

# LAW OF UNJUSTIFIED ENRICHMENT – 2009

## 1. INTRODUCTION

The Law of Unjustified Enrichment is a final year LLB elective credit.

The purpose of the course is to provide insight into the nature and function of the law of unjustified enrichment in South Africa. More particularly:

- To provide the students with a thorough understanding of the history and development of this branch of law, and the general principles of enrichment liability.
- To provide the students with a thorough understanding of how the courts deal with cases of enrichment by transfer, and the application of the *condictiones*.
- To provide the students with a thorough understanding of how the courts deal with cases of enrichment by outlays and encroachment.
- To provide the students with a thorough understanding of the defences that are available where one party claims to have been unjustifiably impoverished.
- To assist students in being able to identify and solve authentic legal problems with regard to enrichment law.
- To familiarise students with legal concepts and terminology commonly encountered in the law of unjustified enrichment.

### Credit Value

10 Credits.

### Assumptions of Prior Learning

In order successfully to complete this portion of the course, students need to be able to:

- Be capable of writing and communicating in coherent English.
- Know how and where to access resources such as textbooks, law reports and statutes in the Law Library.
- Have a working knowledge of the general principles of the various branches of private law.
- Be capable of independent learning.
- Read, analyse and extract principles from law reports and other source material.
- Understand the system of judicial precedent, and the important role precedent plays in private law.
- Have a developed understanding of legal problem-solving techniques.

## 2. OUTCOMES

### Critical Outcomes

Students will be able to:

- (a) identify and solve practical legal problems.
- (b) organise and manage themselves and their work load.
- (c) collect, analyse and evaluate information from the various sources of law, as well as information conveyed in the classroom environment.
- (d) communicate effectively in class debate and written assignments.
- (e) use technology in legal research.
- (f) recognise problem-solving contexts involving the law of unjustified enrichment.

### **Intended Specific Outcomes**

The course is designed so that students successfully completing this portion of the course should be able to achieve the following outcomes. The student should be able to:

- (a) Understand and explain the history and general principles of enrichment liability.
- (b) Understand and explain how the courts deal with cases of enrichment by transfer.
- (c) Understand and explain how the courts deal with cases of enrichment by outlays and encroachment.
- (d) Understand and explain the defences to enrichment claims.
- (e) Apply the knowledge acquired during the course to solve practical problems with regard to enrichment law.

### **3. TEACHING METHODS**

The course will be presented by means of *viva voce* lectures. In lectures, the substantive law will be discussed, leading precedents from the case law will be analysed, and the views of leading academic commentators will be explained. Occasionally, students will be expected to explain case law and consider practical questions in class. Students are expected to assume responsibility for their learning by reading ahead before each lecture, and consolidating afterwards. Lectures are compulsory. The normal Faculty regulations concerning lecture attendance and DP certificates apply. There are no tutorials in this portion of the course.

### **4. COURSE CONTENT**

1. The historical basis of the law of unjustified enrichment, and common law developments
2. The general principles of enrichment liability
  - Enrichment of defendant and corresponding impoverishment of plaintiff
  - A causal link between the defendant's enrichment and the plaintiff's impoverishment
  - The absence of a cause justifying the retention of the enrichment (the *sine causa* element)
3. The availability of a general action
4. Enrichment by transfer
  - The *condictio indebiti*
  - The *condictio ob turpem vel iniustam causam*
  - The *condictio causa data causa non secuta*
  - The *condictio sine causa specialis/ob causam finitam*

- Enrichment of persons with limited capacity
- 5. Enrichment by outlays
  - The unauthorised administration of the affairs of another (*negotiorum gestio*)
  - The improvement of the physical property of another
  - Enrichment by work done or services rendered, and enrichment liens
- 6. Enrichment by encroachment
- 7. Defences
  - Change of position/loss of enrichment
  - Estoppel

## 5. RESOURCES

The core reading and study material for this course are the leading judgments on the aspects of the law of sale to be studied. These cases may be found in the law reports, which may be accessed in the Law Library, both in paper and electronic form. For a full list of cases, see the course handout.

