

Diploma in Journalism

ESSENTIAL MEDIA LAW

SAMPLE EXAM 1 – SEPTEMBER 2011

ENGLAND AND WALES

Time allowed: 2 ½ hours

Instructions:

- Put your name on the top of each sheet of paper used and number each page.
- 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.
- Questions which refer to the Press Complaints Commission code or the Ofcom Broadcasting Code require an answer relevant to only **ONE** of these codes.
- Answer **10** questions.
- Questions 1 to 9 must be answered plus **either** Question 10 **or** 11.

Information:

- The maximum score for this paper is 200 marks.
- Candidates are advised to allocate their time proportionately.
- The *Examining Body* for this paper is the NCTJ.

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Questions 1- 9 **MUST** be answered **PLUS EITHER** Question 10 **OR** Question 11

1. You are the news editor of a local newspaper. An elderly woman is the victim of a brutal street robbery. The police initially have no idea who the robber is, but send you an e-fit (a computer-generated image) of the robber's face, as described by the woman and eye-witnesses. At the police request you publish it on the newspaper's website, with the robbery story. Two days later a man is arrested in connection with the robbery, which he denies.

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a) If police tell your newspaper about the man's arrest, why should you ensure that the e-fit is immediately removed from the website? Explain, with reference to the provisions of the Contempt of Court Act.

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b) If police fail to tell your newspaper of this arrest, can your newspaper be convicted under the Act for continuing to publish the e-fit for some days after the arrest? Refer to the requirements of the defence the newspaper may have, as specified in the Act, and to what steps the newspaper, to ensure it could use this defence, should have routinely taken as regards the police investigation.

(30 marks)

2. An MP makes allegations in a House of Commons debate that a cosmetic surgeon, who the MP names in the debate, has been botching operations, and so has left several of her constituents scarred for life.

a) Can the surgeon successfully sue the MP for libel for the allegations she made in the debate? Explain.

b) Can the surgeon successfully sue for libel a media organisation which reports that debate? Explain.

c) Can the surgeon successfully sue for libel a media organisation which reports further allegations against the surgeon as made by the MP in a press conference which she holds in her constituency?

As regards b) and c) set the requirements of the most relevant defence in libel law.

(20 marks)

3. Youths are in a stolen car being pursued by police. It crashes through a fence into a children's playground inside a park. The youths run off. Fortunately, no-one is hurt, though some play equipment is wrecked.

A passer-by takes photographs on his mobile phone which show three terrified young children crying and being comforted by a policeman at the scene of the above incident.

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Ethically can the media publish/broadcast these photos? Answer with reference to **either** the PCC code **or** Ofcom code as regards a relevant code part which specifically mentions children. State in your answer which code you are referring to.

(10 marks)

4. A story breaks about a local cancer charity being allegedly swindled of money in an internal fraud. Police provide a short quote, naming the charity but otherwise stating merely: "We have begun an investigation into improper use of this charity's funds by a person or persons inside this charity". The charity employs 70 people.

The editor of a news website wants a photo to accompany this story. Someone in its newsroom remembers that a staff photographer took a photograph last year of the charity's chief executive handing out prizes to a group of runners in fancy dress at one of its annual fund-raising races.

What legal danger exists for the website if this photograph is published alongside the news story of the police investigation into the alleged fraud? (you can ignore contempt law)

(10 marks)

5. a) If a 14-year-old boy is convicted of burglary in a case in which he was the sole defendant, which type of court is most likely to have dealt with him?
- b) In normal circumstances, is the media allowed to identify this 14-year-old as having this conviction? Explain.
- c) When he was 11, Jon Venables was convicted of killing two-year-old Jamie Bulger on Merseyside. Venables is now an adult, but the media is not permitted to report where he lives or publish any recent photo of him. Why not?

(15 marks)

6. A sports editor, in his newspaper column, criticises the manager of a local cup-winning team for knowingly fielding unregistered players in the final – a fact which, when it came to light a month after the final, resulted in the team having to hand back the trophy. All players must be registered with the football authorities before they can play in competitions.

In the column, the sports editor writes: "This manager is a local magistrate, so I would have expected greater honesty from him. His use of these players was disgraceful."

