FINAL FINALE %	

UNISA university of south africa

PVL3704 (495023)

MAY/JUNE 2017
MEI/JUNIE 2017

UNJUSTIFIED ENRICHMENT AND ESTOPPEL
ONGEREGVERDIGDE VERRYKING EN ESTOPPEL

STUDENT NUMBER / STUDENTENOMMER									

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	1			2		
Sect A/Afd A						
1-25						
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1						
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UNIVERSITY EXAMINATIONS

UNIVERSITEITSEKSAMENS

UNISA university of south africa

PVL3704 (495023)

May/June 2017
Mei/Junie 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 33 pages **plus instructions for the completion of a mark-reading sheet.**
Hierdie vraestel bestaan uit 33 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 **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** - dié ruimte is vir gebruik deur die eksaminatore
6 **Doen u rofwerk op bladsy 2** Dié 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]

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.

The following facts are relevant for questions 1-4
Die volgende feite is relevant vir vrae 1-4:

A has demanded payment from B of an amount of R50 000,00 which he believes B is owing B has checked his records and they indicate that A has already been paid by C, B's book keeper A threatens B with legal action and B pays A, but under protest, an amount of R50 000,00 At the time of the cheque payment A's account was overdrawn in the amount of R30 000,00 and was therefore in credit of R20,000 after the payment A has taken R10 000,00 out of his account to have his car serviced He has also gambled away R10 000,00 after realising that his account was in credit

A het vereis dat B 'n bedrag van R50 000,00 aan hom betaal wat hy van mening was B aan hom verskuldig is. B het sy rekords nagegaan en hulle reflekteer dat A reeds betaal is deur C, B se boekhouer. A dreig B met 'n hofaksie en onder protes betaal B R50 000,00 aan A. Ten tye van die tjek betaling was A se rekening oortrokke met 'n bedrag van R30 000,00 en was dit gevolglik met R20 000,00 in krediet na die betaling. A het R10 000,00 u it die rekening onttrek om sy kar te laat diens. Hy het ook R10 000,00 weggedobbel nadat hy ontdek het dat sy rekening in krediet is.

Question 1

Which statement best explains the nature of B's claim against A?

1 B has an enrichment claim against A based on the *condictio ob turpem vel iniustam causam*

2 B has an enrichment claim against A based on the *condictio indebiti*

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 *actio negotiorum gestorum contraria*

5 B has an enrichment claim against A based on the *actio negotiorum gestorum utilis* (2)

Vraag 1

Watter stelling beskryf die aard van B se eis teen A die beste?

1 **B het 'n verrykingseis teen A gebaseer op die *condictio ob turpem vel iniustam causam*.**

2 **B het 'n verrykingseis teen A gebaseer op die *condictio indebiti*.**

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 *actio negotiorum gestorum contraria*.**

5 **B het 'n verrykingseis teen A gebaseer op die *actio negotiorum gestorum utilis*.** **(2)**

Question 2

Which statement is incorrect?

1 A has not been enriched at the expense of C, who made the payment

2 A's enrichment is not unjustified as B made a donation to A

3 A's enrichment is unjustified even though there was a contract between A and B

4 A has not been impoverished when the bank debited an amount of R30 000,00 from his account

5 B has not been impoverished by the conduct of the bank (2)

Vraag 2

Watter stelling is verkeerd?

1 **A is nie verryk ten koste van C wat die betaling gemaak het nie.**

2 **A se verryking is nie ongeregverdig nie omdat B 'n skenking aan A gemaak het.**

3 **A se verryking is ongeregverdig al was daar 'n kontrak tussen A en B.**

4 **A is nie verarm toe die bank R30 000,00 van sy rekening debiteer nie.**

5 **B is nie verarm deur die optrede van die bank nie.** **(2)**

Question 3

Which statement best explains the calculation of the enrichment claim?

1 B can only claim R20 000,00 from A because his account was overdrawn and the bank received the benefit of the other R30 000,00

2 B can claim nothing from A as all the money has been used

3 B can claim only R30 000,00 because the rest of the enrichment amount has been spent on a car service and gambling

4 B can claim only R40 000,00 because the rest of the enrichment amount has been lost on a car service

5 B can claim only R40 000,00 because the rest of the enrichment amount has been lost on gambling (2)

Vraag 3

Watter stelling beskryf die berekening van die omvang van die verrykingseis die beste?

