**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)

Non-Material (Error in Motive)

1. Sky buys a used skateboard because she believes that the skateboard was once owned by one of her skateboarding heroes. (2)

Material (Error in Subject Matter) OR non-Material (Error in Attributes)

1. Ocean buys what he thinks is a horse, only to discover that it is a donkey. (2)

Material (Error in Subject Matter)

1. Peach enters into a contract that she believes to be a contract of sale, but it is a contract of lease. (2)

Material (Error of Type of Contract)

1. 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)

Material (Error of Terms)

[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]

The issue here is whether or not the statement “Stroll across the road to the beach” is a fact, an opinion, or a puff. The reason? Because B would only have a claim for a misrepresentation *if* this is regarded as ‘a precontractual misstatement of *fact*’.

In this scenario – the statement concerned is NOT a statement of fact. Also – the CPA does not apply for the advert is placed by ‘a private seller’/not in the ordinary course of business and therefore not between a supplier and a consumer. Why is this relevant? Because IF the CPA did apply; then the false statement *may* have been regarded as reason to declare the contract voidable.

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]

In this question, the solution needs to address the law of unilateral mistake. BOTH the CPA and the common law *may* apply – there is no clear statement of ‘annual turnover’ of the company. And also – it is an 8-Mark question. In most instances (specifically for the Test 2) we will be clearer on which law to apply; and the mark allocation will be less (Test 2 = 6 marks per question).

Under the common law: Unilateral Mistake – Material (subject matter; would not have entered into the contract…); Reasonable (misled by box). Therefore the contract is void; claim lies in unjustified enrichment to recover performance/payment.

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]

Common law applies in this instance. Negligent misrepresentation. The question focuses on whether or not the misrepresentation is incidental (i.e. whether Dineo would still have entered into the contract; but on different terms/a lower price). IF Dineo could prove that the misrepresentation is causal; then the contract could be declared voidable and she could claim for reputation and restitution (i.e. full repayment). However, if incidental (which *seems to be the case in this* instance) - contract is NOT voidable, and she is not able to claim for recision and restitution (i.e. full recovery of the purchase price).

Because the misrepresentation is negligent, she is able to prove the requirements of a delict; therefore may be able to recover the R1000 difference in price IF she can prove all the requirements of a delict.

**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]

In this instance – you need to apply Section 44 of the ECT Act; in particular the list of exclusions. Spell out the 7-day cooling off period; but not how it does not apply in specific instances – one of which is the rendering of services where the consumer *authorizes the start of services to be rendered*.

Application to the facts is tricky in this instance. Suggestion: be clear with the timeline of facts in your solution (draw a timeline if necessary!)

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]

In this solution – you need to apply the thinking from Carbolic Smoke Ball Case (addressed in class). The issue here lies in whether or not the radio station *intends* the advertisement to be regarded as a valid offer or not. There is little evidence of this; but it can certainly be assumed (state that in your answer!)

In this fact set – it is likely that the station WOULD be bound and that both callers. You would need to include a statement/clear reference to the requirements of a valid offer in your answer to get full marks. The callers fulfilling the statement *properly* is the act of acceptance of the offer. Therefore, it is likely that there is a contract between both callers.