The manager threatens to sue for libel because of this published quote. He complains to the sports editor: "Yes, I found out just before the final began that some of our players were not registered, but I kept quiet about it because I did not want to ruin the final for everyone."

If the manager sues, what is the paper's legal position as regards the part of the column quoted above? The answer must indicate how conclusions are reached by setting out the requirements of the libel defence which applies to published opinions, and by stating if each requirement can be met in this scenario.

(25 marks)

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7. You work for a magazine. Your editor tells you: "I want you to produce a feature on how juries work. Find some people who have served on juries in criminal cases. Ask them about those cases, and what the jury discussed and argued about when reaching verdicts, and whether the jurors you interview felt the defendant was guilty or not, and why. Don't put any detail in the feature which might identify any defendant, because this will ensure the feature is legally safe."

Is it legally safe for you to obey the editor's instructions if:

- a) the feature identifies the jurors interviewed?
- b) the feature does not identify the jurors interviewed?

(20 marks)

Explain what relevant law specifies.

8. After a motorway crash, a TV station's newsroom hunts for photographs of those who died.

A brother of a man killed in the crash gives the station a copy of a photograph, showing the man, taken earlier that year by a commercial photographer at a church when one of the man's sons was getting married. The brother says: "I was sent some of these pictures, and so were all the relatives".

If the TV station broadcasts this picture, can anyone sue it under copyright law? Explain the potential effect of that law, as regards the TV station, in this situation.

(20 marks)

9. a) In what circumstances does the 1981 Contempt of Court Act compel journalists to reveal to a court their sources of information?
- b) Set out what either the PCC code or Ofcom code states about journalists protecting the identity of confidential sources. Make clear which code you are referring to. You only need to refer to one of these codes.
- c) Give one example of a journalist who refused to reveal a source to the police or to a court or to a tribunal/public inquiry.

(20 marks)

ONE of the following TWO questions must be answered

10. A media organisation gets a tip-off that a well-known actor is attending Alcoholics Anonymous meetings. It sends a journalist to wait outside such a meeting to get footage of the actor emerging from it onto the street. The media organisation publishes this footage, despite the actor objecting to it being published.
- a) What type of legal action could the actor successfully take as regards this footage being published? What rights does the actor have in this regard, and what legal criteria would the court consider when deciding such a case?
- b) Ethically, should this footage be published/broadcast by the media organisation? Answer with reference to **either** the PCC code **or** Ofcom Code. Make clear in your answer which code you are referring to.

(30 marks)

OR

11. An inexperienced reporter works for a city's radio station.

Police give local journalists a press release about a woman being raped in Melrose Park the previous evening, but do not disclose who she is. The reporter visits the park to find local people to interview about this news.

The reporter then files a report, in which she says: "Local people say the woman is aged 24, and that she was pruning the rose bushes in her garden, which adjoins Melrose Park, when a man with a knife entered the garden. They say he forced her to go with him into the park, where the rape took place. The woman, who is a nurse, then managed to escape and ran to the house of a neighbour who she knew was a police officer."

This information is accurate, but can it all be broadcast? Explain the scope of the relevant law. Police have no idea yet who the rapist is, so there has been no arrest.

(30 marks)

MARKING GUIDE

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Other valid points (OVP)

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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.

Copyright

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Material in [] is to guide the marker and need not be present in student's answer to gain relevant mark(s) in that part of the marking guide, though if it is present, and adds extra clarity or unprompted detail, it should be rewarded with proportionate OVP marks if any OVP marks are otherwise unallocated.

Words or phrases divided by / indicate acceptable alternatives. Where appropriate, if student has both alternatives (and so, for example, is therefore citing statute more fully) proportionate OVP marks could also be awarded, if any OVP marks are otherwise unallocated.

