

Diploma in Journalism

MEDIA LAW COURT REPORTING

SAMPLE EXAM 1 – SEPTEMBER 2011

ENGLAND AND WALES

Time allowed: 1 ½ hours

Instructions:

- Put your name on the top of each sheet of paper used.
- Do **NOT** include the training centre at which you are sitting the examination.
- Dictionaries and other reference books are **NOT** allowed.
- Write each question number clearly in the left-hand margin.
- Where a question is divided into sections marked (a), (b), etc, divide your answer by putting (a), (b), etc, in the margin as appropriate.
- Answer **9** questions.
- Questions 1 to 8 must be answered plus **either** Question 9 **or** 10.

Information:

- The maximum score for this paper is 150 marks.
- Candidates are advised to allocate their time proportionately.
- The *Examining Body* for this paper is the NCTJ.

DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR

Questions 1- 8 **MUST** be answered **PLUS EITHER** Question 9 **OR** Question 10

1.

A newsdesk is alerted to material on the *Sharetube* website which allows people to post their video footage online. The material is footage, shot using a mobile phone, of a burglary trial at the local Crown court. It clearly shows the 21-year-old defendant being sentenced after conviction. The footage was taken by a witness who was sitting in court after giving evidence. He posted it on the website. The terms of the website are that footage posted on it can be “used free by anyone”.

What legal problem would be created if a news organisation used images from this footage to accompany a report of this trial or any other report? Explain the scope of relevant law, including how it affects the person who shot this footage.

(10 marks)

2.

- a) A man who was employed as a shop assistant is convicted of stealing money from the shop’s till. The man was working alone in the shop when he committed this crime.

A news website’s report of this court case has this headline: Man robbed shop.

Why does this headline need to be changed?

- b) A man appears at a magistrates court charged with the offence of entering a house as a trespasser with intent to steal therein.

How could this offence be summed up in one word?

- c) A criminal offence has this definition: The making of an unwarranted demand with menaces with a view to gain.

What single word can accurately be used to describe this offence?

- d) In what type of criminal court does a district judge preside?

- e) In normal circumstances in a Crown court trial, how many people are jurors?

(20 marks)

3.

- a) What protection against an action for defamation do the media have as regards reporting court proceedings contemporaneously? What are the requirements of this defence?

- b) Does this defence protect media reports of interruptions shouted during a court case from the public gallery? Explain.

- c) Does it protect media reports of information from documents which are referred to, but not read out, in a criminal trial? Explain.

(20 marks)

4.

Two senior police officers are charged with fraud. When they first appear at the magistrates court their solicitors immediately request that the officers' home addresses are not revealed in these court proceedings and seek an order under section 11 of the Contempt of Court Act for the media to be banned from reporting those addresses if they are discovered. The police officers claim that because they had been investigating serious crime for more than 20 years, publication of their addresses could lead to reprisals.

What could a media organisation argue in court to oppose the order? In your answer, include a reference to case law.

(15 marks)

5.

Explain what **FIVE** of the following terms or phrases mean (three marks for each correctly answered):

Absolute discharge
Concurrent sentences
Community punishment order
Conditional discharge
Either-way offence
Committal hearing

(15 marks)

6.

The following is an extract from a report prepared by a journalist. What would have to be deleted before publication to conform with the law? What is the relevant law? The court made no order to restrict reporting.

A boy of 12 drove his mother's car for 16 miles while he was over the legal alcohol limit, a court heard.

The boy, now 13, had drunk three alcopops with local girls before setting out to visit a schoolfriend.

Oldburgh youth court, Lincolnshire, heard that his mother alerted police when she realised the car was gone, and he was stopped 16 miles into his journey.

Alison Smith, prosecuting, said the boy had set out for his cousin John Beard's house in Lincoln.

Sharon Church, defending, said the boy, the youngest of five children, had a good record at school.

The boy, from Thorpe Crown village, Lincolnshire, admitted aggravated vehicle taking, driving without a licence and insurance, and driving with excess alcohol. The court made a supervision order, warning he would face a heavier sentence if he drove again on roads before he is old enough to be supervised as a learner, or was caught drink-driving again.

(20 marks)

7.

