

## Unjustified Enrichment in South Africa Law

By JC Sonnekus (English translation  
by JE Rhodie)  
LexisNexis (2008)

vii & 421 pages

Soft cover

The year 2008 was a bountiful one for the law of unjustified enrichment in South Africa. It saw the birth of textbooks by two leading academics in the field: *Unjustified Enrichment* by Daniel Visser and *Unjustified Enrichment in South African law* by JC Sonnekus. The former was reviewed by Adv Alfred Cockrell in the April 2009 edition of this publication. In reviewing Sonnekus' contribution, one is inevitably drawn into comparing it with Visser's work.

The late Professor Peter Birks stirred the hornets' nest in English law by suggesting a novel taxonomy or structure for unjust enrichment or restitution in that legal system. Such was the force of Birks' ideas and personality that he, almost single-handedly, sparked an international academic revolution in unjustified enrichment, until then the poor cousin to contract and delict in the law of obligations. Conferences, textbooks, numerous collections of essays and a plethora of articles ensued in mainstream civilian and common law legal systems. The arguments became increasingly complex and the exchanges heated. The stakes were high. The result was a significant improvement in rationalisation of the often disconnected laws of unjustified enrichment.

Visser was an active participant in this international dialogue and his seminal work draws heavily, and profitably, on the lessons learned there. Those unfamiliar with the intricacies of the debates will find the structure of Visser's work foreign. For many practitioners who find the world of the *condictiones* confusing and inaccessible, Visser's work, for all its erudition and learning, can be a daunting starting point. It is here that Sonnekus' work fills the gap.

Sonnekus' contribution has a familiar feel to it. In title, structure and content, Sonnekus' book draws on De Vos' groundbreaking *Verrykingsaanspreeklikheid in die Suid-Afrikaanse Reg*. To his credit, Sonnekus acknowledges the influence.

Sonnekus correctly points out that the Supreme Court of Appeal has over the last decade increasingly focussed on the need for the presence of the general requirements of enrichment liability to found a claim in unjustified enrichment. He, equally correctly, states that our law has not yet finally severed ties with the arcane *condictiones*. Practitioners would thus be wise to heed Sonnekus' salutary warning that all claims based on unjustified enrichment should, for considerations of safety, be pursued under one of the specific *condictiones* recognised in South African law.

Accordingly, it is apt that Sonnekus first surveys the general requirements for liability in South African law. Thereafter, he dedicates a chapter to each of the common law *condictiones*. These chapters follow a similar pattern. Sonnekus sets out the Roman law foundation of the *condictio* under review, its expansion, if any, in Roman Dutch law and the modern South African law. There are helpful illustrative examples and an analysis of the leading cases. The work is also punctuated with detailed footnotes that provide useful references to comparative and historical sources.

In general, Sonnekus handles his topic with the skill that has justified his frequently citation by our courts at all levels. While Sonnekus' work is less ambitious and narrower in scope than Visser's book, practitioners will generally find it a useful and practical point of reference when faced with questions of enrichment law.

**Saul Miller, Cape Bar**

## The Pensions Funds Act: A Commentary on the Act, Regulations, Selected Notices, Directives and Circulars (The law is as at November 2009.)

By Rosemary Hunter, Johan Esterhuizen, Tashia Jithoo and Sandile Khumalo

Published by Hunter Employee Benefits Law (Pty) Ltd, PO Box 52531, Saxonwold 2132 Johannesburg

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The authors are directors of Hunter Employee Benefits Law (Pty) Ltd. Rosemary Hunter and Johan Esterhuizen are practising attorneys whilst Tashia Jithoo and Sandile Khumalo have experience as legal practitioners. At the outset I disclose having worked on brief with both Rosemary Hunter and Johan Esterhuizen.

The Pensions Funds Act 24 of 1956 (PFA) as amended in 2001 has been a boon to practising lawyers because it was in many respects poorly drafted. Actuaries make poor lawyers and lawyers make poor actuaries. The arranged marriage between actuarial and legal concepts in the PFA has not always been a happy one, but has provided pension lawyers with challenging questions of interpretation.

The authors have clearly wrestled with these problems in the course of advising their clients, which enhances the authority with which they write. The authors have admirably combined their practical experience of the PFA with a high standard of academic writing.

The bulk of the book is devoted to a section-by-section commentary on the PFA. It is written in the style of a reference work. The reader is able to locate the specific section of the PFA on which commentary is sought via the detailed table of contents. The index at the back of the book provides references according to topics for those who may not instinctively or otherwise know where different subjects are dealt with in the PFA.

Publications purporting to provide detailed commentary on a statute frequently do little more than paraphrase the sections of the Act, with little useful commentary or reference to case law. This book devotes 784 pages to its commentary on the PFA. Board notices, directives and pension fund circulars are dealt with in conjunction with the sections of the PFA to which they relate. This is an extremely useful feature because the reader does not have to undertake a separate enquiry as to whether these additional regulatory devices must be observed in addition to the provisions of the PFA. There is a separate index dealing with them at pages 749 to 750 of the book.

The disadvantage of a reference work devoted to section-by-section commentary is that it does not provide a coherent discussion of the statute and the common law context in which it applies. The authors have largely neutralised this problem by providing a bird's eye view summary of the seven chapters of the PFA and a 'Brief History of, and Guide to, the Pension Funds Act.'

Commentary on the sections of the PFA includes, where appropriate, case law dealing with statutory interpretation and substantive common-law principles which apply in tandem with the statutory provisions. A fine example of this is the comprehensive commentary of section 7C(2) dealing with the general duties of boards, a discussion of particular relevance to trustees of pension funds which covers 32 pages of the book and includes references to trust law and company law.