*

5 A right to fruit gathered (2)

**VRAAG 15**

**Watter een van die volgende regte het die *mala fide possessor* definitief nie?**

**1 'n Eis vir noodsaaklike uitgawes.**

**2 'n Eis vir nuttige uitgawes**

**3 'n Retensiereg.**

**4 'n *Ius tollendi*.**

**5 'n Reg tot ingesamelde vrugte**

(2)

QUESTION 16

Indicate which one of the following is not a strict requirement for a valid reliance on estoppel

1 There must have been a misrepresentation of fact

2 Patrimonial prejudice on the part of the person relying on the estoppel

3 The person denying estoppel must have made the misrepresentation culpably in the case of vindication

4 Causation the prejudice must have been the result of the misrepresentation

5 The reliance on estoppel must be allowed by law (2)

**VRAAG 16**

**Dui aan watter een van die volgende nie 'n streng vereiste vir 'n geslaagde beroep op estoppel is nie**

**1 Daar moes 'n feitelike wanvoorstelling plaasgevind het.**

**2 Vermoensnadeel aan die kant van die persoon wat estoppel opwerp.**

**3 Die persoon wat estoppel ontken moes die wanvoorstelling skuldiglik gemaak het in die geval van vindikasie**

**4 Kousaliteit· die nadeel moes as gevolg van die wanvoorstelling ingetree het.**

**5 Die opwerp van die estoppel moet regtens geoorloof wees. (2)**

The following facts are relevant for questions 17-20

**Die volgende feite is relevant vir vrae 17-20:**

A takes his car to B, who sells second-hand cars, to have his car valued and to see if anyone is interested in purchasing it A specifically instructs B to refer any offers to him for consideration The car is parked on B's showroom floor where it is left for three days In this period B sells the vehicle to C for cash Thereafter B is sequestrated

**A neem sy motor na B wat tweedehandse motors verkoop om waardeer te word en om te sien of iemand daarin belang stel om dit te koop. A gee vir B spesifieke instruksies om enige aanbiedinge na hom te verwys vir oorweging. Die motor word op B se vloer getrek waar dit staan vir drie dae lank. Gedurende hierdie tydperk verkoop B die motor aan C vir kontant Daarna word B gesekwestreer**

QUESTION 17

Which action will A use to claim his car from C?

1 The *condictio indebiti*

2 A delictual action

3 A contractual action

4 The *rei vindicatio*

5 The *condictio causa data causa non secuta* (2)

**VRAAG 17**

**Watter aksie sal A gebruik om sy motor van C te eis?**

**1 Die *condictio indebiti.***

**2 'n Deliktuele aksie**

**3 'n Kontraktuele aksie.**

**4 Die *rei vindicatio.***

**5 Die *condictio causa data causa non secuta.*** **(2)**

QUESTION 18

If C raises estoppel against A's action, which element(s) of estoppel could be difficult to prove in the circumstances? Choose the best option from 1 to 5

(a) Misrepresentation

(b) Prejudice

(c) Fault

(d) Causation

(e) Legally permissible

1 (b)

2 (b), (c) and (d)

3 (a)

4 (a) and (c)

5 (e) (2)

**VRAAG 18**

**Indien C e stoppel op werp teen A se a ksie, watter element(e) v an es toppel ka n dalk moeilik wees om in die omstandighede te bewys? Kies die beste moontlikheid uit 1 tot 5**

**(a) Wanvoorstelling.**

**(b) Nadeel.**

**(c) Skuld**

**(d) Kousaliteit**

**(e) Regtens toelaatbaar.**

**1 (b).**

**2 (b), (c) en (d).**

**3 (a)**

**4 (a) en (c).**

**5 (e).** **(2)**

QUESTION 19

Which element of estoppel have the courts been prepared to disregard in such instances?

1 Misrepresentation

2 Prejudice

3 Fault

4 Causation

5 Legally permissible (2)

**VRAAG 19**

**Watter element van estoppel was die howe al bereid om in hierdie omstandighede te verontagsaam?**

**1 Wanvoorstelling**

**2 Nadeel**

**3 Skuld.**

**4 Kousaliteit**

**5 Regtens toelaatbaar.** **(2)**

QUESTION 20

Which case applies to these circumstances?

1 *Akojee v Sibanyoni* 1976 (3) SA 440 (W)

2 *Union Government v National Bank of SA Ltd* 1921 AD 121

3 *Rubin v Botha* 1911 AD 568

4 *Baumann v Thomas* 1920 AD 428

5 *Van Ryn Wine & Spirit Co v Chandos Bar* 1928 TPD 417 (2)

**VRAAG 20**

**Watter saak is van toepassing op hierdie omstandighede?**

**1 *Akojee v Sibanyoni* 1976 (3) SA 440 (W).**

**2 *Union Government v National Bank of SA Ltd* 1921 AD 121**

**3 *Rubin v Botha* 1911 AD 568.**

**4 *Baumann v Thomas* 1920 AD 428**

**5 *Van Ryn Wine & Spirit Co v Chandos Bar* 1928 TPD 417.** **(2)**

QUESTION 21

In which one of the following fields does estoppel not add to the common law position?