1 B kan slegs R 20 000,00 van A eis omdat sy rekening by die bank oortrokke was en die bank die voordeel van die ander R 30 000,00 ontvang het.

2 B kan niks van A eis nie omdat al die geld opgebruik is.

3 B kan slegs 'n bedrag van R 30 000,00 eis omdat die res van die verrykingsbedrag uitgegee is op die diens van 'n kar en 'n gedobbel.

4 B kan slegs R 40 000,00 eis omdat die res van die verrykingsbedrag verlore gegaan het op die diens van 'n kar.

5 B kan slegs R 40 000,00 eis omdat die res van die verrykingsbedrag verlore gegaan het op 'n gedobbel. (2)

Question 4

Which statement best explains the calculation of the enrichment claim if A had been unjustifiably enriched at the expense of B and had known it all along?

1 B can claim nothing from A as all the money has been used

2 B can only claim R20 000,00 from A because his account was overdrawn and the bank received the benefit of the other R30 000,00

3 B can claim only R30 000,00 because the rest of the enrichment amount has been spent on a car service and gambling

4 B can claim only R40 000,00 because the rest of the enrichment amount has been lost on a car service

5 B can claim R50 000,00 even though some of the enrichment amount has been lost on gambling (2)

Vraag 4

Watter stelling beskryf die berekening van die omvang van die verrykingseis die beste indien A ongeregverdig ten koste van B verryk is en die hele tyd daarvan bewus was?

1 B kan niks van A eis nie omdat al die geld opgebruik is.

2 B kan slegs R 20 000,00 van A eis omdat sy rekening by die bank oortrokke was en die bank die voordeel van die ander R 30 000,00 ontvang het.

3 B kan slegs 'n bedrag van R 30 000,00 eis omdat die res van die verrykingsbedrag uitgegee is op die diens van 'n kar en 'n gedobbel.

4 B kan slegs R 40 000,00 eis omdat die res van die verrykingsbedrag verlore gegaan het op die diens van 'n kar.

5 B kan R 50 000,00 eis al het 'n gedeelte van die verrykingsbedrag verlore gegaan op 'n gedobbel. (2)

The following facts are relevant for questions 5-8
Die volgende feite is relevant vir vrae 5-8:

A buys B's Mercedes Benz for R200 000,00 B tells A during the negotiations that the car is in an excellent condition and that it has just been serviced A pays B for the car with a cheque drawn on A's bank - C Bank. B also banks with C Bank A day after taking delivery of the car A finds that the gearbox is faulty To repair the gearbox will cost R30 000,00 Be refuses to pay for

the repairs and states that A damaged the gearbox by towing a too heavy load with the car A is unhappy and immediately instructs C Bank not pay the proceeds of the cheque out to B Due to a clerical error C Bank nevertheless pays the R200 000,00 out to B

A koop B se Mercedes Benz vir R200 000,00. B vertel A tydens onderhandelinge dat die kar in 'n uitstekende toestand is en dat dit so pas gediens is. A betaal vir die kar met 'n tjek getrek op A se bank – C Bank. B bank ook by C Bank. 'n Dag nadat A lewering van die kar geneem het, ontdek hy dat daar fout met die ratkas is. Dit sal R30 000,00 kos om die ratkas te herstel. B weier om vir die herstelwerk te betaal en beweer dat dit A was wat die ratkas beskadig het deur 'n te swaar vrag met die kar te sleep. A is ongelukkig en gee onmiddellik 'n instruksie aan C Bank om nie die waarde van die tjek aan B uit te betaal nie. Weens 'n klerklike fout, betaal C Bank nietemin die R200 000,00 uit aan B.

Question 5

Which statement regarding impoverishment and enrichment is most correct?

1 A has been impoverished and B has been enriched

2 B has been impoverished and A has been enriched

3 C has been impoverished and A has been enriched

4 C has been impoverished and B has been enriched

5 C has been impoverished, but neither A nor B has been enriched (2)

Vraag 5

Watter stelling met betrekking tot verarming en verryking is die mees korrekte?

1 A is verarm en B is verryk.

2 B is verarm en A is verryk.

3 C is verarm en A is verryk.

4 C is verarm en B is verryk.

5 C is verarm, maar nie A of B is verryk nie. (2)

Question 6

Assuming that there was impoverishment and enrichment in the circumstances, which would be the appropriate enrichment action 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 contraria* (2)

Vraag 6

Indien aanvaar word dat daar wel verarming en verryking in die omstandighede plaas gevind het, wat sou die gepaste verrykingsaksie 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 contraria*. **(2)**

Question 7

Which statement regarding the outcome of a claim for enrichment is most correct?

