

IMPORTANT INFORMATION

**READ THIS TUTORIAL LETTER FIRST!
PRESCRIBED MATERIAL! COMPULSORY ASSIGNMENTS!**

START IN TIME!!

DEPARTMENT OF PRIVATE LAW

**UNDUE ENRICHMENT LIABILITY AND ESTOPPEL
(PVL3043)**

Tutorial Letter 101/3/2010

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1 A WORD OF WELCOME

We would like to wish you a year of pleasant and fruitful studies. We shall do everything possible to help you achieve this. You will be well on your way if you start studying early in the year, work out a programme beforehand to enable you to use every moment of your limited study time, and resolve to do the assignments properly.

You will receive other tutorial letters during the semester. A tutorial letter is our way of communicating with you about teaching, learning and assessment. Please read Tutorial letter 301 in conjunction with this tutorial letter as it gives you an idea of generally important information.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers. In this tutorial letter, you will find the assignments for both semesters and instructions on the preparation and submission of the assignments.

This tutorial letter also provides all the information you need with regard to the prescribed study material and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible. We have also included certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 PURPOSE AND OUTCOMES OF THIS MODULE

The purpose of this module is to equip students with knowledge of and insight into the law of undue enrichment liability and estoppel to enable them to solve problems relating to undue enrichment liability and estoppel within the broader context of the law of obligations, as well as basic research skills in the practice of law.

Outcome 1:

Interpret given situations in order to analyse the role of undue enrichment liability and estoppel and selected aspects of the law of obligations in current South African law and everyday life.

Outcome 2:

Analyse given real life situations and legal documents to demonstrate an understanding of the history and theoretical framework of, and the most pressing and prevalent issues regarding the law relating to undue enrichment liability and estoppel.

Outcome 3:

Apply the principles of undue enrichment law and estoppel in practical situations and solve multi-dimensional legal problems associated with enrichment liability and estoppel.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

First semester

Prof GTS Eiselen
Cas van Vuuren 6-47
Telephone number: 012 429-8429

Prof L Steynberg (first half)
Cas van Vuuren 6-02
Telephone number: 012 429 8624

Second semester

Prof GTS Eiselen
Cas van Vuuren 6-47
Telephone number: 012 429-8429

Prof CJ Pretorius
Cas van Vuuren 6-02
Cell: 079 265 7574
Telephone number: 012 429-8502

All queries that are not of a purely administrative nature **but concern the contents of this module** should be sent to us. Please have your study material with you when you contact us.

The Lecturer (PVL3043)
Department of Private Law
PO Box 392
UNISA
0003

Please note: Letters to lecturers may not be enclosed with or inserted into assignments.

- You may send us a **fax**. Our fax number is: 012 429-3393. Address faxes to: The Lecturer (PVL3043).
- You may also **phone** us at the numbers given above. Phone calls made to us when we are not available will be forwarded to an answering machine.

- You are welcome to **visit** us to discuss any queries about or problems with the module. However, **please make an appointment beforehand**, otherwise you run the risk of the lecturer not being available to see you. Our offices are on the 6th floor of the **Cas van Vuuren Building**, Main Campus, Muckleneuk Ridge, Pretoria.
- Students who have access to the appropriate computer technology may contact the lecturers electronically via the *myUnisa* facility. The instructions for sending us an **e-mail** are as follows:
 - Go to *myUnisa* (see par 4.3.2 below).
 - Log in with your student number and password.
 - Select PVL3043 from the orange menu bar.
 - On the left-hand menu bar of the module page, select the “Course contact” option.
 - The next page is an automated e-mail page. The “From” and “E-mail address” fields are automatically completed.
 - Complete the “Message subject” field.
 - Type your message in the space provided for “Message”.
 - Click on the “Send Message” button.
 - Your message will reach the appropriate module mailbox.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

If you need to contact the University about matters not related to the content of this module, please consult the publication *Your Service Guide @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (eg to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you call the University.