As far as textbooks are concerned, there is no prescribed textbook, but there are a number of texts that are highly recommended. These are:

Eiselen and Pienaar *Unjustified Enrichment: A Casebook* (2008) 3<sup>rd</sup> ed, LexisNexis.

Visser “Unjustified Enrichment” in Du Bois (ed) *Wille’s Principles of South African Law* (2007) 9<sup>th</sup> ed, Juta.

Visser *The Law of Unjustified Enrichment* (2008), Juta.

Brand “Enrichment” in *LAWSA Vol 9*.

Sonnekus *Unjustified Enrichment in South African Law* (2007), LexisNexis.

De Vos *Verrykingsaanspreeklikheid in die Suid-Afrikaanse Reg* (1987) 3<sup>rd</sup> ed, Juta.

## 6. STUDENT ASSESSMENT

<b>Specific Outcomes (On completion of this course, the student should be able to:)</b>	<b>Assessment Criteria (What evidence must the student provide to show that they are competent? The student must be able to:)</b>	<b>Assessment Tasks (The evidence will be gathered in the following way. The student may be expected to:)</b>
Understand and explain the history and general principles of enrichment liability.	<ul style="list-style-type: none"> <li>- Discuss the historical development of the law of unjustified enrichment.</li> <li>- Describe and explain the core principles that have to be satisfied before a claim based on enrichment can be entertained.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the various principles and requirements are.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining how this area of law has developed, and what the general principles of liability are.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
Understand and explain how the courts deal with cases of enrichment by transfer.	<ul style="list-style-type: none"> <li>- Describe and explain the content and operation of the various conditiones.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to these conditiones.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the content and operation of the various conditiones.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
Understand and explain how the courts deal with cases of enrichment by outlays and encroachment.	<ul style="list-style-type: none"> <li>- Describe and explain how cases of enrichment by outlays are dealt with.</li> <li>- Describe and explain how cases of enrichment by encroachment are dealt with.</li> <li>- Demonstrate an understanding of the court decisions that have authoritatively determined what the law is with regard to such cases of enrichment.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the content and operation of the various enrichment actions applicable to such cases of enrichment.</li> <li>- Write case notes on the leading precedents discussed and examined during the course.</li> </ul>
Understand and explain the defences to enrichment claims.	<ul style="list-style-type: none"> <li>- Describe and explain how, and in what circumstances, a defence may be raised to an enrichment claim.</li> </ul>	<ul style="list-style-type: none"> <li>- Write short essays, supported by authority, explaining the defences.</li> </ul>

Apply the knowledge acquired during the course to solve practical problems with regard to enrichment law.	<ul style="list-style-type: none"> <li>- Identify the relevant legal problem or issue.</li> <li>- State the relevant law, and discuss the relevant legal precedents with regard to that issue.</li> <li>- Apply the law to the facts in order to come to a reasoned conclusion about the problem, and the legal remedies that might flow from the finding.</li> </ul>	<ul style="list-style-type: none"> <li>- Write judgments or opinions in which a practical problem is analysed and solved on the basis of the relevant law and precedents.</li> </ul>
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### **Assessment Strategy**

The final mark (percentage) is comprised of the following components:

Examination: 70 marks  
Class work: 30 marks

### **Test**

There is one test for the course, which is written late in the first term. The test will be out of 12 marks, and students have 5 minutes reading time, and 40 minutes in which to complete the test. The test is written in a class period. The test will contain questions equivalent to that which may be found in the June examination, and will require the students to apply their knowledge to solve a legal problem. The test is compulsory.

### **Assignment**

There is one major assignment for this course, which is submitted towards the end of the second term. The assignment should be approximately 2500 words in length, and will have to be thoroughly researched, and correctly referenced and presented. The assignment counts 18 marks of the class-mark component of the course. The assignment is compulsory.

### **Examination**

One two-hour paper will be written in November. The examination will be out of 70 marks. The students will have to answer two 35-mark questions out of a choice of three questions. The questions will require students both to be able to explain legal rules and principles in a theoretical sense as well as to apply their knowledge to solving practical problems in authentic contexts. The examination is compulsory. An external examiner assesses the quality of both the examination paper and the students' answers.

## **7. EVALUATION**

This course is evaluated as part of the global evaluation of LLB courses conducted at the end of the first semester.