Twelve students are appearing at magistrates' courts charged with criminal damage following rowdy protests against an increase in university tuition fees.

You are a reporter. On your arrival at the courthouse to cover this case, you see other students staging a noisy demonstration outside it, and a court official stops you from entering and tells you: "The court is closed to the public, and the media, until after the students' case."

What does the common law and statute law stipulate about admission of public and journalists when magistrates are trying a case? State how such law would apply in the scenario set out above.

(15 marks)

8.

- a) What is the name given to the regulations that govern inquests?
- b) What do the regulations say about admission and exclusion of the public?
- c) What do the regulations say about a coroner taking evidence by written statement, i.e. without the witness being at the inquest in person?
- d) Briefly state what objects an inquest can rule to be treasure and what may happen to such objects if so defined.

(15 marks)

Answer either question 9 or 10

9.

A doctor is due to give evidence in court against a woman, a former patient, who is alleged to have conducted a lengthy campaign of harassment against him. Before the trial begins, a lawyer acting for the doctor requests that the court makes an order under section 46 of the Youth Justice and Criminal Evidence Act 1999 to protect the doctor's identity.

- a) Set out the scope of such an order and explain how it would, if made, affect media coverage of this trial. Your answer should explain the type of circumstance, as specified by the Act, in which a court can make a section 46 order.
- b) If you were a reporter in court, on what grounds could you argue against this order being granted in respect of a doctor? Refer what the Act states as the purpose of such orders.

(20 marks)

10.

A man is remanded for a week, charged with the killing of his seven-year-old daughter. The chair of the magistrates says: "We make an order under section 39 of the Children and Young Persons Act that the identity of the child shall not be published."

- a) Can a section 39 order be validly made in these circumstances? Explain the law.
- b) Briefly set out, in terms of method or procedure which should be followed, how the media might challenge in this court the making of such an order in this scenario. If that challenge fails, what other legal route is open to the media to challenge the order?

(20 marks)

MARKING GUIDE

Diploma in Journalism

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A total of 150 marks are available. Overall mark out of 150 will be multiplied by two and divided by three and rounded up to the nearest whole mark to create a percentage mark. The following grades will be awarded: **A** 70+ per cent, **B** 60-69, **C** 50-59, **D** 40-49, **E** 30-39, and **F** 0-29.

Awarding of marks

Candidates must demonstrate through their answer that they know the law well enough to state it and, where asked, apply it with confidence and clarity.

The marks for each section of each question (for example 4 marks) should be awarded to candidates giving a comprehensive and completely accurate answer to that section.

A less adequate answer to a section should receive proportionately fewer marks, (for example 2 or 3 out of 4 marks), according to the level of understanding / knowledge demonstrated by the candidate.

Other valid points (OVP)

These are marks which can be awarded where the candidate puts forward valid, relevant points/details other than those specifically required in the marking guide. For example, OVP marks should be given where the candidate's answer conveys a good knowledge of facts gleaned from lecture notes and books recommended for study, and/or by using relevant examples. Please indicate clearly where and how many OVP marks have been awarded.

Deduction of marks

Marks must be deducted for seriously wrong facts that would cast a doubt on a candidate's full understanding of an issue; e.g. suggesting a jury might sit in a magistrates' court, even if the rest of the answer is right. In this instance, the candidate should be given one mark under the pass mark for the question; e.g. 14 out of 30; 4 out of 10; etc. If, however, the error is so fundamental as to show that the candidate has not grasped the underlying principle in that (section of the) question, no marks should be awarded for that section / question; e.g. suggesting absolute privilege is a defence to contempt.

Marks need not be deducted for wrong dates of acts or of cases cited and, where cases are quoted, marks need not be deducted if the name is misspelled but the case is identifiable.

Borderline cases

Where an examiner would like a second opinion on a borderline candidate, the examination script can be sent to the NCTJ for re-marking by a member of the media law board.

Moderation

When marks have been received by the NCTJ, centres will be informed which papers are required for moderation. If the marking is considered unsatisfactory the NCTJ may call in the entire set of papers for re-marking at the centre's expense.