1 The *rei vindicatio*

2 Representation in terms of mandate

3 Partnership

4 The conclusion of a contract

5 Waiver of rights (2)

**VRAAG 21**

**In watter een van die volgende velde dra estoppel nie tot die gemeenregtelike posisie by nie?**

**1 Die *rei vindicatio***

**2 Verteenwoordiging ingevolge lasgewing**

**3 Vennootskap**

**4 Kontraksluiting**

**5 Afstanddoening van regte (2)**

QUESTION 22

In which one of the following fields has estoppel virtually become superfluous due to acceptance of the reliance theory?

1 The *rei vindicatio*

2 Representation in terms of mandate

3 Partnership

4 The conclusion of a contract

5 Waiver of rights (2)

**VRAAG 22**

**In watter een van die volgende velde het estoppel byna oorbodig geword weens aanvaarding van die vertrouensteorie?**

**1 Die *rei vindicatio***

**2 Verteenwoordiging ingevolge lasgewing**

**3 Vennootskap.**

**4 Kontraksluiting**

**5 Afstanddoening van regte** **(2)**

QUESTION 23

Which statement is the most correct?

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 a n existing right while estoppel is merely a defence

4 A party may not waive a right to rely on estoppel

5 None of the above (2)

**VRAAG 23**

**Watter stelling is die mees korrekte?**

**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 Party kan nie afstand doen van 'n reg om op estoppel te steun nie**

**5 Geeneen van bogenoemde nie.** **(2)**

QUESTION 24

The city council of Cape Town has a statutory duty to collect property rates and taxes at certain rates During the past two years the city council has only collected half of the correct amount of taxes from XYZ (Pty) Ltd due to a clerical error The city council has now discovered the mistake and claims immediate payment of an amount of R500 000 from XYZ XYZ has raised a defence of estoppel against the claim They maintain that they have paid more dividends to their shareholders in the past two years than they would have done if the city council had claimed the correct amount of rates and taxes

Indicate which statement most correctly reflects the position in regard to XYZ's reliance on estoppel

1 XYZ will not be successful with its reliance on estoppel because XYZ did not act to its detriment

2 XYZ will not be successful with its reliance on estoppel because estoppel is not allowed by law in instances where the city council must carry out a statutory duty

3 XYZ will not be successful with its reliance on estoppel because the city council did not make a misrepresentation

4 XYZ will probably be successful with its reliance on estoppel

5 XYZ will not be successful with its reliance on estoppel because the city council did not act negligently (2)

**VRAAG 24**

**Die stadsraad van Kaapstad het 'n statutêre plig om eiendomsbelasting teen bepaalde koerse te hef Vanwee 'n klerklike fout het die stadsraad die afgelope twee jaar slegs sowat die helfte van die korrekte bedrag van XYZ ( Edms) Bp k gehef. Die stadsraad het die fout nou agtergekom en eis onmiddellike betaling van R500 000 van XYZ. XYZ verweer hulself teen die eis met 'n beroep op estoppel. Hulle voer aan dat hulle in die afgelope twee jaar meer dividende aan hulle aandeelhouers uitbetaal het, as wat hulle sou gedoen het indien die stadsraad die korrekte hoeveelheid belasting gehef het.**

**Dui aan watter stelling die mees korrekte is met betrekking tot XYZ se beroep op estoppel**

**1 XYZ sal nie slaag met 'n beroep op estoppel nie omdat XYZ nie tot sy nadeel gehandel het as gevolg van die stadsraad se wanvoorstelling nie.**

**2 XYZ sal nie slaag met 'n beroep op estoppel nie omdat estoppel nie regtens is waar daar 'n statutêre plig op die stadsraad rus nie**

**3 XYZ sal nie slaag met 'n beroep op estoppel nie omdat die stadsraad nie 'n wanvoorstelling gepleeg het nie.**

**4 XYZ sal waarskynlik slaag met 'n beroep op estoppel.**

**5 XYZ s al n ie slaag m et 'n beroep o p e stoppel nie omd at die stadsraad nie nalatig opgetree het nie. (2)**

QUESTION 25

In which instance has an exception to the rule applicable to question 24 been recognised?