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

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

3 C will not be successful with an enrichment claim against B because B has not been enriched· he has lost his contractual claim against A

4 A will be successful with an enrichment claim against C because C has paid B contrary to A's instruction

5 None of the above (2)

Vraag 7

Watter stelling met betrekking tot die uitkoms van 'n verrykingseis is die mees korrekte?

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

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

3 **C sal nie slaag met 'n verrykingseis teen B nie omdat B nie verryk is nie: hy het sy kontraktuele eis teenoor A verloor.**

4 **A sal slaag met 'n verrykingseis teenoor C omdat C teenstrydig met A se instruksies vir B betaal het.**

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

Question 8

Which case would you refer to in substantiating your answer to Question 7?

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

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

5 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (SCA) (2)

Vraag 8

Watter saak sou u na verwys om u antwoord op Vraag 7 te staaf?

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

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

5 ***Leeuw v First National Bank Ltd* 2010 (3) SA 410 (HHA).** **(2)**

Question 9

Where a collecting bank pays out the proceeds of a cheque which has been dishonoured to its customer, what would be the appropriate enrichment action to claim return of the money from the customer?

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 contraria* (2)

Vraag 9

Waar 'n invorderingsbank 'n tjek wat gedishonoreer is, uitbetaal aan sy kliënt, wat sou die gepaste verrykingsaksie wees om die geld van die kliënt terug te eis?

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 contraria*. **(2)**

Question 10

Which case would you refer to in substantiating your answer to Question 9?

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

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

5 *Leeuw v First National Bank Ltd* 2010 (3) SA 410 (SCA) (2)

Vraag 10

Watter saak sou u na verwys om u antwoord op Vraag 9 te staaf?

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

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

5 ***Leeuw v First National Bank Ltd* 2010 (3) SA 410 (HHA).** **(2)**

Question 11

Which of the following are requirements for the true management of affairs action (*actio negotiorum gestorum contraria*)?

(a) The *gestor* must act without instruction from the owner

(b) The actions of the *gestor* must be successful

(c) The *gestor* must have intended to act in the interests of the owner

(d) The *gestor* must not act against the express prohibition of the owner

(e) The *gestor* must have intended to act free of charge

1 (a), (b) and (e)
2 (b), (d) and (e)
3 (a), (c) and (e)
4 (a), (c) and (d)
5 (a), (b), (c) and (e) (2)

Vraag 11

Watter van die volgende is vereistes vir die egte saakwaarnemingsaksie (*actio negotiorum gestorum contraria*)?

(a) Die *gestor* moet optree sonder opdrag van die eienaar.

(b) Die optrede van die *gestor* moet suksesvol wees.

(c) Die *gestor* moet die bedoeling hê om in belang van die eienaar op te tree.

(d) Die *gestor* moet nie in stryd met die eienaar se uitdruklike verbod optree nie.

(e) Die *gestor* moet bedoel om gratis op te tree.

1 (a), (b) en (e).
2 (b), (d) en (e).
3 (a), (c) en (e).
4 (a), (c) en (d).
5 (a), (b), (c) en (e). **(2)**

Question 12

A sells (and transfers) his house to his church for a very low price The contract states that the church may only use the house for religious purposes The church lets the house to a third party to run a business Which remedy would A use to reclaim the house from the church?

1 The *condictio causa data causa non secuta*

2 The *rei vindicatio*

3 An action for breach of contract

4 A delictual claim

5 The *condictio sine causa* (2)

Vraag 12

A verkoop sy huis (en dra dit oor) aan sy kerk teen 'n baie lae prys. Die kontrak bepaal dat die kerk slegs die huis vir godsdienstige doeleindes mag aanwend. Die kerk verhuur die huis aan 'n derde party om 'n besigheid te bedryf. Watter remedie sou A gebruik om die huis van die kerk terug te eis?

1 Die *condictio causa data causa non secuta*.

2 Die *rei vindicatio*.

3 'n Aksie vir kontrakbreuk.

4 'n Deliktuele aksie.

5 Die *condictio sine causa*. **(2)**

Question 13

What is the term limiting the way in which the church may use the house called?

