QUESTION 1 – 25 MARKS

A party may be held contractually liable even though he or she can show that in the process of contracting he or she made a material error as to the terms intended by the other party. Explain fully the legal principles applicable in this regard, making reference to relevant case law. How do the principles affect the position where a party has signed a document containing contractual terms? Is it possible to contractually exclude reliance on mistake?

Having completed your discussion, comment briefly on whether there is a contract in the following cases.

(a) Vanessa, a prospective LLB student at the local campus, applies for a loan from Last National Bank. The bank indicates that it will give her a loan only if her stepfather, Dick, consents to stand surety for her. Vanessa eventually persuades Dick to go into town to see the Loans Manager of the bank. The latter produces a form full of detailed fine print and Dick, who is generally too lazy to read anything except the sports page in the newspaper, exclaims: ‘Oh no! Not a lot of legal mumbo-jumbo! I’ve no time to read all this now.’ The Manager replies politely that Dick’s consent to stand surety is essential if the loan is to go through, and Dick then signs the document, muttering something about banks and red tape. Later, Dick happens to glance through his copy of the suretyship and he discovers that it provides that he will be surety for ‘any amount owing at any time in the future’ by Vanessa to the bank ‘from any cause whatever’ (not merely the loan), and that he may not terminate his liability as surety without the prior written consent of the bank. Dick is horrified at the scope of the suretyship undertaking and he refuses to accept liability.

(b) Terri, a tenant whose lease is about to expire, asks the landlord, Larry, if he will renew the lease for a further two years. Larry replies that he has no objection in principle to a renewal, but must have an increase in rent for the renewal period. He adds: ‘Let me think about how much and I’ll get my attorney to draft something and send it to you.’

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Question 1 (continued)

Larry instructs his attorney, Dullwitt, to draft a new lease and to increase the rent from R4 500 to R5 500 per month. Dullwitt Drafts does the drafting, but forgets about the increase and reflects the rent in the document as R4 500. Terri, when signing, realizes there has been a mistake, but decides not to say anything to Larry whom, she observes, signs without bothering to read the document.

(c) Van der Merwe and Patel are negotiating a sale of shares. Van der Merwe says his lowest price is R490 per share but Patel stubbornly refuses to offer more than R440. Patel goes back to his office and, having thought again about the matter, decides to increase his offer. He dictates to his secretary an offer to buy at R460. She carelessly types the price as ‘R490’ and Patel signs the letter without noticing the mistake. When Van der Merwe receives the letter he is taken aback at the price mentioned and amazed that Patel (whom he knows to be stubborn and hard-headed) appears to have had a change of heart. He accepts the offer quickly, in case there has been a mistake.

(d) Gullible, who is keen on buying a second-hand car as a birthday present for his son, takes a shine to a VW Golf standing in Otto’s showroom. After a test-drive, Gullible agrees to buy the vehicle on condition that Otto replaces certain parts in the engine and puts on a set of ‘sporty tyres’. When Gullible calls round to pick up the vehicle, Otto’s secretary hands him a document and says that Otto wants it signed. The document bears the logo ‘Otto’s Motors’ (the name of Otto’s business) and has the words ‘Manufacturer’s Guarantee’ printed in bold print across the top. Gullible asks what the document is for and the secretary says: ‘It’s just our standard guarantee.’ Gullible takes this to mean that the document relates to the new parts installed and he signs it without bothering to read it. Later, when the vehicle develops engine trouble, he peruses the document and discovers that it contains, inter alia, a clause exempting the seller from liability for any latent or patent defect in the vehicle. Gullible would not have signed the document had he known what it contained.

(e) Speedking is a rich ‘yuppie’ who, amongst other things, drives in motor rallies. He owns two Jaguar motor cars, one specially tuned and strengthened for rallies, and the other, a luxury model. His equally rich young friend, Buff, takes him out to lunch at the Country Club and, during lunch, says: ‘I say, Speedy old chap, I am a great admirer of your Jag. Would you be prepared to sell it to me? I am willing to pay you R1 million for it. Of course, I am assuming it is still in good enough condition to match up to a Porsche or a top-of-the-range BMW.’ Speedking assures Buff that the car is ‘in excellent condition’ and accepts his offer. Throughout the discussion, Speedking is thinking of the luxury model, and Buff the rally model. The value of each model is approximately the same but Buff would not have agreed to buy the luxury model.

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QUESTION 2 – 25 MARKS

Referring to the reported cases, explain the requirements that must be satisfied for a misrepresentation to found an action for rescission of a contract. Include in your answer discussion of when silence may be regarded as actionable and the legal position in regard to ‘puffing’. Having completed your discussion, consider briefly whether the remedy of rescission is available in the following cases.

