The essential media law and regulation syllabus is set out in this programme of study. It is designed to give candidates the knowledge of how media law and regulation will affect their day-to-day work in newsrooms.

The way a journalist behaves in reporting a story is central to their skills base. The Diploma in Journalism is designed to equip candidates with an understanding of the many ethical issues which confront journalists in their day-to-day work. It will enable them to apply high ethical standards and identify when issues arise.

The aim of the assessment based on this programme (which includes an introduction to court reporting) is to ensure trainee journalists:

- Understand the legal system, the courts processes, terminology and hierarchy of the courts;
- Recognise the principles and dangers of contempt of court;
- Understand the legal and ethical restrictions concerning anonymity, including in reports based on or referring to court cases;
- Know why accuracy is important;
- Understand the general principles of defamation, the defences and their application;
- Apply the laws of copyright;
- Understand the law of breach of confidentiality
- Understand the need to protect confidential sources;
• Understand how the law protects people’s privacy and private information; and

• Apply in day-to-day work the provisions of regulatory codes, and honour the spirit of the codes as well as their specific provisions.

The syllabus comprises topics which may occur in exam questions and topics which will not occur in exam questions but which, nevertheless, should also be studied. The syllabus is based on information contained in McNae’s Essential Law for Journalists, 22nd edition, published in 2014 - and the book’s website www.mcnaes.com referred to below as mcnaes.com.

Candidates should have regular access to this textbook and ensure that they are aware of and have access to its website for updates which amend or add to the book’s content. They should also have copies of or access to this programme of study, including that part below, headed ‘Subjects to be studied, NOT examined’.

Candidates are required to achieve a grade A-C in this exam to meet the industry standard and gain eligibility for entry to the NCTJ’s professional qualification, the National Qualification in Journalism (NQJ).

The exam
200 marks, expressed as a percentage

Time allowed: 2 hours 30 minutes

The mark out of 200 will be divided by two to create a percentage mark, with any half mark in this percentage being rounded up to the nearest whole digit. Marks of 50 per cent or more are required to achieve a C grade or higher.

Grades will be awarded as follows: (percentage marks)

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<tr>
<td>A</td>
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<td>B</td>
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Grade descriptors can be found at the back of this programme of study.

If required to, centres must be able to produce material (and student representatives) to assure the NCTJ, e.g. during accreditation visits, that all such topics are covered.

The media law board wishes to stress that the following requirements are important in the effective delivery of this programme of study:

(1) regular assessment of candidates’ work;

(2) at least one visit to a magistrates court and at least one visit to a Crown court.

(3) close liaison with other course tutors, to ensure subject integration.
Guided learning hours

The essential media law and regulation syllabus will incorporate a programme of study that will be taught for a minimum of 70 hours. This includes direct contact, directed assignments, work experience and supported self-study.

Subjects to be studied and examined

The descriptions below indicate what scope of knowledge is expected of candidates during the exam, as regards:

- the law;
- The Independent Press Standards Organisation (as replacement for the Press Complaints Commission), the Editors’ Code of Practice;
- Ofcom and the Ofcom Broadcasting Code

when explaining such matters or applying the law or these codes to a scenario. In the programme ‘publication’ includes ‘broadcasting’.

Where these codes share an identical or similar ethical requirement, an exam question which requires a candidate to answer wholly or partly in relation to ethical (i.e. self-regulatory or regulatory) considerations will permit the candidate to answer in respect of either the Editors’ Code of Practice or the Ofcom Broadcasting Code – i.e. the candidate will not be expected in the marking guide for such a question to refer to both codes. Tutors should make clear to candidates that such ‘alternative’ answers are acceptable, and can point out that in the ‘Subjects to be studied and examined’ part of this programme of study such identical or similar requirements of these codes are referred to in the same sub-section of the programme (e.g. sub-section 3:5, below). Where a sub-section only refers to one of the codes, any exam question about this topic will expect the answer to refer to what that code says.

All elements of the programme of study must be studied even in respect of those parts of the codes for which, as explained above, it is acceptable for a candidate in the exam to answer in respect of one code and not the other.

The level of detailed knowledge expected of candidates in the exam and as regards topics studied but not examined is indicated by the detail (and case examples) included in the text of the 22nd edition of McNae’s Essential Law for Journalists and its website, and in the Editors’ Code of Practice and in the Ofcom Broadcasting Code. If in doubt about the level of detail required for any specific topic, tutors are invited to consult the media law board and confidential marking guides. Below, page references given are for the 22nd edition of McNae. These page references are supplied for guidance on the whereabouts in the book of specific matters, to aid teaching, study and revision. Law tutors will be expected to guide candidates about the wider context of such matters, which will involve candidates needing to read other materials not cited below. Candidates will not be required to quote verbatim from PCC, Ipso or Ofcom adjudications in their answers to examination questions but will receive ‘other valid points’ credit for discernable references to relevant adjudication(s).