1 A suspensive condition

2 A resolutive condition

3 An assumption

4 A modus

5 A stipulation for the benefit of a third party (2)

Vraag 13

Wat word die beding wat die kerk se gebruik van die huis beperk, genoem?

1 'n Opskortende voorwarde.

2 'n Ontbindende voorwaarde.

3 'n Veronderstelling.

4 'n Modus.

5 'n Beding ten behoewe van 'n derde. (2)

The following facts are relevant for questions 14-15
Die volgende feite is relevant vir vrae 14-15:

A steals and forges a cheque in the amount of R10 000,00 from his employer B and pays it into his account with his bank, C A's account with C is overdrawn in the amount of R8 000,00 and C, unaware of the theft, immediately debits A's account to discharge A's debt to it (C) A credit balance of R2 000,00 remains on A's account

A steel en vervals 'n tjek in die bedrag van R10 000,00 van sy werkgewer B en betaal dit by sy bankrekening by C in. A se rekening by C is oortrokke in die bedrag van R8 000,00 en C, onbewus van die diefstal, debiteer A se rekening onmiddellik om sy skuld teenoor die bank af te los. 'n Krediet balans van R2 000,00 bly op A se rekening.
Question 14

What would B be able to claim from the bank (C) with an enrichment action?

1 B would be able to claim the full R10 000,00 from C because A could not have transferred ownership in the stolen funds to C, or anybody else for that matter

2 B would be able to claim only the credit balance of R2 000,00 on A's account because the debt of R8 000,00 that A had toward C was validly discharged

3 B would be able to claim the R8 000,00 used to discharge A's debt to C (the remaining amount of R2 000,00 stands to the credit of A and B must claim this money directly from A)

4 B would be able to claim nothing because the bank (C) had no knowledge of the theft

5 None of the above (2)

Vraag 14

Wat sou B met 'n verrykingseis teen die bank (C) kon eis?

1 B sou die volle R10 000,00 van C kon eis omdat A nie eiendomsreg in die gesteelde geld aan C kon oordra nie (of selfs aan enigiemand anders).

2 B sou slegs die krediet balans van R2 000,00 kon eis omdat die skuld van R8 000,00 wat A vir C geskuld het, geldiglik vereffen is.

3 B sou die R8 000,00 wat gebruik is om A se skuld teenoor C te vereffen, kon eis (die restant in die bedrag van R2 000,00 staan tot A se krediet en B moet dit direk van A eis).

4 B sou niks kon eis nie omdat die bank (C) nie kennis van die diefstal gehad het nie.

5 Geeneen van bogenoemde nie. (2)

Question 15

What is the appropriate enrichment action that B must institute against the bank (C) according to 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 contraria* (2)

[TURN OVER]
[BLAAI OM]

Vraag 15

Wat is die geskikte verrykingsaksie wat B teenoor die bank (C) moet instel 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 contraria*.** **(2)**

Question 16

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

1 There must have been a misrepresentation of intention

2 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 vereiste vir 'n geslaagde beroep op estoppel is nie:

1 **Daar moes 'n wanvoorstelling van bedoeling plaasgevind het.**

2 **Nadeel 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)**

Question 17

Which case demonstrates that in certain circumstances the entrusting of one's property to another person amounts to a representation that the holder is the owner or entitled to dispose of the property?

1 *Baumann v Thomas* 1920 AD 428

2 *Fawdon v Lelyfeld* 1937 TPD 339

3 *Hauman v Nortjé* 1914 AD 293

4 *Van Ryn Wine & Spirit Co v Chandos Bar* 1928 TPD 417

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

Vraag 17

Watter saak demonstreer dat in sekere omstandighede die laat van eiendom in iemand anders se besit 'n voorstelling is dat die houer die eienaar is of geregtig is om die eiendom te vervreem?