Please note that all administrative enquiries should be directed to the **Unisa Contact Centre**. Enquiries will then be channelled to the respective departments. The details are as follows:

- | | |
|------------------------------|--|
| • Calls (RSA only) | 0861 670 411 |
| • International Calls | +27 11 670 9000 |
| • Fax number (RSA) | 012 429 4150 |
| • Fax number (international) | +27 12 429 4150 |
| • E-mail | study-info@unisa.ac.za |

5 STUDENT- SUPPORT SYSTEM

5.1 GENERAL

For information on the various student support systems and services available at Unisa (eg student counselling, tutorial classes and language support), please consult the publication *Your Service Guide @ Unisa* which you received with your study material.

5.2 CONTACT WITH FELLOW STUDENTS

5.2.1 Study groups

It is advisable to form study groups and to have contact with fellow students. The addresses of students in your area may be obtained from the following department:

Department of Undergraduate Student Affairs
PO Box 392
UNISA
0003

You may also contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 4 above).

5.2.2 myUnisa

If you have access to a computer that is linked to the internet, you can quickly access resources and information at the University. The *myUnisa* learner management system is Unisa's new virtual campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the computer and the internet.

We advise you to visit the *myUnisa* website regularly during the semester as we may post important announcements or inform you of the latest developments regarding Undue Enrichment Liability and Estoppel.

To go to the *myUnisa* website, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the “Login to *myUnisa*” link on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *Your Service Guide @ Unisa* which you received with your study material for more information on *myUnisa*.

6 TUTORIAL MATERIAL

6.1 INVENTORY LETTER

At the time of registration, you will receive an inventory letter containing information about your study material. Also see the booklet entitled *Your Service Guide @ Unisa*.

Check the study material you received against the inventory letter. You should have received all the items specified in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

Please note: Your lecturers cannot help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 3 above).

6.2 TUTORIAL MATERIAL

The tutorial material for PVL3043 consists of the following:

- (1) **two study guides** (which you will receive from the University)
- (2) **tutorial letters** (which you will receive during the semester)
- (3) **cases** (as discussed in the study guides)

No prescribed text books or recommended books!

6.3 STUDY GUIDES

You should receive the following study guides from the University:

- (1) **Study Guide 1: Undue Enrichment Liability**
- (2) **Study Guide 2: Estoppel**

6.4 FURTHER TUTORIAL LETTERS

Apart from Tutorial Letters 101 and 301, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available or needed (for instance, feedback on assignments).

Students who have access to the internet can view the study guide and tutorial letters for the modules for which they are registered on the University’s online campus, *myUnisa*, at <http://my.unisa.ac.za>.

Tutorial letters are part of your study material for assignment and examination purposes. They are at least as important as the study guide itself. Read and reread each tutorial letter; keep it for reference purposes, and read it again later. Tutorial letters which contain additional study material must be regarded as part of your study material for study and examination purposes.

6.5 CASES

It is sufficient for the purposes of this module if you study the prescribed cases as they appear in the study guides. We might include references of recent decisions that you have to study to the list of prescribed cases, in subsequent tutorial letters. You will at the same time receive a discussion of such cases. Make sure that you include these new references into the list here below when you prepare for the examination.

You may, however, for own purposes of course study the prescribed cases as they appear in the law reports if you have access to them, but **this is not necessary for examination purposes**. Copies of decisions may usually be obtained at law libraries, magistrates' offices and legal firms. If you experience difficulties in obtaining new decisions, you may approach the **Unisa Library** for this purpose. Consult *Your Service Guide @ Unisa* in this regard.