- 1.
- a) The case is active because of the arrest 2
 - Nothing should now be published which creates a substantial risk of serious prejudice 2
 - The e-fit must be removed from the site because it may affect how the woman/witnesses give visual identification evidence at an identity parade or in court 2
1
1
 - b) Under the Act's section 3 2
 - the newspaper has a defence if it took reasonable care (term needs to be exact for to gain all these four marks) 4
 - to check if the case was active/there had been any arrest and did not know or suspect it was active/there had been arrest 2
2
1
 - Newspaper should make regular checks with police about this 2
 - Its journalist(s) should have made notes of who spoke for police, what said and when about case 3
 - because newspaper must prove/has burden of proof that such checks were made to gain this defence 2
 - Other valid points, e.g. further detail of contempt risk, i.e. witnesses/woman may remember e-fit rather than actual face seen 2
- (30 marks)**

- 2. a) He cannot sue the MP successfully for what is said in Parliament because MPs enjoy absolute privilege 1
2
- b) The newspaper enjoys qualified privilege for a report of Parliamentary proceedings if 2
report is fair and accurate 2
and is in public interest 1
which this report is 1
and no malice 1
- c) The report of press conference is covered by qualified privilege if requirements of defence met 2
1
These include that [if requested] a reasonable letter/statement by way of explanation/contradiction must be published 2
1

Above five marks can be awarded for either b) or c)

Other valid points, 4
accurate reference to Schedule to Defamation Act
[or] discernable reference in c) to case law arising in McCartan, Turkington, Breen/
Private Clegg case/that this was House of Lords ruling
*NB: 3 marks deducted if candidate suggests that a reasonable letter/statement
by way of explanation/contradiction is a defence requirement in b)*

(20 marks)

3. **PCC**
- Children’s welfare/well-being/privacy could be affected here. 2
- Code makes it clear that children under 16 must not be photographed on issues involving their welfare unless a parent/responsible adult consents
If term welfare not used, only 2 marks here 4
- unless there is strong enough public interest justification, which seems unlikely here 2
- OR**
- Ofcom**
- These photographs infringe children’s privacy 2
- Broadcasters should play particular attention to the privacy of people under 16. If privacy infringed, consent must be obtained from parent/responsible adult before such a child is photographed/photo broadcast 4
- unless warranted/justified in public interest, which seems unlikely here 2
- Other valid points 2
e.g. specific reference to Clause 6 of PCC code or section 8 of Ofcom code
[or] further, ethical consideration, e.g. perhaps a longer range photo which does not identify the children may be published, though if children could have been/be upset by photo being taken, then maybe best not to use it in any form
[or] photo merely showing wrecked equipment/car/police is OK to publish.
- (10 marks)**

4. Allegation of fraud is defamatory 3
- Use of this picture of chief executive to accompany story identifies him in relation to fraud allegation, but he may be innocent 3
- Chief executive may successfully sue for libel damages 2
- Other valid points 2
e.g. relevant definition of a defamatory statement
[or] correct use of term ‘inference’ as regards picture of chief executive
[or] suggestion he is involved on fraud may only be defended by justification defence, if he is not charged by police
[or] use of police statement covered by qualified privilege
- (10 marks)**

5.

- a) The youth court 2
- b) No 2
 Not until he is 18. 1
 He will have anonymity in law 2
 under Children and Young Persons Act 2
- c) A court order/injunction bans the media from publishing such matter, 2
 to enable Venables to be rehabilitated/escape vengeance 2
- Other valid points, e.g. 2
 In b) mention of section 49 in youth court context
 or description of restriction's normal scope
 [or] in c) reference to order being made by High Court
 [or] in c) reference to order reflecting Venables' rights under
 Article 2 of European Convention on Human Rights

(15 marks)

6. Allegation of manager's dishonest conduct/cheating is defamatory 2
 but paper will have fair comment/honest comment defence if 2
 recognisable as opinion/comment, which this quote/column is 2
 based on provably true facts 4
 here the manager admits he knew the players used were not registered, 2
 - so this can be proven as factual
- Those facts must be alluded to/stated in what is published 2
 [unless already well known] – and they are stated here
- What is being commented on must be of public interest 2
 sport/cheating is, so this requirement is met here 2
 Must be the writer's honestly-held opinion 4
- Other valid point(s), 3
 e.g.
 Discernible, relevant reference to precedent case, e.g. Irish News case
 [or] other good detail in discussion/application of defence requirements to scenario

(25 marks)

7. a) What editor wants would lead to contempt of court 2
As regards jury process, it is illegal to seek/try to discover 3
or to publish 3
statements made/arguments advanced/opinions expressed 4
[2 OVP marks if more than of these alternatives cited]
or who voted for what verdict 2
- b) would still be contempt/illegal 4
[illegal even to ask such questions of jurors]
- Other valid points, e.g. 2
Law is in Contempt of Court Act
[or] reference to the Times being convicted of such contempt recently
[or] explanation that jury discussions/deliberations confidential to ensure jurors feel safe in their role/do not fear future consequences/vengeance.etc