1 ***Baumann v Thomas* 1920 AA 428.**

2 ***Fawdon v Lelyfeld* 1937 TPA 339.**

3 ***Hauman v Nortjé* 1914 AA 293.**

4 ***Van Ryn Wine & Spirit Co v Chandos Bar* 1928 TPA 417.**

5 ***Union Government v National Bank of SA Ltd* 1921 AA 121.** **(2)**

The following facts are relevant for questions 18 to 22
Die volgende feite is relevant vir vrae 18-22:

A has sold his painting by artist X to B for R20 000,00 The contract stipulates that ownership will only pass to B after the last instalment of R2000,00 has been paid A has given a letter to B stating the following "Herewith I, A, confirm that I have sold a painting by artist X to B " After a period of six months and payment of R12 000,00, B gives the painting to C, a dealer in art B wants to sell the painting when he has paid for it He requests C to obtain possible offers for the painting from the public which must be referred to B for consideration B also shows C the letter from A C sells the painting to D without B's consent for R 15 000,00 after telling D that he (C) is the owner Thereafter, B fails to make any further payments to A and C is sequestrated A wants to claim the painting from D

A verkoop sy skildery deur kunstenaar X aan B vir R20 000,00. Die kontrak bepaal dat eiendomsreg eers op B oorgaan nadat die laaste paaiement van R2000,00 aan A betaal is.

A gee 'n briefie aan B waarin die volgende staan: "Hiermee bevestig ek, A, dat ek 'n skildery deur kunstenaar X aan B verkoop het." Na verloop van 6 maande en betaling van R12 000,00 gee B die skildery aan C, 'n kunshandelaar. B wil die skildery verkoop nadat hy daarvoor ten volle betaal het en B versoek C om moontlike aanbiedinge van die publiek vir die skildery uit te lok en na hom (B) te verwys vir oorweging. B wys ook die briefie wat A aan hom gegee het aan C. C verkoop die skildery aan D vir R 15 000,00 sonder B se toestemming nadat hy vir D gesê het dat hy (C) die eienaar van die skildery is. Daarna versuim B om enige verdere paaiemente aan A te betaal en C word gesekwestreer. A wil die skildery van D terugeis

Question 18

If A wants to claim the painting from D which one of the following is the appropriate action for A to use?

1 The *condictio sine causa*

2 The *condictio indebiti*

3 The *rei vindicatio*

4 The *condictio ob turpem vel iniustam causam*

5 A delictual action for fraud (2)

Vraag 18

Indien A die skildery van D wil eis, watter een van die volgende is die geskikte aksie vir A om te gebruik?

1 Die *condictio sine causa*.

2 Die *condictio indebiti*.

3 Die *rei vindicatio*.

4 Die *condictio ob turpem vel iniustam causam*.

5 'n Deliktuele aksie vir bedrog. (2)

Question 19

Which statement(s) is(are) correct?

(a) A has committed a misrepresentation to C by giving the letter to B, which A should have realised that B could abuse

(b) B has committed a misrepresentation to C by giving the letter to C and failing to inform C that he (B) was not entitled to sell the painting until he had fully paid for it

(c) C has committed a misrepresentation to D by failing to disclose to D that he (C) does not have authority to sell the painting

(d) D has been deceived as to the ownership of the painting

(e) All of the above

1 (a) and (c)
2 (b) and (c)
3 (a), (b) and (c)
4 (d)
5 (e)

(2)

Vraag 19

Watter stelling(s) is korrek?

(a) A het 'n wanvoorstelling teenoor C gemaak deur die brief aan B te gee, wat A moes besef het B kon misbruik.

(b) B het 'n wanvoorstelling aan C gemaak deur die brief aan C te gee en deur te versuim om aan C te openbaar dat hy (B) nie daarop geregtig was om die skildery te verkoop nie voordat hy nie ten volle daarvoor betaal het nie.

(c) C het 'n wanvoorstelling aan D gemaak deur te versuim om aan D te openbaar dat hy (C) nie gemagtig was om die skildery te verkoop nie.

(d) D was bedrieg met betrekking tot wie die eienaar van die skildery was.

(e) Al bogenoemde.

1 (a) en (c).
2 (b) en (c).
3 (a), (b) en (c).
4 (d).
5 (e).

(2)

Question 20

Which statement(s) reflect(s) the position in regard to fault and estoppel?

(a) D must allege and prove negligence on the part of A when A claims the painting

(b) Negligence on the part of A is irrelevant because B was negligent in leaving the painting with C

(c) Negligence on the part of A is irrelevant because C acted intentionally when he sold the painting to D

(d) Fault is usually required for a successful reliance on estoppel in such circumstances

(e) Negligence on the part of A is irrelevant because D was intentionally misled by C

1 (a)
2 (b) and (c)
3 (a) and (d)
4 (b), (c) and (e)
5 (e)

(2)

Vraag 20

Watters stelling(s) reflekteer die posisie met betrekking tot skuld en estoppel?