It should also be noted that any resit candidate for the Diploma exams should ensure he/she revises by reference to the programme of study for the academic year in which the resit occurs.

Tutors and candidates need to check the www.mcnaes.com website for updates on law and ethical matters.
1. Basic knowledge of the law, including of court processes, of terminology, and of the hierarchy of the courts

1.1: That sources of UK law include common law, precedent/case law, statute; that in many instances courts have to consider the European Convention on Human Rights when making decisions (McNae, pp. 4-8); the divisions between civil and criminal law and examples of an event which could give rise to both criminal and civil proceedings (McNae, p. 8); correct use of the following terminology: charge, prosecute (McNae, pp. 8 and 41); claimant (McNae, pp. 8, 132 and 453); defendant (as appropriate in relation to civil or criminal courts) (McNae, pp. 8 and 132); solicitor, barrister, counsel (McNae, pp. 8-9, 76, 135 and 454); to sue, damages (McNae, pp. 8, 134 and 137); claim form (McNae, pp. 134 and 453); tort (McNae, pp. 130 and 457); injunction (McNae, pp. 134 and 455); settlement (McNae, p. 133); found liable (that is, held liable), admitted liability (McNae, pp. 8 and 133).

1.2: That most criminal cases are dealt with by magistrates, but that more serious cases are dealt with by the Crown courts, where the verdict is determined by jury, and where judges sentence (McNae, pp. 54 and 75); the appeal routes for criminal cases (McNae, pp. 63 and 85-86), that in criminal cases the High Court deals with points of law (McNae, pp. 63 and 86); that most juveniles prosecuted appear in youth courts, unless the offence is grave or an adult is co-accused (see also 3:2 below).

1.3: That the main civil courts are the county courts and the High Court (McNae, p. 131); examples of the types of case heard before civil courts, including county courts, e.g. debt recovery, other breaches of contract (and other torts such as trespass, negligence, and in the High Court, defamation), bankruptcy, divorce, care proceedings (McNae, pp. 130-131); that juries may be used in certain categories of civil cases, including those involving claims of malicious prosecution or false imprisonment or defamation (McNae, p. 136-137).

2. Contempt and related matters

2.1: The strict liability rule of the Contempt of Court Act 1981, including when criminal and civil cases become, and cease to be, ‘active’; the type of material which if published could breach the rule, and why; the type of information which can be published without breaching the rule, and why (McNae, pp. 215-218; 219-223, 231-232); the ‘fade factor’, but that it may not be enough to prevent liability for contempt for ‘impediment’ (McNae, pp. 225-226); that the 1981 Act covers inquests, and when they are ‘active’ (McNae, pp 195-196); the contempt risk of archive material accessible to the public on websites, and how the media should react to complaints that such material could or does cause prejudice (McNae, p. 226); Who has powers to initiate contempt proceedings under the 1981 Act (McNae, pp. 215-216).

2.2: A basic awareness that, to prevent prejudice, in the preliminary stages of a criminal prosecution automatic, statutory reporting restrictions are usually in force to forbid the publication at that stage of any references made in preliminary hearings to evidence or to any previous conviction(s) or bad character a defendant has (see footnote A, below); but that once a trial has

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A Candidates will not be expected for the Essential Media Law and Regulation exam to name, in respect of these restrictions covering preliminary hearings, any specific statute, e.g. the Crime and Disorder Act 1998, or to state
begun, it is usually the case that the media can report the trial’s proceedings contemporaneously.

2.3: The scope of the defence in section 3 of the 1981 Act, and best practice to ensure this defence can be used (McNae, p. 219).

2.4: The contempt risks in publishing material to assist the police; what the then Attorney General said in 1981 as regards such assistance; that there is no defence under the 1981 Act to cover such assistance but that there has not yet been a prosecution for contempt in such circumstances (McNae, p. 218).

2.5: Assessment of contempt risks in publishing material about ‘active’ civil cases, e.g. there is less risk if the case does not involve a jury, but some such risk could remain as regards witnesses (McNae, pp. 136-137, 232), and what sub judice means in this context (McNae, pp. 232-233 and 456).