LIST OF CASES

Undue Enrichment

- 1 *B & H Engineering v First National Bank of SA Ltd* 1995 (2) SA 279 (A)
- 2 *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 (3) SA 264 (A)
- 3 *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 (4) SA 19 (A)
- 4 *CIR v Visser* 1959 (1) SA 452 (A)
- 4 *First National Bank of SA Ltd v B & H Engineering* 1993 (2) SA 41 (T)
- 5 *Fletcher and Fletcher v Bulawayo Waterworks Co Ltd* 1915 AD 636
- 6 *Gouws v Jester Pools (Pty) Ltd* 1968 (3) SA 563 (T)
- 7 *Govender v Standard Bank of SA Ltd* 1984 (4) SA 392 (C)
- 8 *Hauman v Nortjé* 1914 AD 293
- 9 *Kommissaris van Binnelandse Inkomste v Willers* 1994 (3) SA 283 (A)
- 10 *Nortjé v Pool* 1966 (3) SA 96 (A)
- 11 *Odendaal v Van Oudtshoorn* 1968 (3) SA 433 (T)

- 12 *Rahim v Minister of Justice* 1964 (4) SA 630 (A)
- 13 *Rubin v Botha* 1911 AD 568
- 14 *Weilbach v Grobler* 1982 (2) SA 15 (O)
- 15 *Willis Faber Enthoven (Pty) Ltd v Receiver of Revenue* 1992 (4) SA 202 (A)

Estoppel

- 1 *Akojee v Sibanyoni* 1976 (3) SA 440 (W)
- 2 *Baumann v Thomas* 1920 AD 428
- 3 *Electrolux (Pty) Ltd v Khota and Another* 1961 (4) SA 244 (W)
- 4 *Grosvenor Motors v Douglas* 1956 (3) SA 420 (A)
- 5 *Johaadien v Stanley Porter (Paarl) (Pty) Ltd* 1970 (1) SA 394 (A)
- 6 *Oakland Nominees (Pty) Ltd v Gelria Mining and Investment Co* 1976 (1) SA 441 (A)
- 7 *Sunday v Surrey Estate Modern Meat Market* 1983 (2) SA 521 (C)
- 8 *Union Government v National Bank of SA Ltd* 1921 AD 121
- 9 *Van Ryn Wine and Spirit Co v Chandos Bar* 1928 TPD 417

7 ASSIGNMENTS: GENERAL INFORMATION

7.1 GENERAL REMARKS

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading text, consult with other sources, discuss the work with fellow students, so that you are actively engaged in learning..

Two compulsory assignments are set for this module. The mark obtained for assignment 01 will count 10% towards your final mark for the module and the mark obtained for assignment 02 will also count 10% towards your final mark for the module. No extension can be granted for the submission of assignment 01, since the timely submission of this assignment determines your admission to the examination. **Only part of assignment 01 will be marked.** Assignment 02 is a multiple-choice assignment and will be marked by computer.

PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 4 above).

Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

Students may submit written assignments and assignments done on mark-reading sheets either by post or electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

To submit an assignment **via myUnisa**:

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

7.2 COMMENTARIES ON ASSIGNMENTS

The commentaries on the assignments **will be sent to all students registered for this module** in a follow-up tutorial letter, and not only to those students who submitted the assignments. As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

7.3 SUBMISSION DATES

The closing dates for the submission of **assignment 01** are:

- **1 March 2010** for the **first semester**
- **10 August 2010** for the **second semester**

REMEMBER: NO EXTENSION CAN BE GRANTED!!

The closing dates for the submission of the multiple-choice **assignment 02** are:

- **29 March 2010** for the **first semester**
- **13 September 2010** for the **second semester**

Please note: Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

8**EXAMINATION AND ADMISSION TO THE EXAMINATION****8.1 EXAMINATION**

For general information and requirements as far as assignments are concerned, see the brochure *Your Service Guide @ Unisa* which you received with your study material.

At the end of the semester you will write **one two-hour paper** that counts 100 marks. The exam mark counts 80% of the final mark for the module and the assignments 20%. The paper will consist of 50% multiple-choice questions (similar to assignment 02) and 50% longer questions (similar to assignment 01). Please take note that all the assignment questions are on Undue Enrichment Liability, but in the examination 50% of the paper will be on Undue Enrichment Liability and 50% on Estoppel.