Examiners should make clear in the margin how marks have or have **not** been awarded / deducted; check that their calculations are correct and check they have correctly transposed marks to marking sheets. Errors could lead to full moderation at the centre's expense.

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MEDIA LAW: COURT REPORTING MARKING GUIDE

1.	Criminal Justice Act [1925]	2	
	prohibits the taking of photographs/filming in court,	2	
	or its precincts	2	
	Also an offence to publish photograph/film	2	
	Other valid points	2	
	e.g. Act also prohibits sketching/making of portraits in court		
	[or] precincts not defined		
	[or] court could use contempt law to punish such use of mobile phone		
			(10 marks)
2.	a) Robbery means theft with use of force/violence	3	
	or threat of force/violence	3	
	b) Burglary	4	
	c) Blackmail/extortion	4	
	d) Magistrates court/youth court	2	
	e) Twelve	2	
	Other valid points	2	
	e.g. in a) definition of theft given		
	[or] Theft Act cited in a) or b) or c) as source of definition		
			(20 marks)
3.	a) Absolute privilege gives protection	4	
	Must be fair	2	
	accurate	2	
	Report of court case held in public in UK	2	
	b) Does not protect reports of interruptions from public gallery	2	
	if people making them are not involved in the case	2	
	c) Does not protect reports of documents not read out in evidence/court	3	
	Other valid point(s)	3	
	e.g. as regards c), privilege will only apply if judge makes clear it covers a report of a particular, case document		
			(20 marks)

4. Case law has established that there must be “a real and immediate” risk to someone’s safety to justify use of section 11 in such a circumstance as this 4
- The reporter should ask what objective basis/evidence exists of such a risk of reprisal in this particular case 4
- Section 11 should not be used merely for the “comfort and feelings of defendants”/other discernable reference to R v Evesham Justices, ex p McDonagh 4
- OVPs 3
- e.g. Reporter could refer to media’s/public’s rights under Article 10 of the European Convention on Human Rights, to impart/receive information
[or] the reporter could refer to the open justice principle/point out that if defendant is not identified in report then public may wrongly think someone else (innocent) is the alleged offender;
[or] if any court has already allowed the defendant’s name and address to be mentioned in its public proceedings, use of section 11 thereafter is invalid in such circumstances. (15 marks)
5. 3 marks for each of the FIVE correctly answered, see below – if candidates attempt to define more than five mark the first five defined. (15 marks)
- Absolute discharge
- Follows a conviction but no penalty 1
2
- Concurrent sentences
- Sentences which run at same time 2
- Jail term served relates to the longest sentence 1
- Community punishment order
- Unpaid work in community 2
- supervised by probation service/officer 1
- Conditional discharge
- No penalty imposed on conviction 1
- If defendant commits another offence within period laid down 1
- liable to be dealt with for first offence as well as subsequent offence 1
- Either-way offence
- Can be dealt with by magistrates or Crown court 2
- depending on what magistrates/defendant decide(s) 1
- Committal hearing
- Magistrates decide if sufficient evidence for case to go Crown court 2
- Would be either-way case/defendant may be discharged 1

NB: maximum of 15 marks

6.	Children and Young Persons Act [1933], section 49	3	
	Delete: Name of cousin	5	
	Youngest of five children	5	
	Name of village	5	
	Other valid point(s)	2	
	e.g. scope of section 49 – no name, address or mention of school, photograph		(20 marks)
7.	Principle of open justice can be departed from only when administration of justice would otherwise be frustrated or rendered impracticable / <i>similar common law test on open justice, e.g. exclusion of public and media justified at common law only where their presence would defeat course of justice</i>	4	
	Common law power of exclusion not applicable here as regards media, because journalist(s) will not disrupt hearing	4	
	[Section 121 of] Magistrates' Courts Act says must sit in open court when trying case	4	
	Other valid point(s)	3	
	e.g. reference to Attorney General v. Leveller magazine [or] to Scott v Scott.		
	[or] Example of valid, common law power exclusion of Press, such as where woman or child giving intimate evidence/national security		(15 marks)
8.	a) Coroners Rules	2	
	b) Every inquest in public	1	
	except all/part can be in camera/in private in interests of national security	2	
	c) Coroner may admit documentary evidence if it is unlikely to be disputed	2	
	but must be read aloud	2	
	unless coroner otherwise directs	1	
	d) Findings of historic gold or silver objects	2	
	If treasure, should be offered to a museum	1	
	Other valid point(s)	2	
	e.g. fuller definition of treasure		(15 marks)