(20 marks)

8. The TV station does not hold the copyright. 2
The photographer does 2
or his/her employer if pictures taken in course of employment 2
- unless copyright was assigned to whoever commissioned it as part of the deal for the wedding photos 2
- Whoever has copyright can sue the TV station for damages 2
if the picture was used without their permission 1
- The commissioner, anyway, has moral rights 2
because the picture is of a private or domestic occasion 2
and so can sue for damages if the photo was used without his/her permission 2
- other valid points, e.g. 3
the relevant statute is the Copyright, Designs and Patents Act
[or] the fair dealing defence does not apply to photographs

(20 marks)

9. [Section 10 says that] the court must be satisfied that disclosure is necessary
- in the interests of justice 3
 - or national security 3
 - or for the prevention of crime [or disorder] 3
- b) The PCC code states that journalists have a moral obligation to protect confidential sources of information. 4
- or**
- The Ofcom code states that guarantees/pledges/promises given to contributors relating to confidentiality/anonymity should normally be honoured. 4
- c) Any valid example e.g. Jeremy Warner, William Goodwin, Daniella Garavelli and the Journal (Newcastle) (all cited in McNae's Essential Law). 4
Also Brendan Mulholland and Foster (jailed) in the Vassall case (mentioned in McNae's).
- Other valid point(s) 3
- e.g. Citing Article 10's potential as a bulwark protection for journalists in cases concerning use of confidential sources
[or] good detail in case example provided

(20 marks)

10.	a) <u>Law</u>	
	The actor could sue for breach of privacy	2
	He has rights under Article 8 of European Convention on Human Rights	4
	The court will rule/will probably rule that in this situation the actor has a reasonable expectation of privacy, which is the criterion/test applied	4
	unless publication of footage defensible in public interest	2
	That defence seems unlikely to prevail here	2
	b) <u>PCC /Ofcom Code</u>	
	To publish the footage breaches the PCC code/Ofcom code as regards the man's privacy	2
	even though he was in a public place	2
	Health is a private matter under PCC code/would be viewed as private by Ofcom	2
	As he was seeking help for his condition he has a reasonable expectation of privacy under PCC code in respect of footage	4
	or	
	As he was seeking help for his condition he has reasonable/legitimate expectation of privacy under Ofcom code in respect of footage	4
	Other valid points	6
	e.g. relevant reference to real case such as <i>Campbell v MGN</i> , including some detail of it, e.g. ruled in it that too much detail published/photo unjustified even though Campbell conceded prior hypocrisy in her conduct	6
	[or] reference to there being tort of misuse of private information	4
	[or] definition of private place under PCC code/some detail of what Ofcom code says of privacy in public places	6
	[or] explanation of what constitutes public interest under PCC code/Ofcom code	6
	[or] specific reference to clause 3 of PCC code/section 8 of Ofcom code	2
		(30 marks)

11.		
	Under Sexual Offences Act [2003]	2
	it is an offence to publish anything which would identify the rape victim in her lifetime	4 2
	The Act says that matter which should not be published about such a victim [if likely to identify] includes address the identity of any school/educational establishment attended by him/her the identity of any place of work any still/moving picture	 4
	Safe to publish her age	2
	But to state her house is next to the park may identify her [especially if age given, unless park is very large/many such houses – 2 OVP marks]	2
	Mention of rose bushes makes it more likely her address/she will be identified	3
	Stating she has a neighbour who is a police officer also could/will identify her	3
	Stating she is a nurse could also identify her [e.g. if too much other detail broadcast, though depends on size of city/nurse workforce – 2 OVP marks]	3
	Other valid points e.g. to identify woman legally in such a report would need her written consent gained with no interference to her peace/comfort	5

(30 marks)

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1. Is it legal to take photos, or to film, in a courtroom when a case is underway there, or in the foyer of a courthouse?

What is the relevant law, and what is its scope?

How does it apply to making sketches of witnesses and defendants as they appear in court cases?

