INSTRUCTIONS

1. Students are requested, in their own interests, to write legibly

2. This paper consists of FOUR (4) pages. Please ensure that you have all of the pages.

3. Answer any FOUR (4) questions
Question 1

Shaun Briggs was employed as a supervisor at the Lovely Foods Deli. He was dismissed after having been found guilty of breach of company procedure and consuming the company's product without proper authority. He was captured on video on three separate occasions (between September and December 2011) eating slices of bread inside the deli with the door closed. The bread in question was left on the outer counter, to be disposed of later as it was broken or damaged and could not be sold to customers. It was often given away for free to local farmers.

It is the company's policy that no employee may consume food whilst in the deli. All staff are required to only eat in the staff canteen. In mitigation, he had argued that he had 18 years' service, and had never been found guilty of an offence previously. He therefore pleaded with the employer to give him a final warning as the bread had no value to the company. Lovely Foods Deli dismissed him despite his plea in mitigation. He wishes to challenge the dismissal on the basis that the sanction of dismissal is too harsh in the circumstances.

Give full advice, with reference to case law.

[Total Q1: 25 marks]

Question 2

Owen Reed was employed for 30 years as a security guard for Diamonds South Africa. On at least 10 occasions he failed to search the bags of his friends as they left the premises.

Diamonds South Africa has discovered that on each of these occasions there were diamonds missing from the premises. Owen Reed is called to a disciplinary inquiry and charged with gross negligence.

He seeks advice on whether he can be dismissed for this offence, in view of his length of service and the fact that 5 other employees who were found guilty of this offence were given final written warnings in the last year. He is also concerned that none of his friends are being disciplined for leaving the premises without being searched.

Advise him accordingly.

[Total Q2: 25 marks]
Question 3

Dr Cheryl Smith (a white female) has been working as a senior Human Resource manager of the Department of Health for 10 years. She has recently received a PhD from UKZN in Industrial Psychology. The position of Director of Human Resources is advertised and Dr Smith applies, thinking she is well qualified for the post and that her experience meets the requirements. She is interviewed for the post together with 4 other candidates (2 blacks and 2 whites).

On assessment she received an average rating of 80%, the highest score obtained by any candidate.

The difference between Dr Smith’s score and the second rated candidate, Mr. Dlamini (a black male) was 25%. Mr. Dlamini worked in the Human Resources Division in the South African Police Services for 5 years in a senior management position.

In its recommendation the selection panel agreed that due to the difference between Dr Smith’s score and that of Mr. Dlamini, service delivery would be adversely affected if the latter were to be appointed.

The panel’s recommendation was discussed at a meeting with the Head of the Department, Dr Ndlovu. Dr Ndlovu stated that appointing Dr Smith will aggravate the representivity status of the department and that ‘such appointment will not enhance service delivery to a diverse community’.

The post is left vacant and Dr Smith believes that she has been unfairly discriminated against on the basis of her race. Advise her of her chances of success with such a claim. Refer to relevant case law.

[Total Q3: 25 marks]
Question 4

ABC Company embarks on a retrenchment exercise. The employer calls a general meeting of all 500 staff members and tells them that it is contemplating the need to retrench 20% of the workforce due to operational requirements and that it 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.

ABC wants to dismiss the employees for their conduct. Give full advice to ABC Company.

[Total Q4: 25 marks]

Question 5

James Scott approaches you for advice on 20 April 2013. He was dismissed without a hearing on 21 November 2012, in circumstances where the employer, Krazy Craig, lost his temper and told him to get out of his premises. He went to his union for assistance, and he was assured that the union would refer the matter to the CCMA. On 30 April 2013, he realized that his union had done nothing about the matter. He wishes to apply for condonation for the late referral of his dismissal dispute to the CCMA. Advise him on his prospects of success.

[Total Q5: 25 marks]

[TOTAL MARKS FOR PAPER: 100]