QUESTION 1

Peter Tobias has been employed by “X Ray shoe makers” CC since 1987. He has a clean disciplinary record and is regarded as a reliable and trustworthy employee by the company. Because he is such a well-trusted employee, the company allows him to get away with minor misdemeanours which would not be tolerated by newer employees. For example – although the company has a strong policy on late-coming, Peter regularly clocks in 5 minutes late and has never been warned about this. New employees are automatically given a warning whenever they clock in late. Peter Tobias unexpectedly becomes involved in Union activities and is eventually in 2007 elected as trade union representative. He takes his responsibilities as trade union representative very seriously and starts to become a bit of a nuisance to the company. On 21 March 2007, Peter clocked in 3 minutes late and was issued with a verbal warning. On 30 June he clocked in 2 minutes late, and received a written warning. On 3 October he clocked in 5 minutes late and was told he was dismissed. He also tells you that last month, he made a formal report to the Department of Labour about corruption and safety irregularities in the workplace.

You are the legal representative whom Peter consults to assist you in challenging the fairness of his dismissal.

Explain how you would argue this case.

(50 marks)
QUESTION 2

Sam Sneeze works for a dry cleaner. After working without problems for three years, the dry cleaners introduce a new, cheaper chemical into the operations. Sam is allergic to the new chemical, and cannot do his work as a result. Sam calls in the Health Inspectors who do a check on the chemical, and find that it complies with all the health and safety requirements applicable to the industry. The new chemical is significantly cheaper than the old chemical, and management are not prepared to revert to the old chemical. There are no positions in the factory that do not require contact of some sort with the chemical.

Sam approaches you for advice on what rights, if any, he has. He wants to know what courses of action are available to him.

(50 marks)

QUESTION 3

Explain each of the unfair labour practices as listed in section 186(2) of the Labour Relations Act, using examples from case law to illustrate each one.

(50 marks)

QUESTION 4

Johan Steyn was employed by Kellog Foods as a supervisor in the deli since 1989. He has been a good worker, but he was recently dismissed after an inquiry in which he was found guilty of breach company procedure and misappropriation of company goods after he was seen on a video on 13 different occasions performing certain acts. In the first 6 videos, it appears that he failed to search staff as they left the deli, which was part of his functions to prevent staff from stealing food from the deli. On the 7 other videos, it appears that he was seen eating `pap’ and meatballs whilst sitting in the far corner in the deli. The deli serves `pap’ and meatballs as its main dish in the daily lunch menu. He believes that his dismissal is unfair because he sometimes forgot to search staff because he had not been given training to do this. He also argues that the food he ate was purchased from a woman who serves meals lunchtime, but he has been unable to find her to testify on his behalf. In any event, other staff caught eating in the deli had been given a warning, and he saw no reason he should be treated differently. He states that even if he was guilty of the charges, the sanction of dismissal was too harsh in the circumstances. He wishes to challenge his dismissal on the basis of substantial fairness and seeks advice.

(50 marks)
ABC employers embark on a retrenchment exercise. They call a general meeting of all 500 staff members and tell them that they are contemplating the need to retrench 20% of the workforce due to operational requirements, and that they will be issuing staff members with letters inviting them to participate in the consultation process. The staff are shocked, and return to work very subdued. At tea time they discuss the matter and become highly agitated. At the end of tea time, the trade union representative suggests that they should embark on a ‘go slow’ to get the company to appreciate the value of their work and to abandon the retrenchment exercise. The staff agree, and the ‘go slow’ commences. The trade union conveys the purpose of the ‘go slow’ to management.

(a) Advise the Union on whether their conduct constitutes a protected strike.

(25 marks)

(b) The Employer wants to dismiss the employees for their conduct. Give full advice.

(25 marks)

[50 MARKS]