9. A section 46 order can be made as regards a witness [aged over 18] 1
- who the court considers is in 'fear' 2
 - or 'distress' 2
 - about being identified in such a report 2
- The effect would be that it would be illegal to include in any media report any matter likely to identify him/her to public as a witness/alleged victim in this case 1
- during his lifetime 2
- The Act says that the matter which cannot be published [if likely to identify such a witness] includes in particular:
- the witness's address;
 - the identity of any educational establishment attended by him/her;
 - the identity of any place of work;
 - and any [still or moving] picture of the witness. 4
- b) It could be argued that the doctor, as a professional, should be hardy enough/willing/able to give evidence in such a case without anonymity, and that open justice principle should not be compromised without sufficient reason 4
- Other valid points e.g. 2
- The Home Office notes to/guidance on the Act state(s) that order should not be used to cover a disinclination to give evidence on account of mere embarrassment.
[or] purpose of such an order is to improve the quality of evidence given by the witness/improve co-operation of witness
[or] if media oppose the making of the order, they can cite Article 10 of European Convention on Human Rights which protects freedom of expression/to impart information
[or] example of how order may mean other types of detail cannot be published about witness/could conceivably prevent defendant being identified in the report if her family/acquaintances know he was her doctor

(20 marks)

10. a) This section cannot apply if the child is dead 3
- Several High Court judges have said this 2
- Any specific example of any judge saying this* e.g. Mr Justice Bristow at Warwick Crown Court [in 1973]/Judge Grigson at the Old Bailey [1994] 3
- (b) Journalist in court could ask to address court, citing case law 2
- Could initiate/make challenge in note/approach to clerk 2
- or editor could write to clerk 2
- If this method fails, news media could ask for judicial review 2
- at High Court 2
- Other valid points, 2
- e.g. journalist raising matter in mags court is cheap/judicial review would involve legal fees/costs.

(20 marks)



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SAMPLE EXAM 2 – SEPTEMBER 2011

ENGLAND AND WALES

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MEDIA LAW: COURT REPORTING

Questions 1- 7 **MUST** be answered **PLUS EITHER** Question 8 **OR** Question 9

1. In what circumstances may a lawyer in court be allowed to treat a person as a hostile witness?

What is the effect of being declared a hostile witness?

(10 marks)

2. A town councillor makes a first appearance before magistrates, accused of wounding a woman in a park.

His solicitor says in the hearing: "My client will strenuously deny this charge". The defendant tells the court he wants to be tried by a jury. The magistrates do not make any order affecting reporting.

The magistrates refuse to grant bail after the prosecution lawyer objects to bail. They then adjourn the case, for a committal hearing to take place.

As regards any report of the councillor's first appearance before magistrates, can the media include:

- (a) the solicitor's quote and the fact that the defendant chose jury trial?
- (b) the prosecution's arguments against bail?
- (c) the conditions of bail?
- (d) the name of the woman?

The answer must indicate clearly how conclusions are reached, referring to relevant law.

(20 marks)

3. A lorry driver denies dangerous driving but is found guilty by magistrates and fined £500. His solicitor then tells the magistrates that the conviction puts his client's career at risk. He will, he says, quickly lodge an appeal against the conviction.

The solicitor asks the magistrates to make an order under section 4 of the Contempt of Court Act, postponing any media reporting of the case until after the appeal has been heard. "My client may well be acquitted on appeal", the solicitor says.

What argument should the only reporter covering the case make to the magistrates to counter the solicitor's request?

Explain the law of contempt in relation to these circumstances. What does section 4 specify about what may be postponed by such an order, the reason why such an order can be made and how long it can last?

(25 marks)

4. (a) What is the purpose of an inquest in the circumstances of:
- (i) death?
 - (ii) treasure?
- (b) On what ground, under the Coroners Rules, can journalists and the public be excluded from an inquest hearing?