Continued…/
(a) Spudd, the owner of the MacTavern Restaurant, specialising in traditional Irish food. He offers to sell the restaurant to Paddy for R1 million. Paddy says: ‘I can’t afford more than R750 000.’ Spudd replies: ‘Paddy, this is a potential gold mine! If you devote your full attention to the business you should achieve a gross turnover of well over R750 000 a month.’ This last statement convinces Paddy to buy for R1 million. After running the restaurant for a short period, he discovers that Spudd, despite having worked long hours in the business every day for several years, never managed to obtain a turnover of more than R200 000 per month.

(b) Shezi offers to sell his Nissan bakkie to Parbhoo. Parbhoo is concerned that the vehicle may be defective in certain respects. When he raises his concerns, Shezi says ‘Don’t worry, before I deliver the bakkie, I will have Speedy Motor Repairs overhaul it and repair any defects’. Parbhoo accepts Shezi’s offer on this understanding. A few days later, he takes delivery of the vehicle and pays the price. He then discovers that Speedy Motor Repairs have not overhauled or even seen the vehicle. The manager of Speedy tells Parbhoo that they (Speedy) ceased to have any dealings with Shezi two years before when he failed to settle a debt which he owed them.

(c) Myte lives a short distance from the centre of town. Across the road from his house he owns 2 hectares of land on which he exercises his dogs. His friend, Mayne, who is a property developer, says to him one day: ‘It’s a shame to see that large piece of land lying idle: it seems to be ideal for township development. I’ll offer you R1 million for it.’ Myte has recently learned that the town-planning scheme for the area does not permit subdivision and that the market value of the land is only R200 000. Realizing that disclosure of these facts will put Mayne off, Myte does not mention them and simply accepts Mayne’s offer. After the parties have signed a written contract, Mayne discovers that he cannot establish a township on the property.

(d) Van der Merwe, a Karoo farmer, is approached by Joos, who says that his son, Slyke, has ‘X-ray eyes’ and can ‘see water underground, sometimes as far down as 100 metres.’ Joos offers to have his son look for water on Van der Merwe’s farm for a fee of R20 000. Van der Merwe is impressed with the son’s apparent supernatural abilities, and he decides to accept Joos’ offer. Slyke’s divining efforts are unsuccessful and Van der Merwe reluctantly gives Joos a cheque for the agreed contract price. Later that day, a police sergeant tells him to be ‘on the look-out for a pair of tricksters, Joos and Slyke’ who are defrauding people by pretending to be water diviners. Van der Merwe realizes that he is one of the victims and decides to stop payment on the cheque.

(e) Solly is the owner of the ‘Continental Restaurant’, which overlooks a small dam. He advertises the restaurant for sale and Haste comes to inspect it with a view to buying. Haste says: ‘I am prepared to offer you R1 500 000.’ Solly, who is in need of more money than this, decides to try and persuade Haste to offer more. He says to Haste: ‘Look, this is no ordinary restaurant. Our customers include the State President. With the liquor licence attaching to the premises you can hold moonlight parties alongside the lake. It’s a real bargain at R2 million.’ This speech tips the balance in Haste’s mind and he buys at the asking price of R2 million.

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Question 2 (continued)

When he takes over the restaurant, he discovers that the state President only previously visited on one occasion and that nearly all the restaurant’s business is done during the day, and regular patrons have no interest in holding parties next to the dam.

**QUESTION 3 – 25 MARKS**

(1) Discuss fully the principles applicable in the so-called ticket and notice cases. Illustrate by reference to the reported cases. Having completed your discussion, comment briefly on the following problems.

(a) Simon hands in his suit for dry-cleaning to Kleenem CC, a firm of ‘steam and dry-cleaning specialists’. While talking to Keenem’s employee in the front office, Simon does not observe on the wall directly behind the counter (and clearly visible to all customers being served) a notice containing the following exemption clause in large red letters: ‘According to our standard trading conditions, all items are cleaned entirely at owner’s risk. The management accepts no responsibility whatsoever for loss of, or damage to, items delivered for cleaning, whether or not the loss or damage is attributable to the negligence of its employees.’ On getting his suit back, Simon finds that it is torn and frayed in a number of places. He makes inquiries and discovers that an inexperienced Kleenem employee negligently put the suit through the wrong cleaning programme and this damaged the fabric. Simon demands that Kleenem pay him for his loss but the manager denies liability.

(b) At the entrance to ‘Park-Safe Garage’ a notice is displayed: ‘Parking: R15-00 per day.’ Dozey, in town to do some shopping, drives in and parks his car in one of the bays. When he returns to collect his car, he learns that it has been negligently damaged by the attendant, who reversed into it while moving another vehicle. On complaining to the management, Dozey’s attention is drawn to a ticket which was put under the windscreen wiper of his car after he had left to go shopping. The ticket reads in bold letters: ‘Owners park at own risk. Park-Safe Garage is not responsible for damage or loss arising out of theft, fire or negligence.’ Dozey has not previously used the garage.