(20 marks)

2. A blogger, who specialises in writing about education matters, publishes the following text in his internet blog: "I can reveal that teachers at a comprehensive school in Pentownburgh were horrified by the method in which its headteacher was appointed. No-one else was interviewed for this job, which was not advertised locally or nationally in the normal way, and the person appointed had a very poor record as a teacher. That was some time ago. I shall be very interested to hear how this headteacher is running the school now, and I promise to name it in this blog if I hear of any more complaints from teachers there."

As no person was named by the blogger, is this text safe as regards defamation law? Explain.

(15 marks)

3. A reporter is told unofficially, by a friend who works in the design section of a local company, that it is relaunching its famous range of jeans next September.

The company, the friend says, has booked adverts on television and in magazines for next September, to publicise the relaunch then.

The friend also leaks to the reporter an artist's detailed drawings of some of the new jeans, which have several new design features.

If the reporter's newspaper publishes a story now, revealing this information, and the artist's drawings, could the company successfully sue the newspaper under

- (a) the law of confidence
- (b) copyright law?

Explain how relevant law applies in this scenario as regards a) and b). For example, as regards a) explain what criteria a court would consider, as regards the published information, if the company sued the newspaper.

(20 marks)

4. A weekly newspaper's story starts:

Three men were caught as they broke into a supermarket in Gotham soon after midnight on Wednesday of last week.

They were discovered by police who were alerted by supermarket staff.

The three were listed to appear before Gotham magistrates this week, charged with burglary. The staff said they had seen the men hanging about outside late Tuesday evening.

Where is the danger in the above wording? The answer must clearly indicate how conclusions are reached.

(10 marks)

5. During a planning inquiry held in public, a witness alleges that the managing director of a company seeking permission to expand its premises has been bribing local council officials.

Under cross-examination, the witness admits he has no evidence to support this allegation.

A newspaper reports the witness's making of the allegation but does not include in its report his admission that he has no evidence to support the allegation.

The managing director then threatens to sue the newspaper for defamation.

Would the newspaper have any defence? Explain the relevant law, referring to the requirements of the defamation defence which can cover media reports of public inquiries.

(20 marks)

6. A young magazine writer says to her editor: "Why don't we find that 12-year-old kid who gave evidence in that murder trial which has been all over the papers? Those reports did not say who she is, but if we find out we can do a feature on her, showing pictures of her with her family, for example, in their garden. She sounds a brave kid – she saw the murder as she was walking to school. She ran and told the teachers, and they rang the police who caught the murderer. It was the kid's evidence which convicted him. We can have pictures of the teachers too. The school will like the publicity, I am sure."

What should the editor tell the writer about relevant law concerning this child being involved in this court case? Refer to its effect as regards the writer's ideas, as indicated above, for the content of her proposed feature.

(15 marks)

7. As regards **either** the PCC code **or** the Ofcom code, does the code permit journalists, when working on a story, to:
- (a) record phone conversations when they are interviewing people by phone, without telling those people that the call is being recorded?
 - (b) place a hidden camera in a room to film secretly what people do in the room?

In your answer, refer to **either** the PCC code **or** the Ofcom code, not both, and make clear which code you refer to. Explain what the relevant parts of the code state as regards the type of conduct in a) and b).

(20 marks)

8. In a published article which gives recipes for home-made stuffing, a writer refers by name to a well-known chef who appears in TV adverts endorsing a commercial brand of stuffing. The writer states in the article that this chef “has, in my view, never used that brand of stuffing when cooking food himself, despite what those adverts suggest.”

The chef is angered by this article, and sues for libel because of the part quoted above.

From the information above, do you consider that the defamation defence that can protect opinion pieces is likely to succeed in this scenario?

Your answer must identify the defamation defence, and indicate how conclusions are reached by setting out the requirements of the defence, and by stating which of them are met in the scenario above.

(30 marks)

9. Detail the defence given by the Contempt of Court Act which might aid a newspaper if it published a general news story on some social issue at a time when a major, criminal trial was about to take place involving such an issue.

(20 marks)

ONE of the following TWO questions must be answered

10. A journalist discovers that a 50-year-old male paedophile befriended a teenage girl. The paedophile never met the girl face to face, but – by pretending to be a teenage boy – chatted to her on a social networking website using its message system. Eventually the paedophile, still posing as a boy, persuaded the girl to agree to spend a weekend with him in a tent. But, fortunately, the girl changed her mind about going to the camp site, and decided to tell her mother. The mother alerted the police.