2.6: The general danger of contempt as regards failure to obey court orders, e.g. failing to obey an injunction prohibiting publication (McNae, pp. 213, 306) or failing to obey a court order to reveal the identity of a source of information (McNae, pp. 402-403, 406) – see also 8.1, below.

2.7: The scope of the defence in section 5 of the 1981 Act, and best practice to ensure this defence can be successfully used, as regards publishing features or news stories which allegedly create prejudice to court or inquest cases (McNae, pp. 230-231); the reasons for the success and failure of the section 5 defence in contempt prosecutions arising from the Dr Leonard Arthur case (McNae, p. 231).

2.8: The protection, in section 8 of the 1981 Act, of the confidentiality of jury deliberations in civil and criminal cases and inquests (McNae, pp. 117-118).

2.9: The ban under section 9 of the 1981 Act on audio-recording devices being taken into / used without permission in court, and on any such recorded material being broadcast without permission (McNae, p. 116).

2.10: The scope of the ban on photography / videoing / filming / portrait-making / sketching in and around the court, and when juries visit crime scenes, and on publication of such material, under the Criminal Justice Act 1925 (McNae, pp. 113-114); difficulties of interpretation of ‘precincts’(McNae, p.114); and how the media legally make / publish portraits /sketches of court proceedings (McNae, p. 114); common law contempt as regards photography / videoing / filming in and around a court and the need for permission to photograph/film when juries visit crime scenes (McNae, pp. 114-115).

3. Anonymity

3.1: Ethical considerations as regards identification of juveniles concerned in pre-trial investigations, as expressed in rule 1.9 of the Ofcom Broadcasting Code (section 1) which states that when covering any pre-trial investigation (e.g. by police) into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is the exact scope of what may be reported when such restrictions are in force or to specify circumstances in which such restrictions can be lifted or do not apply.
not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them; that the code also states that ‘particular justification’ is required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved as a potential defendant (see mcnaes.com ch.4).

3.2: **Juveniles concerned in court proceedings as defendants, witnesses, victims or alleged victims**

The age of criminal responsibility, including that a child aged under 10 cannot be prosecuted, what the term ‘juvenile’ embraces, and that juveniles charged with a crime are in most instances dealt with in youth courts, from which the public are excluded (McNae, pp. 88-89, 91); but that some juveniles may be tried/sentenced in the (adult) magistrates court or Crown court if there is an adult who is co-accused (McNae, p. 95); that a juvenile charged with a homicide or ‘grave’ offence will be tried/sentenced in the Crown court (McNae, p. 90). The scope of the discretionary restrictions under section 39 and the automatic restrictions under section 49 of the Children and Young Persons Act 1933 which forbid the identification, in media reports of court cases, of juvenile defendants, juvenile witnesses and juveniles ‘in respect of whom the proceedings are taken’, e.g. who are not witnesses but who are the victim/alleged victim of an offence (McNae, pp. 91-94, 95-97); that section 49 and section 39 ceases to apply when the juvenile reaches the age of 18 (McNae, pp. 95 and 97, and update on mcnaes.com); that the section 49 automatic restrictions cease to apply if a youth court lifts them in the public interest in respect of a convicted juvenile (McNae, pp.94-95); that sections 39 and 49 do not apply to dead juveniles (McNae, pp. 92, 96 and 183); that either such restriction may apply to a juvenile concerned in applications for a criminal behaviour order (CBO) to be imposed or in proceedings for alleged breach of a CBO (McNae pp. 100-102 and check mcnaes.com for updates); that section 39 orders may be used in proceedings concerning applications for injunctions to prevent anti-social behaviour (McNae p. 100). See also footnote B, below.

3.3: **Complainants in sexual offence cases**

The scope of restrictions which automatically confer lifetime anonymity on complainants (victims/alleged victims) in sexual offence cases in general, as regards media reports of them (McNae, pp. 103-108).

NB: As regards particular offences, candidates should be able to recognise in an exam that the anonymity normally applies in respect of allegations of rape, of assault by penetration, of other types of sexual activity with a child (including by an adult family member and including what is termed in older law as incest),

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B Note that in respect of such injunctions McNae refers to ‘injunctions to prevent nuisance and annoyance’. This was the relevant heading in the first draft of the Anti-Social Behaviour, Crime and Policing Bill, and was current when the 22nd edition of McNae was prepared. But after amendments by Parliament, the heading in what became the Anti-Social Behaviour, Crime and Policing Act 2014 refers generally to injunctions to prevent anti-social behaviour, which is how such injunctions will be referred to in any examination question. Candidates do not need to know how anti-social behaviour is legally defined in the Act. But it can be noted by tutors that Parliament’s amendments mean the definition used in such injunction proceedings can include some but not all acts of nuisance and annoyance. For background, see www.mcnaes.com ch 9. No examination question on CBOs or injunctions in the 2014 Act will be set until this law is in force, but this is expected to be in or around September 2014. Check www.mcnaes.com for updates.
of sexual assault, of trafficking a person for sexual exploitation, of controlling a prostitute for gain, of exposure, of voyeurism, and of meeting or intending to meet a child following sexual grooming.