(c) Jorler enters the foyer of the ‘Fleapit Cinema’ in Johannesburg and buys a ticket to see the film. On the back of the ticket is printed in bold letters: ‘The Management accepts no responsibility for any loss or damage suffered by patrons whilst in this cinema, even if such loss or damage is due to the negligence of the management or its servants or agents.’ Jorler does not read the ticket, but puts the remaining half in his pocket after the usherette has torn it in half as part of the process of admitting him to the auditorium. When Jorler sits down, a projecting nail in the arm of the seat tears and ruins his suit.

(2) Outline the requirements which must be satisfied for set-off to take place and explain the operation and effect of set-off. Having done so, answer the following questions, giving brief reasons for your answer in each case.

Continued…/
Question 3 (continued)

(a) Can a claim for delivery of a cow be set off against a claim for delivery of a horse?

(b) Is a gambling debt capable of set-off?

(c) L lets a dwelling to T, the contract providing that L must keep the exterior of the premises in proper repair. The roof develops several leaks, so T calls upon L to have it repaired, but he fails to do so. T has the roof fixed and wants to deduct the cost of repairs from the rent. Does set-off operate in the following case? (Assume, for purposes of your answer, that L is liable in law for the repairs.)

(d) Does set-off have to be specifically invoked by one of the parties?

(e) What is the effect of the expression, ‘without deduction or set-off’?

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QUESTION 4 – 25 MARKS

‘The right of a contractant to a decree of specific performance is not an absolute one. In certain circumstances, the court is obliged to refuse specific performance, and in all other cases it has discretion to do so.’

Write notes explaining each of the following.

(1) The meaning of the term ‘specific performance’ and the forms that an order of specific performance may take.

(2) The nature of a contractant’s entitlement to claim specific performance.

(3) The nature of the court’s discretion to refuse specific performance.

(4) Factors that are commonly regarded as militating against, or favouring, the granting of specific performance.

In the course of your answer comment on the decisions in ISEP Structural Engineering and Plating (Pty) Ltd v Inland Exploration Co (Pty) Ltd 1981 (4) SA 1 (A) and Benson v SA Mutual Life Assurance Society 1986 (1) SA 776 (A). Having completed your discussion, briefly consider the following problems.

(a) L lets his house to T for 5 years. The contract provides that T is not entitled to make improvements to the premises and that, on expiry of the term of the lease, he must restore the premises to L in the same good order and condition in which he (T) received them. While the lease is in force, T installs expensive Italian tiles in the bathroom and lays carpets throughout the house, increasing the overall value of the property by some R50 000.

Continued…/
Question 4 (continued)

When T vacates at the end of the lease, he does not remove the tiles and carpets. L ascertains that the reasonable cost of doing this will be R15 000 and wishes to recover this amount from T.

(b) B agrees to buy 1000 shares from S at a price of R50 per share, payment to be made on delivery of the share certificate. On the date agreed upon for delivery and payment, B goes to S’s office and is told that S has left for London on urgent business and will only be back in two week’s time. The trading price of the shares on the Stock Exchange at this time is R50 per share. Before S returns, the price of the shares on the Stock Exchange soars to R80 per share. On S’s return, B again goes to see him and demands delivery of the shares against payment of R50 000. S refuses to deliver.

(c) Smiley, a carpenter who specializes in the making of cupboards, enters the employment of Mustah Builders (Pty) Ltd (MB). Smiley signs a written contract stating that, for the duration of the contract (a period of three years), he will not work as a carpenter for any other business manufacturing cupboards or enter the services of any competitor of MB. After a year, Smiley abandons his job at MB and goes to work for one of MB’s competitors. MB want to prevent him from doing so.

(d) Archibald is employed as the chief accountant and financial manager for Mainstream Products (Pty) Ltd. After an argument with the managing director of the company, he is unlawfully dismissed. He wants to obtain an order compelling the company to reinstate him.

(e) Orville engages Bricklay to build a wall across the front of his (Orville’s) property in return for payment of a lump sum on completion. Bricklay does part of the job and then refuses to perform any further until he receives part payment for the work he has done. Orville is satisfied with the quality of workmanship so far and wants an order compelling Bricklay to finish the job. He is willing to pay the contract price once the wall has been completed.

(f) The Bridal Suite at the Lush Hotel is a detached rondavel. To improve the attractiveness of the suite, the hotel orders from Eezee Furnishers an enormous circular water-bed, to be specially made for R300 000. Before Eezee Furnishers start making the bed, the rondavel is struck by lightning and destroyed. The hotel management informs Eezee Furnishers of this fact and asks them not to make the bed, as it will be too big to fit any other room in the hotel and they will have no use for it. Eezee Furnishers reply that they are going ahead with the order and will demand R300 000 on delivery of the bed in due course. Having completed the bed, they demand payment against delivery.