**Mistake and Misrepresentation**

QUESTION 1

In the examples that follow, identify the *type* of mistake *and* whether it is a material or non-material mistake.

1. Apple rents a flat in a particular block because he believes the block to be quiet block (i.e. that the residents are considerate and don’t have loud parties, slam gates and so forth). (2)
2. Sky buys a used skateboard because she believes that the skateboard was once owned by one of her skateboarding heroes. (2)
3. Ocean buys what he thinks is a horse, only to discover that it is a donkey. (2)
4. Peach enters into a contract that she believes to be a contract of sale, but it is a contract of lease. (2)
5. Clementine enters into a contract with a film studio believing that the contract entitles her to payment of a fixed sum ($200 000) and to share in the profits of the film. In fact, the contract only entitles her to payment of a fixed sum. (2)

[10 MARKS TOTAL]

QUESTION 2

B entered into a contract of sale of immovable property in Muizenberg, Cape Town which was advertised on Property 24 by a private seller as:

*"An interior designer's dream, high ceilings of traditional Dutch design, a dream lifestyle. Stroll across the road to the beach. Sip your coffee in one of the coffee shops downstairs while checking your morning emails. Eat out at one of the fabulous restaurants or sit in the sun while watching the surf".*

B moved into the flat after payment of the purchase price. After two days of staying at the property, she realised that the distance to the beach is five kilometres (5 km) which in her opinion is not a stroll at all.

B is very furious and approaches you for advice. Advise Bon whether they can rescind the contract based on misrepresentation?

[4 marks]

QUESTION 3

Ismail is the sole director of a clothing business in Cape Town. His business, Ismail T’s (Pty) Ltd has a net asset value of R5 million and it sells only t-shirts. Palessa imports bulk materials, clothing, and textile supplies and sells at discounted prices to retailers, such as Ismail T’s. Ismail approaches Palessa, and Ismail T’s (Pty) Ltd enters into a contract with Palessa in terms of which the company buys a consignment, which is in a closed box, labelled *“ T- Shirts”.* When he later opens the box, he discovers that it contains only fabric that can be used to manufacture t-shirts, not t-shirts ready for sale. You may assume that only Ismail T’s (Pty) Ltd is mistaken.

Would Ismail T’s (Pty) Ltd be able to get out of the contract on the basis of mistake? Explain fully.

[8 MARKS]

QUESTION 4

Dineo bought a second-hand smart watch from Amos, who is an accountant, for R3000. Before buying the watch Dineo asked Amos if the watch was waterproof. Amos said that it was. After buying the watch, Dineo discovered that it is not waterproof. Dineo is really annoyed. She would only have paid R2000 for the watch if she had known that it wasn’t waterproof. But now she wants to return the watch and get all her money back.

Can Dineo get out of the contract on the basis of misrepresentation and get back the full purchase price or any portion of it?

Explain fully.

[6 MARKS]

**Offer and Acceptance:**

QUESTION 1

Anna’s toilet is leaking. She contacts Drip-Drip plumbing after seeing their advert on Google. James, one of the plumbers at Drip-Drip, asks Anna to send him some pictures of the toilet. He replies: “It is going to cost R7500 to fix that problem. I will send a formal quote via email later. Can I start sourcing the parts? If so – I can get them tomorrow and have it fixed the following day.

Anna replies: “👍”

James sends a formal quote via email later that evening, sources the parts, and arrives at Anna to fix the toilet the following day. She responds by saying: “I reviewed your quote and have decided that I will rather use another provider. I am going to rely on the cooling-off period in the CPA and therefore, even if there was a contract between us, I am entitled to cancel without penalty!”

Is Anna correct? Or is there a valid contract between Anna and Drip-Drip plumbing?

[6 MARKS]

QUESTION 2

Best Burgers recently launched an advertising campaign on all the radio stations that will run throughout September 2022. It offered a lifetime supply of free burgers to anyone who could call in and is able to say the following phrase in under 5 seconds without making a mistake:

*Best Burgers beat all beefy burgers because it has the best biggest beefiest supercilious smoking sensational tongue tingling tasty tantalising tremendously meaty beefy burgers!!*

On the first morning of the campaign, two listeners complete the sentence properly in under the required time.

You are the legal advisor for Best Burgers. The marketing department would like to know whether the company is bound to provide a lifetime supply of free burgers to both callers.

[5 MARKS]