For the examination you have to study the two study guides, including the prescribed case law, as well as all the tutorial letters you receive during the course of the semester.

8.2 EXAMINATION ADMISSION

Please note: In order to gain admission for the examination students must submit assignment 01. If you fail to submit this compulsory assignment before or on the due date, you will not gain admission to the examination!

Note that it is **not required** that you **pass** assignment 01 (ie get at least 50% for it) in order to gain examination admission. Submission of assignment 01 is adequate in order to gain examination admission. However, since the marks you obtain for assignment 01 and 02 will contribute 20% towards your final mark for the module, it will be to your advantage to do well in both the assignments.

NB: It is your responsibility to contact the University (study-info@unisa.ac.za or telephonically at 0861 670 411) before the examination date to ensure that all assignments have been recorded against your name, that the marks awarded are correct and that examination admission has been obtained.

8.3 THE REQUIRED SUBMINIMUM FOR YOUR EXAMINATION MARK

It is very important that you should note that a subminimum applies for your examination mark: **You need to obtain at least 40% in the examination before your semester mark will be taken into account for purposes of determining whether you pass, fail or qualify for a supplementary examination.** That means that a student who obtains at least 40% in the examination and who worked during the semester and consequently has a good semester mark, will have a great advantage above a student who has no semester mark or a bad semester mark. It also means that even if you get full marks for both your compulsory assignments you will still fail the module if you earn less than 40% in the examination. You will not even be allowed to write a supplementary examination.

8.4 EXAMINATION PERIOD AND SUPPLEMENTARY EXAMINATIONS

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2010 and the supplementary examination will be written in October/November 2010. If you are registered for the second semester you will write the examination in October/November 2010 and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

Should you qualify to write a supplementary examination, you would have to obtain at least **50%** in the supplementary examination to pass the module. The reason for this is that the mark obtained for the assignments is **not** taken into account in the case of a supplementary examination. In other words, only your examination mark is taken into account in the supplementary examination to determine whether you pass.

8.5 PREPARATION FOR THE EXAMINATION

We have included one example of a previous examination paper to help you in your preparation for the examination (see at the end of this tutorial letter). **Other previous examination papers will not be made available to students by your lecturer.** However, the assignment questions are based on previous examination papers. Detailed commentary on the assignments will be supplied in a later tutorial letter.

8.6 DIFFERENCES BETWEEN ASSIGNMENTS AND THE EXAMINATION

Please take note of the following:

- (1) Assignments and the questions contained in the activities in the Study Guide are not meant to be spot questions.
- (2) During the examination you will have no recourse to the study material. Your assignments are done, however, while you have the study material in front of you. In the examination the emphasis therefore falls on your ready knowledge of the work.

- (3) Remember that a time limit applies in the examination. Plan the time to be spent on each question carefully, and do not spend more time on a question than is justified by the marks allotted to it.
- (4) It is important for you to realise that the examination is not set with the purpose of catching you out, but rather in order to test how well you have mastered the study material.
- (5) Written examination questions are assessed differently from assignment questions. One mark is usually awarded in the examination for each correct fact in a direct question. The following mark rubric is an example of a typical mark rubric which will be used to assess a problem type question (which counts 10 marks) in the examination:

Evaluation criteria	Not yet achieved	Partially achieved	Achieved
1. Identifying the problem and giving appropriate advice.	0	0.5-2.5	3
2. Discussing the relevant law applicable to the problem referring to the relevant case law (prescribed cases and cases discussed in Study Guide), writers and legislation.	0	0.5-4.5	5
3. Applying the law to the facts of the problem.	0	0.5-1.5	2

9 COMPULSORY ASSIGNMENTS**ASSIGNMENT 01: FIRST SEMESTER
DUE DATE: 1 MARCH 2010****NO EXTENSION!!****TUTORIAL MATTER: Study units 1-5 (Unjustified Enrichment Liability)**