1 An invalid mandate

2 Ostensible authority

3 Fictitious hire purchase agreements

4 Waiver

5 Tender agreements (2)

**VRAAG 25**

**In watter geval is 'n uitsondering op die reel van toepassing op vraag 24 erken?**

**1 'n Ongeldige mandaat.**

**2 Oenskynlike magtiging**

**3 Fiktiewe huurkoopkontrakte**

**4 Afstanddoening.**

**5 Tender ooreenkomste (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**

Discuss the requirement that the defendant's enrichment must have been at the expense of the plaintiff (10)

**Bespreek die vereiste dat die verweerder se verryking ten koste van die eiser moes gewees het. (10)**

**[10]**

QUESTION 2 / **VRAAG 2**

K rents a farm from L K effected the following improvements on the farm without L's knowledge (a) built a dam at a cost of R30 000,00, (b) built a luxury lapa on the edge of the dam at a cost of R100 000,00, and (c) sank a borehole at a cost of R20 000,00 K also repaired the roof of the farm house which had started to leak at a cost of R10 000,00 Discuss fully the legal position with regard to these improvements when the lease expires Also briefly discuss whether the position would have been different if the lease agreement between K and L had been invalid (15)

**K huur 'n plaas van L. K het die volgende verbeterings op die plaas sonder L se kennis aangebring: (a) 'n dam gebou teen 'n koste van R30 000,00; (b) 'n luukse lapa langs die dam opgerig teen 'n koste van R100 000,00; en (c) 'n boorgat gesink teen 'n koste van R20 000,00 K het ook die dak van die plaashuis herstel omdat dit begin lek het teen 'n koste van R10 000,00 Bespreek volledig die regsposisie met betrekking tot hierdie verbeterings wanneer die huurkontrak verstryk. Bespreek kortliks ook of die posisie anders sou gewees het indien die huurooreenkoms tussen K en L ongeldig was (15)**

**[15]**

**[TURN OVER]**
**[BLAAI OM]**

QUESTION 3 / VRAAG 3

Fully discuss the requirement of prejudice in relation to estoppel Refer to examples in your answer (10)

**Bespreek volledig die vereiste van nadeel by estoppel. Verwys na voorbeelde in u antwoord. (10)**

[10]

QUESTION 4 / **VRAAG 4**

The town council of Bapsfontein invited tenders for the construction of a new house for the town mayor After the tender period closed, the executive committee of the council decided to award the tender to X However, the council secretary mistakenly sent a letter of acceptance to Y who also tendered It was the duty of the secretary to send out such letters on behalf of the council Y immediately set about preparing to build the house and bought materials Soon thereafter the council realised the mistake and informed Y that the letter of acceptance had been sent to it by mistake and that the tender had in fact been awarded to X Y issued summons against the council for breach of contract and claimed damages The council raised two defences (a) it had no intention of accepting the award of Y and (b) the council secretary had no authority to accept the tender of Y (only the executive board had such authority) Discuss fully how Y could counter these defences and whether he would be successful in the circumstances

(15)

**Die dorpsraad van Bapsfontein het tenders uitgenooi vir die oprigting van 'n nuwe huis vir die burgermeester. Na sluiting van die tender tydperk, het die uitvoerende komitee van die raad besluit om die tender van X te aanvaar. Die sekretaris van die raad het egter per abuis 'n brief van aanvaarding aan Y gestuur, wat ook getender het Dit was die plig van die sekretaris om sodanige briewe namens die raad uit te stuur. Y het onmiddellik voorbereidings getref om die huis te bou en het materiaal aangekoop. Kort daarna het die raad die fout agter gekom en Y daarvan in kennis gestel dat die brief van aanvaarding foutiewelik aan Y gestuur is, en dat die tender inderdaad aan X toegeken is. Y het dagvaarding teen die raad uitgereik vir kontrakbreuk en skadevergoeding geeis. Die raad het twee verwere geopper· (a) dit het nie die bedoeling gehad om Y se tender te aanvaar nie en (b) die sekretaris van die raad het nie die magtiging gehad om die tender van Y te aanvaar nie (slegs die uivoerende komitee het sodanige bevoegdheid gehad). Bespreek volledig hoe Y hierdie verwere kan teenstaan en of hy in die omstandighede suksesvol sal wees.**

**(15)**

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EXAMINATION MARK READING SHEET — EKSAMEN-MERKLEESBLAD

## PART 1 (GENERAL/ALGEMEEN) DEEL 1

STUDY UNIT e g PSY100 X / STUDIE EENHEID bv PSY100-X — 1

PAPER NUMBER / VRAESTELNOMMER — 2

INITIALS AND SURNAME / VOORLETTERS EN VAN — 3

DATE OF EXAMINATION / DATUM VAN EKSAMEN — 4

EXAMINATION CENTRE (E G PRETORIA) / EKSAMENSENTRUM (BV PRETORIA) — 5

STUDENT NUMBER / STUDENTENOMMER — 6

UNIQUE PAPER NO / UNIEKE VRAESTEL NR — 8

7 9

For use by examination invigilator

Vir gebruik deur eksamenopsiener

### IMPORTANT

1 USE ONLY AN HB PENCIL TO COMPLETE THIS SHEET
2 MARK LIKE THIS
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4 ENTER YOUR STUDENT NUMBER FROM LEFT TO RIGHT
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7 CHECK THAT ONLY ONE ANSWER PER QUESTION HAS BEEN MARKED
8 DO NOT FOLD

### BELANGRIK

1 GEBRUIK SLEGS N HB POTLOOD OM HIERDIE BLAD TE VOLTOOI
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

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| 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 |
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| 14 | 49 | 84 | 119 |
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Specimen only

[15]

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

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