That such a complainant can, if aged 16 or over, sign a written waiver to consent to be identified in a media report of such a crime/such a court case, and the conditions which need to be honoured to make the consent valid (McNae, pp. 109-110); that in some circumstances a court may lift this anonymity (McNae, pp. 108-109) (the candidate for the Essential Media Law and Regulation exam does not need to note these circumstances); that the anonymity does not apply to a report of a court case when the charge(s) in those proceedings was/were originally and remain(s) ‘other than’ the sexual offence alleged by that victim/alleged victim, e.g. such anonymity does not apply to a report of court proceedings in which a person who claimed to have been a victim of a sexual offence has been subsequently prosecuted, in respect of that claim, for perjury, wasting police time, or perverting the course of justice; and does not apply when an allegation that a sexual offence occurred is made in evidence in proceedings in which that allegation was at no stage a charge under sexual offence law (McNae, p. 110). and see mcnaes.com update about Northern Echo case.

NB: Candidates should know that the anonymity applies in respect of alleged attempts to commit sexual offences, and allegations of conspiracy, incitement, and aiding in respect of such offences.

NB: Candidates will be expected, as regards legislation in this context, to name the Sexual Offences (Amendment) Act 1992.

3.4: Ethical considerations as regards identification of complainants in sexual offence cases, as expressed in Clause Eleven (Victims of Sexual Assault) of the Editors’ Code of Practice (McNae, pp. 111, 445).

3.5: Ethical considerations as regards the identification of children in sex cases, as expressed in Clause Seven (Children in Sex Cases) of the Editors’ Code of Practice, and that code’s public interest exceptions (McNae, pp. 15-16, 111 and 445); or in rule 1.8 of the Ofcom Broadcasting Code (Protecting the Under-Eighteens - section 1) as regards coverage of sexual offences (McNae, p.111).

3.6: Section 11
That under section 11 of the Contempt of Court Act 1981 Act a court can permanently ban publication of a name or matter in media reports of such cases; and typical usage of section 11, e.g. blackmail cases; national security cases, commercial secrets cases (McNae, pp. 119-120).

3.7: Adult witnesses
That it is illegal for the media to identify an adult during their lifetime as being or having been a witness in a court case if an order has been made by a court under section 46 of the Youth Justice and Criminal Evidence Act 1999 because the witness is/was considered to be in fear or distress about identification in media reports, and the scope of this reporting restriction (McNae, p. 123).

3.8: Anonymity injunctions under Convention rights
That a court (in particular the High Court) may by injunction order that a person must not be identified in media reports of some aspect(s) of their life, or that no such report should be published, because of the person’s rights to privacy under Article 8 of the European Convention on Human Rights (see also section 9:1, below), e.g. a famous footballer or actor accused of adultery (McNae, pp. 7, 315); that in a few instances involving defendants in notorious criminal cases, the court has made a permanent order that no current photograph be published of such a person or any indication published of their current whereabouts or of
any new identity they have or may be given, and that such an order may be
based too on Article 2, the right to life and/or Article 3, the right which protects
against degrading treatment or torture, e.g. by those seeking vengeance on or
to do harm to Jon Venables, Robert Thompson, Maxine Carr (McNae, pp. 7-8,125,
and mcnaes.com ch.11).

3.9: **Jigsaw identification**
The danger of jigsaw identification if anonymity applies under any of the
provisions listed above, and that there is particular danger of jigsaw
identification if journalists serving different media organisations or blogging in
their own right fail to liaise when covering the same story to avoid jigsaw
identification, i.e. they may need to agree prior to publication the specifics of
non-identifying detail to be published (McNae, pp. 96-98 and 105); that there is also
a specific ethical obligation to avoid jigsaw identification in respect of children in
sex cases/coverage of sexual offences, as expressed in the Editors’ Code of
Practice or in the Ofcom Broadcasting Code, see 3:5 above.