The journalist also discovers that the paedophile was traced and was later convicted for using the website to “groom” the girl, i.e. he was trying to prepare her to have sex with him.

Can the journalist publish or broadcast a feature about these events, including an interview with, and photographs or footage of, the girl and her mother, if they agree?

Refer to the requirements of

- (a) sexual offences law and
- (b) relevant parts of either the PCC code or the Ofcom code as regards child victims of sex offences and media interviews with children on such matters. Make clear which code you refer to.

(30 marks)

OR

11. Magistrates have issued warrants for the arrest of two men after a bombing in which a number of people died. The Matlock Gazette publishes an official police statement which gives the names of the two men. The statement says they are wanted for questioning about the bombing, and describes their physical appearance as regards facial characteristics, height, body build and hair colour.

As regards publication of this matter, what is the newspaper’s liability for:

- (a) contempt;
- (b) defamation?

The answer must show clearly how conclusions are reached.

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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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ESSENTIAL MEDIA LAW EXAMINATION

Material in [] is to guide the marker and need not be present in student's answer to gain relevant mark(s) in that part of the marking guide, though if it is present, and adds extra clarity or unprompted detail, it should be rewarded with proportionate OVP marks if any OVP marks are otherwise unallocated.

Words or phrases divided by / indicate acceptable alternatives. Where appropriate, if student has both alternatives (and so, for example, is therefore citing statute more fully) proportionate OVP marks could also be awarded, if any OVP marks are otherwise unallocated.

1.	Criminal Justice Act, [1925]	2
	Prohibits taking photo/filming	2
	Making any portrait/sketch in court	2
	Or of any person entering or leaving	2
	Court or precincts	2
	Also prohibits publication	2
	Precincts not defined	3
	Photography/filming/sketching could also be contempt [in common law]	2
	Other valid point(s)	3
	Artists memorise scene/face in court but do their sketches away from courtroom to get round this law	
	[or] media photographers/crew outside frequently do photo/film people entering and leaving a court, and this is tolerated by some courts	—
		<u>20 marks</u>
2.	Not safe - anyone who is identified can sue, even if not named	2
	Potential for any headteacher of a comprehensive in Pentownburgh to sue for suggestion they are/were not qualified/were improperly appointed	3
	Blogger needs proof to successfully defend an action by head he intended to refer to	2
	If more than one comprehensive, head of each could sue – blogger could not have intended to refer to all, so at least some would probably/definitely win case	2
	Those responsible for any such appointment could sue for suggestion of impropriety/incompetence in appointment process	3
	Other valid point(s), e.g.	3
	Test for identification is whether acquaintances of those who sue/claimant could reasonably think matter referred to those who sue/claimant	
	[or] detail of requirement of justification defence	
	[or] teachers of any identified school could conceivably sue for suggestion they had complained of head, if not truth in blogger's allegation	
	[or] relevant definition of defamatory statement	
		<u>15 marks</u>

3.	(a)	The court will consider if the information given to the reporter has the [necessary] quality of confidence	2
		it does here, it is commercially sensitive information, see below	1
		The court will also consider if information was originally communicated in circumstances imposing an obligation of confidence	2
		It was, in that such an obligation existed on behalf of employee (friend) and his/her employer (the company) and this has been breached by passing of info to reporter	2
		The court will also consider if unauthorised use of that information – publication of it a newspaper – could damage the company	2
		It could because premature disclosure of the new designs/the date of the relaunch may help rival companies/dilute the publicity impact of the design's official launch	2
		The company could therefore claim damages from the newspaper if published	2
	(b)	Whoever owns the copyright of the drawings of the jeans, e.g. the artist who created them	1
		or the company, if they have bought the copyright from the artist or employ him/her	1
		could sue the newspaper for damages for breach of copyright	2
		Other valid points, e.g. The newspaper may be ordered to disclose the name of the source (i.e. the reporter's friend) on the grounds that disclosure is in the interests of justice, because the company may wish to sue the informant for breach of contract/confidence. [or] If company demands to know source, ethically journalists must not reveal confidential sources, under PCC code [or] The artist may retain copyright if this is in his/her employment contract (one mark only) [or] Further explanation of civil sanctions as regards breach of confidentiality [or] There is no public interest defence available to the newspaper	3
			<u>20 marks</u>
4.		Contempt danger of prejudice	4
		Suggests arrested men are definitely the burglars	4
		Other valid point(s) e.g. potential defamation danger too from this report if men in court are later acquitted	2 —
		[e.g.] reference to Contempt of Court Act or strict liability rule/case active, etc	<u>10 marks</u>