(a) D moet ten minste nalatigheid aan die kant van A beweer en bewys wanneer A die skildery eis.

(b) Nalatigheid aan die kant van A is irrelevant omdat B nalatig was deur die skildery by C te los.

(c) Nalatigheid aan die kant van A is irrelevant omdat C opsetlik gehandel het wanneer hy die skildery aan D verkoop het.

(d) Skuld word gewoonlik vereis vir die suksesvolle opwerping van estoppel in sodanige omstandighede.

(e) Nalatigheid aan die kant van A is irrelevant omdat D opsetlik deur C mislei is.

1 (a).
2 (b) en (c).
3 (a) en (d).
4 (b), (c) en (e).
5 (e).

(2)

Question 21

Indicate which statement is relevant in regard to detriment and estoppel

1 A suffers prejudice because he is without the painting and he has not been fully paid by B

2 B suffers prejudice because C has defrauded him

3 C suffers prejudice in that he received less for the painting than what it was worth

4 D suffers prejudice in that he has paid for a painting tainted by fraud

5 All of the above (2)

Vraag 21

Dui aan watter stelling met betrekking tot nadeel en estoppel relevant is.

1 A ly nadeel omdat hy die skildery verloor het en hy nie ten volle deur B betaal is nie.

2 B ly nadeel omdat C hom bedrieg het.

3 C ly nadeel deurdat hy minder vir die skildery ontvang het as wat dit werd is.

4 D ly nadeel omdat hy vir 'n skildery besmet met bedrog betaal het.

5 Al bogenoemde. (2)

Question 22

Which statement most correctly indicates the outcome of the matter?

1 D will successfully plead estoppel against A because A was negligent

2 D will not successfully plead estoppel against A because D himself acted intentionally

3 D will successfully plead estoppel against A because A's misrepresentation was the proximate cause of D's prejudice

4 D will not successfully plead estoppel against A because A's misrepresentation was not the proximate cause of D's prejudice, but rather the fraud of C

5 1 and 3 (2)

Vraag 22

Watter stelling gee die mees korrekte aanduiding van die uitkoms van die aangeleentheid?

1 D sal sukesvol estoppel teenoor A opwerp omdat A nalatig was

2 D sal nie suksesvol estoppel teenoor A opwerp nie omdat D self opsetlik opgetree het.

3 D sal suksesvol estoppel teenoor A opwerp omdat A se wanvoorstelling die "proximate cause" van D se nadeel was.

4. D sal nie suksesvol estoppel teenoor A opwerp nie omdat A se wanvoorstelling nie die "proximate cause" van D se nadeel was nie, maar eerder C se bedrog.

5 1 en 3.

(2)

Question 23

Which statement regarding the basis of estoppel is incorrect?

1 Estoppel has been regarded as a doctrine of the law of evidence

2 Estoppel has been regarded as a *sui generis* remedy

3 The basis of estoppel has been regarded as the *exceptio doli*

4 The protection of good faith has been regarded as the basis of estoppel

5 The law of quasi-contract has been regarded as the basis of estoppel (2)

Vraag 23

Watter stelling ten opsigte van die grondslag van estoppel is verkeerd?

1 Estoppel is al beskou as 'n leerstuk van die bewysreg.

2 Estoppel is al beskou as 'n remedie *sui generis*.

3 Die grondslag van estoppel is al beskou as die *exceptio doli*.

4 Die beskerming van goeie trou is al beskou as die grondslag van estoppel.

5 Kwasi-kontraktereg is al as die grondslag van estoppel beskou. (2)

Question 24

Choose the incorrect statement

1 In *Fawden v Lelyfeld* 1937 TPD a plea of estoppel succeeded

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 did not succeed

5 In *Adams v Mocke* 23 SC 722 a plea of estoppel did not succeed (2)

Vraag 24

Kies die verkeerde stelling.

1 In *Fawden v Lelyfeld* 1937 TPD het 'n pleit van estoppel geslaag.

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 nie geslaag nie.

5 In *Adams v Mocke* 23 SC 722 het 'n pleit van estoppel nie geslaag nie. (2)

Question 25

Estoppel is most similar to which theory?

1 The declaration theory

2 The will theory

3 The information theory

4 The reception theory

5 None of the above (2)

Vraag 25

Estoppel is die naaste aan watter teorie?