Your answer may not exceed 2 (two) typed or 4 (four) handwritten pages and must comply with the requirements for assignments. **Take note that only one of the two questions will be marked. You need to answer both questions!**

Question 1

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

(10)

Question 2

A owns a factory manufacturing steel in a continuous process. His monthly electricity bill averages R100 000. He just received a letter from the Johannesburg Municipality in which they threaten to cut his electricity if he doesn't immediately pay his "arrear account of R300 000". A knows that there must be a mistake, because his account is paid in full, but also knows that if there is a disruption in his electricity supply he will suffer severe losses. He pays the amount immediately and sends a letter of complaint with. Advise A whether he will be able to reclaim the R300 000 he paid, and with which remedy? In your answer discuss the requirements for this remedy.

(10)

TOTAL: [20]

ASSIGNMENT 02: FIRST SEMESTER
DUE DATE: 29 MARCH 2010

COMPULSORY ASSIGNMENT

UNIQUE NUMBER: 673110

REMEMBER!

- **This assignment should be submitted by all students registered for the FIRST SEMESTER.**
- Since this is a multiple-choice assignment, it must be completed on a **mark-reading sheet**.
- Please write the correct unique number for the appropriate module on the mark-reading sheet.
- This assignment covers the whole of **Study guide 1: Unjustified Enrichment Liability**.

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

Question 1

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

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

(1)

Question 2

S has concluded a contract with P for the sale of his horse, Big Boy, at a price of R 50,000. P immediately paid the purchase price to S. Unknown to both parties at the time of the conclusion of the contract, Big Boy had died the day before the conclusion of the contract when he was kicked by another horse. S immediately used the purchase price to buy a new young foal for R15,000, to pay his workers weekly wages of R 8,000, to pay his overdraft of R 10,000 and to pay for a luxury weekend away of R 12,000. There remains R 5,000 of the money in his savings account with the bank. This contract of sale is, however, void due to initial impossibility.

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

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

(1)

Question 3

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

1. P has an enrichment claim for the full R 50,000 paid.
2. P has an enrichment claim **only** for the R 5,000 left in the savings account, the R 15,000 paid for the foal and the weekly wages paid of R 8,000.
3. P has an enrichment claim **only** for the R 5,000 left in S's savings account.
4. P has an enrichment claim **only** for the R 5,000 left in the savings account and the R 15,000 paid for the foal.
5. P has an enrichment claim **only** for the R 5,000 left in the savings account, the R 15,000 paid for the foal, the weekly wages paid of R 8,000 and the R 10,000 paid on the overdraft.

(1)

Question 4

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

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

(1)

Question 5

L is renting a farm from O for an amount of R 10,000 per month. Without notifying O, L concludes a contract with R to build a new storeroom at a cost of R 100,000 and to make repairs to the roof of the house on the farm at a cost of R 15,000 because the roof is leaking and causing damage to the interior of the house.

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

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

(1)

Question 6

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

1. L as lawful occupier has an enrichment action against O for the value of all of the improvements effected to the farm.
2. L as *bona fide* occupier has an enrichment action against O to the extent that the improvements increased the value of the farm.
3. L as lawful occupier has an enrichment action against O for only the value of the necessary improvements effected to the farm, i.e. the repairs to the roof.

4. L as lessee of rural land, has no claim against O in terms of the Roman-Dutch Placaaten that still applies in South African law.
5. L as lessee of rural land, has a claim against O in terms of the Roman-Dutch Placaaten that still applies in South African law.

(1)

Question 7

Assume the same facts as in Question 5. Assume further that L has absconded after the improvements were effected and cannot be found as he has apparently emigrated.

Indicate which statement best explains the case law on whether R will have a claim against O under these circumstances:

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

(1)

Question 8

B has bought an operating business from S for R 1.5 million. After B had taken over the running of the business, X, a major supplier to the business, refuses to supply B with any product until S has settled a debt owed to X for goods delivered in an amount of R 50,000. B pays S's debt with X because he cannot operate the business without the product supplied by X. S refuses to repay the amount to B.