(15 marks)

5. A man pleads guilty in a magistrates court to a charge of theft from his employer. There is no departure from the usual court procedure, but at the end of the case, after the man has been fined, his solicitor asks the magistrates to make "a section 11 order" to permanently prohibit the man's identification in media reports of the case. The solicitor says that otherwise the publicity will harm his client's chances of finding alternative employment.

Can the magistrates validly make such an order at the end of the case under the Contempt of Court Act? The answer must indicate how conclusions are reached.

(10 marks)

6. Erica Cordingley, aged 14, gives evidence at a youth court about how three girls, aged 15 and 16, pushed her down an escalator in a shopping precinct, an assault which left her with a broken shoulder, chipped teeth and a broken wrist. The three attackers are convicted and placed under supervision for two years.

You are a journalist covering this case. After it ends Erica's step-father Paul Mason agrees to be interviewed, and tells you: "Those girls were not really punished because the magistrates, I feel, did not do their job properly. There was no real justice for Erica."

The court made no order to restrict reporting. Explain any legal consideration(s) you would have in mind when deciding what can be published from the details of this court case, as given above, and from quoting Mr Mason as regards his comment above. Refer to any relevant statute law.

(20 marks)

7. A man pleads guilty in a magistrates court to stealing food worth £20 from a local corner shop. He tells the court that he needed to feed his family after his unemployment benefit was stopped due to a bungle by the local benefits office. He is given a conditional discharge for this offence.

A news website reports this court case the same day, correctly reflecting what was said in court, apart from one error in that it says he stole the food from a supermarket, not from a corner shop.

A weekly paper publishes, in its next issue, a report of the case which correctly reflects what was said in court, except that it wrongly states the value of the stolen food to have been £2,000.

Explain the position in defamation law of both the website and the newspaper as regards these court reports. Can either or both be sued successfully for libel?

In your answer, set out what the law requires if a media organisation's court reports are to enjoy protection from libel actions.

(20 marks)

ONE of the following TWO questions must be answered

8. Reporters are covering a magistrates court case in which a man is pleading not guilty to a charge of assaulting a 45-year-old barrister, Nigel Carrinton-Judd.

The Crown Prosecution Service counsel says she is applying for an order to be made by the court to ban media reports of the case from identifying Carrinton-Judd. He is due to give prosecution evidence in the case.

The CPS counsel then gives the magistrates a six-page application asking for such an order under section 46 of the Youth Justice and Criminal Evidence Act.

The magistrates say they will retire to read the application but invite the reporters in court to make a written representation if they object to such an order being made.

- (a) What is the specified scope of a section 46 order as regards what cannot be published about a witness for whom it is made?
- (b) What does the Act specify about the circumstances which justify a witness being covered in such an order?
- (c) Bearing in mind your answers to a) and b), what should reporters in the above scenario argue to oppose such an order being made as regards Carrington-Judd?

(30 marks)

OR

9. A man is being tried at Crown court. The court does not make any order restricting reporting. The case is being covered by two journalists, one from a daily newspaper and one from a weekly newspaper. Both write quickly a short report of the trial's opening session for website publication. Both these reports correctly reflect in summary what is said in court.

The following paragraph is the daily paper's website report, which is published first:

A young woman was raped in Jedville's Victoria park, a jury has been told. Courier driver Terry Armstrong-Templeton, aged 47, of Elsburg Close, Hightown, who denies rape, had tried to "chat up" the woman in a busy supermarket earlier that afternoon, and then followed her as she walked away from it, prosecution barrister Jean Morgan said. The Crown court trial continues.

The website report by the weekly paper journalist is drafted to read as follows:

A driver raped a 23-year-old after delivering goods to her workplace, Jedville Crown court heard. Terry Armstrong-Templeton, aged 47, whose job involved deliveries to around 250 businesses each month, stalked his victim for 300 yards after she left work, and dragged her into bushes, said prosecutor Jean Morgan. Armstrong-Templeton, of Elsburg Close, Hightown, denies rape. His trial is due to last two weeks.

Assuming that the weekly paper's journalist reads the daily paper's website, what amendment should he/she make to his/her draft report before it is published, and why? Refer to detail, and explain the scope of relevant law.

(30 marks)