1 Die verklaringsteorie.

2 Die wilsteorie.

3 Die informasieteorie.

4 Die ontvangsteorie.

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

Total section A / Totaal afdeling A **[50]**

*SECTION B / **AFDELING B***

NOTE TO MARKERS. MARK VERY LIGHTLY.

ALWAYS REFER TO RELEVANT CASE LAW

VERWYS ALTYD NA RELEVANTE REGSPRAAK

QUESTION 1 / **VRAAG 1**

Discuss the requirement that the defendant must have been enriched (10)

Bespreek die vereiste dat die verweerder verryk moes gewees het. (10)

[10]

QUESTION 2 / **VRAAG 2**

In *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 (3) SA 482 (SCA) para [9] the court said "We now know from the hard print that there is a common-law basis for the acceptance of a general enrichment action, at least one of a subsidiary nature In this respect the decision of the majority in *Nortje's* case has been shown by the then largely dormant authority to be clearly wrong" Critically discuss this statement with reference to relevant case law (10)

In *McCarthy Retail Ltd v Shortdistance Carriers CC* 2001 (3) SA 482 (HHA) para [9] het die hof gesê: "We now know from the hard print that there is a common-law basis for the acceptance of a general enrichment action, at least one of a subsidiary nature In this respect the decision of the majority in *Nortje's* case has been shown by the then largely dormant authority to be clearly wrong." Bespreek hierdie stelling krities met verwysing na relevante regspraak. (10)

[10]

QUESTION 3 / **VRAAG 3**

X is an employee of Company Y X is paid a monthly salary of R30 000,00 which is payable at the end of the month During July 2016 X receives a very lucrative offer from Company Z provided he can start work immediately X does not return to his employment with Y after 20 July 2016 Y now refuses to pay X anything for his employment during July 2016 Briefly advise X whether he has any claim against Y, and if so discuss the nature of the claim as well as the amount that he can claim (5)

X is 'n werknemer van Maatskappy Y. X word 'n maandelikse salaris van R30 000,00 betaal wat aan die einde van elke maand betaalbaar is. Gedurende Julie 2016 ontvang X 'n baie aanloklike aanbod van Maatskappy Z, op voorwaarde dat hy onmiddellik by hulle moet begin werk. X keer nie terug na sy pos by Y na 20 Julie 2016 nie Y weier nou om X enigiets te betaal vir sy dienste gelewer gedurende Julie 2016. Adviseer X daaroor of hy enige eis teen Y het, en indien wel wat die aard van die eis is asook die moontlike bedrag wat hy kan eis (5)

[5]

QUESTION 4 / **VRAAG 4**

Write a critical discussion on negative misrepresentation (misrepresentation by omission) within the context of estoppel Refer to relevant case law (10)

Skryf 'n kritiese bespreking oor negatiewe wanvoorstelling (wanvoorstelling deur middel van 'n late) by estoppel. Verwys na toepaslike regspraak. (10)

[10]

[TURN OVER]
[BLAAI OM]

QUESTION 5 / **VRAAG 5**

A takes his car to B, who sells second-hand cars, to have his car valued The car is parked on B's showroom floor where it is left for three days In this period one of the sales staff, X, who believed the vehicle to be part of the stock, sold the vehicle to C for cash A now claims the vehicle from C with a *rei vindicatio* Advise C with reference to relevant case law (10)

A neem sy motor na B wat tweedehandse motors verkoop om waardeer te word. Die motor word op B se vloer getrek waar dit staan vir drie dae lank. Gedurende hierdie tydperk verkoop B se verkoopsman, X, wat geglo het die motor is deel van hul voorraad die motor aan C vir kontant. A eis nou die motor terug met die *rei vindicatio*. Adviseer C met verwysing na relevante regspraak. (10)

[10]

QUESTION 6 / **VRAAG 6**

Briefly discuss the origin and history of the law of estoppel in South African law (5)

Bespreek kortliks die herkoms en geskiedenis van estoppel in die Suid-Afrikaanse reg (5)

[5]

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

TOTAL PAPER/ TOTAAL VRAESTEL: [100]

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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
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5	c1 c2 c3 c4 c5	40	c1 c2 c3 c4 c5	75	c1 c2 c3 c4 c5	110	c1 c2 c3 c4 c5
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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
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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
27	c1 c2 c3 c4 c5	62	c1 c2 c3 c4 c5	97	c1 c2 c3 c4 c5	132	c1 c2 c3 c4 c5
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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
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