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

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

(1)

Question 9

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

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

(1)

Question 10

Assume the same facts as in Question 8. Further assume that the reason why S refused to pay X was because the goods delivered were defective. S had a valid claim for the reduction of the purchase price of those goods in an amount of R 13,000.

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

1. B has a claim against S for the full amount of R 50,000.
2. B has a claim against S for only R 37,000.
3. B has a claim against X for the full amount of R 50,000.
4. B has no claim against S because he is not entitled to meddle in the affairs of S without the permission of S.
5. 3 and 4 are both correct.

(1)

TOTAL : [10]

ASSIGNMENT 01: SECOND SEMESTER
DUE DATE: 10 AUGUST 2010

NO EXTENSION!!

TUTORIAL MATTER: Study units 1-5 (Unjustified Enrichment Liability)

Your answer may not exceed 2 (two) typed or 4 (four) handwritten pages and must comply with the requirements for assignments. **Take note that only one of the two questions will be marked. You need to answer both questions!**

Question 1

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

(10)

Question 2

A owns a factory manufacturing steel in a continuous process..His monthly electricity bill averages R100 000. He just received a letter from the Johannesburg Municipality in which they threaten to cut his electricity if he doesn't immediately pay his "arrear account of R300 000". A knows that there must be a mistake, because his account is paid in full, but also knows that if there is a disruption in his electricity supply he will suffer severe losses. He pays the amount immediately and sends a letter of complaint with. Advise A whether he will be able to reclaim the R300 000 he paid, and with which remedy? In your answer discuss the requirements for this remedy.

(10)

TOTAL: [20]

ASSIGNMENT 02: SECOND SEMESTER
DUE DATE: 13 SEPTEMBER 2010

COMPULSORY ASSIGNMENT

UNIQUE NUMBER: 770300

REMEMBER!

- **This assignment should be submitted by all students registered for the SECOND SEMESTER.**
- Since this is a multiple-choice assignment, it must be completed on a **mark-reading sheet**.
- Please write the correct unique number for the appropriate module on the mark-reading sheet.
- This assignment covers the whole of **Study guide 1: Unjustified Enrichment Liability**.

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

Question 1

Which one of the following statements cannot be regarded as a general requirement for enrichment liability?

1. The plaintiff must have been impoverished.
2. The enrichment must have taken place without a justifiable cause.
3. The enrichment must have taken place unlawfully.
4. The defendant must have been enriched.
5. The plaintiff is only entitled to the lesser of his impoverishment and the enrichment of the defendant.

(1)

Question 2

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 3 are correct.
5. 1 and 2 and 3 are correct.

(1)

Question 3

A has paid B an amount of R 40,000 by cheque. Before B could present the cheque to his bank, A countermanded the cheque because B had delivered defective goods to him. X, a clerk at A's bank failed to notice the countermand notice and payment of the amount was made to B.

Indicate which statement best explains the nature of the possible claims by A or the bank:

1. B has been enriched at the expense of the bank, because the bank had no mandate to make a payment from A's account.
2. B has been enriched at the expense of A, from whose account the payment was made.
3. A has an enrichment claim against B for the full amount of R 40,000.
4. A has an enrichment claim against B for a reduced amount.
5. 2 and 4 are both correct.

(1)

Question 4

E is an employee of M. E is paid a monthly salary of R 20,000. On 15 June 2009 M summarily dismissed E because of theft of company assets. The dismissal was lawful in terms of the employment contract and employment law.

Indicate which statement best explains the possible claim that E might have against his employer:

1. E has no claim for any part of his salary.
2. E has a contractual claim for the full amount of his salary for June 2009.
3. E has a *pro rata* claim for half of his salary of June 2009 based on the principle of unjustified enrichment.
4. E has a contractual claim for a *pro rata* part of his salary for June 2009.
5. E has a claim for the full amount of his salary for June 2009 based on the principle of unjustified enrichment.