5.	Qualified privilege	4
	Requires fair and accurate report	2 2
	Published without malice	1
	But omission of witness's admission would mean report not fair	4
	So defence lost	4
	Other valid point(s). e.g. Justification defence for publishing bribe allegation would not succeed if no proof/difficult [or] further requirement is publication on request of reasonable letter/statement by way of explanation/contradiction – but if report not fair, publishing such letter/statement would not restore privilege	3 —
		<u>20 marks</u>
6.	If the reports did not identify child, then she had / probably had anonymity in law	5
	Under/probably under section 39	2
	Of the Children and Young Persons Act [1933]	2
	Making it illegal to identify her address, school, or to publish her picture in context of case	3
	Other valid point(s), e.g. [or] pix of garden alone could identify her address [or] pix of teachers would identify school [or] this is a discretionary power [or] power can be used in respect of those aged under 18/juveniles	3
		<u>15 marks</u>

7. (a) **PCC code** Yes, permitted [such recording per se does not even have to be in public interest] 4
- Only 2 marks if candidate indicates that PCC states this must have public interest justification or the above 4 marks can be awarded as follows as regards the Ofcom code*
- Must under Ofcom code tell other person that call is being recorded if intention is to broadcast 2
- unless warranted/justified in public interest not to alert other person to fact of recording 2
- (b) **PCC code** Such a hidden camera would under the PCC code [Clause 10] be a clandestine recording device 2
- Code prohibits such use of camera unless to gain information in “the public interest” 3
- And then only when the material cannot be obtained by other means/PCC would want editor/journalist to have reason to suspect/prima facie evidence that matter needing exposure may be taking 3
- The gist of any of these definitions OK for these 3 marks, plus OVPs if more than one. But these 3 marks not available if public interest not already alluded to or the above 8 marks can be awarded as follows as regards the Ofcom code* 3
- Such a hidden camera would under the Ofcom code [section 8] be covert/surreptitious filming 2
- Code says should not to be used unless justified/warranted to gain information in “the public interest” 3
- and then only when the material cannot be obtained by other means/when prima facie evidence exists that matter needing exposure may be taking place /reasonable to suspect further material will be obtained/necessary for credibility/authenticity 3
- The gist of any of these definitions OK for these 3 marks if in a) or b) plus OVPs if more than one. But these 3 marks not available if public interest not already alluded to*
- As regards b), The PCC code defines “the public interest” as being/including detecting/exposing/revealing crime/a serious misdemeanour/protecting public health/safety preventing the public from being misled 4*
- The gist of any of these definitions of public interest OK for these 4 marks, plus OVPs if more than one. or the above 4 marks available as follows as regards Ofcom code, whether points made in a) or b)*
- The Ofcom code defines “the public interest” as being/including detecting/exposing/revealing crime/ protecting public health/safety/exposing misleading claims/disclosing incompetence which affects public 4
- The gist of any of these definitions of public interest OK for these 4 marks, plus OVPs if more than one.*

Other valid points 4
e.g. in b) Such leaving of camera could also be breach of the PCC code's/Ofcom's protection of privacy, though public interest exception can apply to infringement of privacy
[or] in a) Recording a telephone call when a journalist is one of those talking is not classed by the PCC as using a clandestine device
[or] in a) if intention to broadcast arises after call, Ofcom code says must get consent to broadcast, unless justified/warranted in public interest without consent]
[or] in a) Ofcom code says purpose of call must be explained, unless in public interest warranted/justified not to explain

20 marks

8. Comment suggests chef is a hypocrite/endorsees this stuffing only for money 4
The defence is fair comment / honest comment 2
Must be recognisable as opinion 2
This is – “in my view” 2
Must be a matter in public interest 2
Would be here 2
Must be the writer’s honestly-held opinion 2
Here apparently is / is of poor quality of this brand 2
But comment must be based on provably true fact 2
Needs to be able to prove that this chef never uses this brand of stuffing 4
Could be difficult to prove this/this can be seen as an allegation of fact, not comment 2
Other valid point(s), e.g. 4
Reference to relevant case law
[or] good discussion of difference between comment and allegation of fact, applied to scenario