(1)

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. He departs for America. C wants to claim the R12,000 from B.

Question 5

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 *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) it was held that C has no claim against B because B had not been enriched.
2. In terms of the decision in *Gouws v Jester Pools (Pty) Ltd* 1968 3 SA 63 (T) it was held that C has no claim against B because B has not been enriched at C's 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 overruled in *Brooklyn House Furnishers Ltd v Knoetze & Sons* 1970 3 SA 264 (A).

(1)

Question 6

Which statement best explains whether C has a retention right or whether he can exercise it?

1. C can exercise a retention right over the vehicle against B until such time as it has been paid for its necessary expenses.
2. C can exercise a retention right over the vehicle against B until it has been paid the full contract price.
3. In terms of the decision in *Buzzard Electrical v 158 Jan Smuts Avenue Investments* 1996 4 SA 19 (A) C has no retention right because it has no enrichment claim against B.
4. An enrichment retention right is a personal right and can therefore be exercised only against the creditor.
5. C has no retention right under these circumstances.

(1)

Question 7

A has sold uncut diamonds to B for an amount of R100,000 in contravention of statutory law. B has paid the amount but before the diamonds could be delivered, it was confiscated by the police during a raid of A's house. Which statement best explains the nature of the claim against A?

1. In circumstances like these a court may exercise an equitable judicial discretion to relax the *par delictum* rule, depending on the relative turpitude of the parties' conduct.
2. B has a claim for damages against A due to a breach of contract.
3. B has a claim against A in terms of the *condictio ob turpem vel iniustam causam* because it is unfair that he should lose his money and get nothing.
4. B has a claim against A in terms of the *condictio sine causa specialis* because there is no other enrichment action at his disposal.
5. B has a claim for damages against A based on delict.

(1)

Question 8

In which one of the following circumstances can the *condictio sine causa specialis* be used?

1. As a general enrichment action.
2. Where property is transferred on the grounds of a valid cause which later falls away.
3. Where a contract is terminated due to a resolutive condition.
4. Where property has been transferred in terms of an illegal agreement.
5. Where undue payment was made due to an excusable error.

(1)

Question 9

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 unlawfully 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.

(1)

Question 10

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 rejected the existence of a general enrichment action in South Africa and also rejected the idea that courts can extend enrichment liability to circumstances where it is deemed necessary.

(1)

TOTAL : [10]

Enjoy your studies and contact your lecturer whenever you encounter a problem.

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PREVIOUS EXAMINATION PAPER

Section A: Multiple-choice questions (25 questions, 50 marks) is not included. See below the questions from Section B: Long questions.

QUESTION 1

C steals a cheque from D and forges it with E as the payee. C agrees with E that E will deliver R100.000 worth of goods to C as soon as the amount has been deposited into his bank account. C deposits the cheque with F, E's bank in favour of E. The cheque is honoured and the money paid from D's account. F has credited E's account with the amount.

By the time that D found out that the cheque had been stolen, E had already released the goods to C and has also spent R50.000 of the money. Advise D whether he has an enrichment claim against either E or F, and if so the nature and requirements for that action.

(10)

QUESTION 2

C and D have concluded an agreement which is invalid because it is illegal. C has already paid R250.000 to D. Explain whether C will be successful with the *condictio indebiti* in claiming the money from D. Would it have made any difference in your answer if the contract had been void due to non-compliance with statutory formality requirements? Motivate fully.

(15)

QUESTION 3

Discuss the requirement that a party must suffer prejudice for a reliance on estoppel in full with reference to relevant case law and academic opinion. In the course of your answer you must also include a critical discussion of the two approaches to this issue.

(10)

QUESTION 4

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 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*. Advise A whether C may have any possible defences against this claim.

(15)

TOTAL SECTION B: [50]