30 marks

9.	Act says publication made as [or as part of] discussion	2
	in good faith	2
	of public affairs/matters of public concern	2
	is not to be treated as contempt	2
	if risk of prejudice	2
	to particular legal proceedings/this major trial	2
	is merely incidental to the discussion	4
	Other valid point(s)	4
	General news story should not seek to imply that defendant in major trial is innocent or guilty	
	[or]	
	reference to real case involving defence, e.g. Malcolm Muggeridge case	
	Discernible reference to case involving Malcolm Muggeridge/Daily Mail	

20 marks

ONE of the following TWO questions should have been answered

10. (a) girl by has anonymity 4
- for her lifetime 2
- so if retained her mother could not be identified either 2
- How old is the girl? If she is 16 or over she can consent to be identified in the feature 2
- by law this must be written consent (no mark here unless indicated it must be written) 2
- and to be valid there must have been no [unreasonable] interference with her peace/comfort to obtain that consent 2
- [no provision in Act for parent to give consent]
- The following 4 marks available whether made in a) or b) as regards the Ofcom Code* 4
- Code [section 1] specifies particular care must be taken not to provide clues in coverage which may identify young [non-adult] victims of sexual offences if law gives them anonymity
- [or] *above 4 marks available as follows as regards PCC code* 2
- How old is the girl? PCC code also states [clause 7] that the press must not, even if legally free to do so, identify children [under 16] who are victims [or witnesses] in cases involving sex offences.
- unless there is [exceptional] public interest justification 2
- (b) How old is the girl? This issue concerns children's welfare (PCC code)/children's privacy (Ofcom code) 4
- PCC code/Ofcom code says that a child [under 16] must not be interviewed or filmed on issues involving their own/any child's welfare (PCC)/privacy (Ofcom) without consent of parent/responsible adult
- [Only 3 marks here unless welfare mentioned as regards PCC code or privacy mentioned as regards Ofcom code]*
- Scenario specifies there is such parental consent 2
- In respect of either code, the following 4 marks are available if candidate is clearly not confused about legal anonymity prevailing if it applies and the need for parental consent for interview, photos/footage, if girl under 16. Arguably is/there is public interest here in interviewing/identifying the girl if law permits, to help impact of story highlighting danger of paedophiles* 4
- Other valid points, 2
- e.g. in a) anonymity law prohibits publication of address, school, workplace, photo/film of her
- [or] If girl under 16, journalist should consider if her welfare may be harmed by media interview, even if parent consents and article/programme retains anonymity
- [or] if girl is interviewed for broadcast, but her identity needs to be kept secret, then need to disguise her voice – same applies for mother.
- [[or] candidate shows clear awareness of that mother can be interviewed but not

girl, if this is best for girl
 [or] candidate shows clear awareness that ethical decision on whether to identify
 girl, if law permits this, is distinct from that whether to interview her
 [or] good application of any other relevant part of Ofcom code
 or] pixellation of girl's face would help enable law to be obeyed if anonymity
 applies/is an ethical option even if no legal anonymity

30 marks

OR

11. (a) Contempt
- Proceedings active if warrants issued 2
 - Publication should not normally create substantial risk 2
 - of serious prejudice 2
 - Descriptions could create such risk as regards visual identification evidence 2
 - if there is identity parade/identification evidence in trial 2
 - BUT contempt proceedings unlikely if story based on police statement 2
 - Attorney General said in 1981/Commons that Press nothing to fear from assisting in apprehension of wanted man 2
 [in reasoned terms – 2 OVP]
- (b) Defamation
- Defamatory to suggest two are suspected of murder 2
 - BUT qualified privilege 4
 - for fair and accurate report 2
 - of official police statement 2
 - and subject to publication if requested of reasonable statement/letter of explanation / contradiction 2
 1
 - Other valid point(s) 3
 e.g. under (b) - fuller requirements of Q.P
 [or] source of QP is Defamation Act.

Two marks deducted if student suggests that publishing the men's names is prejudicial.

30 marks

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