4. Accuracy

4:1: The ethical obligation to be accurate, as expressed in Clauses 1.i and 1.ii
(Accuracy) of the Editors’ Code of Practice (McNae, p. 16 and 443) or in rules 5.1
and 5.2 (in respect of Due Accuracy in news) of the Ofcom Broadcasting Code
(McNae, pp. 28 and 29-30).

5. Defamation and related matters

5.1: General principles of defamation / libel law, including the definitions of a
defamatory statement, of an innuendo and of an inference, and that the
Defamation Act 2013 removes the presumption in favour of jury trials in
defamation actions (McNae, pp. 237-241); libel dangers from juxtaposition of
published matter creating inference, and from lax captioning / use of
photographs/ footage (McNae, pp. 239, 250 and 252); what a libel claimant must
prove (McNae, pp. 249-253 and see footnote C, below); that normally a claimant
must commence a defamation action within one year of the publication of the
relevant material (McNae, pp. 278); the ‘repetition rule’ (McNae, pp. 253-254); that the
repetition rule is qualified by the ‘single publication rule’ defence in the 2013
Act specifying that the period for bringing a defamation action starts from date
of first publication of material to the public, even if ‘substantially the same’
material is subsequently published, but that this defence will not apply if the
manner of the subsequent publication is ‘materially different’ from the manner
of the first publication (McNae, pp. 254-255); that a dead person cannot be libelled
(McNae, p. 278).

5.2: The test of identification in defamation law, the risk of libelling an individual by
reference to a group of people, and case law relevant to identification (McNae,
pp. 250-252).

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C A candidate who states that another requirement is that a claimant must show that ‘serious harm’ has
been or is likely to be caused by what was published (McNae, p. 238) may gain one or more ‘other valid
points’ marks in an exam, but no exam question will demand knowledge of what qualifies or does not
qualify as ‘serious harm’.
5.3: That the 2013 Act sets out the defence of ‘truth’; that the ‘truth’ defence requires the defendant to prove that the statement complained of is ‘substantially true’; that if there are two or more imputations, the defence does not fail if ‘having regard to the imputations which are proved to be substantially true, the imputations which are not proved to be substantially true do not seriously harm the claimant’s reputation’ (McNae, pp. 257-260); why ‘truth’ can be a difficult defence to use, i.e. the burden of proof is on the publisher, what the standard of proof is and the potential difficulty of meeting the standard e.g. if a witness proves reluctant to testify, or hard to locate, or when meaning is created in inference and innuendo; that such difficulty can lead to media organisations being reluctant to defend libel actions, and to opt for settlement out-of-court, to avoid risk of high damages / high costs, unpredictable rulings on meaning (McNae, pp. 242-244, 258 and 260-261).

5.4: That the 2013 Act sets out the ‘honest opinion’ defence; its main requirements, including the de facto requirement that the statement was recognisable as an opinion; that the defence fails if the claimant can prove in a case where the defendant was the author of the statement he/she did not hold the opinion, and that in a case where the statement complained of was published by the defendant but made by another person (the author), the defence is defeated if the claimant proves that the defendant knew or ‘should have known’ that the author did not hold the opinion; that this is the defence relevant to comment about court cases or inquests, e.g. criticism of judges / magistrates / coroners / defendants (McNae, pp. 261-264).

5.5: The protection of the defence of absolute privilege for MPs / peers / Assembly members as regards what they say in Parliamentary proceedings (McNae, p. 264) or National Assembly for Wales proceedings; that the defence of absolute privilege protects media reports of court cases, including inquests, heard in public in the UK, and of courts martial of the UK armed services if heard in public within or outside of the UK, and also protects a media report of a court case heard in public anywhere the world under the law of a country or territory outside the UK (McNae, pp. 264-5); and that defence of absolute privilege also protects the public proceedings of an inquiry held under the Inquiries Act 2005 (McNae, p. 210); and that the requirements of the defence are that the report is fair, accurate, contemporaneous and it is of proceedings held in public and how reports can be made fair and accurate, e.g. attribution, etc. (McNae, pp. 264-267).

5.6: The scope and requirements of the statutory defence of qualified privilege, and the distinction between the requirements of qualified privilege under Part 1 and 2 of schedule 1 of the 1996 Defamation Act (McNae, pp. 267-272), as regards:
- media reports of the proceedings in public of courts (including inquests) based in the UK or anywhere in the world, when the coverage is non-contemporaneous (Part 1 of the schedule) (McNae, pp. 267, 268, 269, 448 and 452)
- media reports of the proceedings in public of legislatures anywhere in the world, including the UK Parliament, and of the National Assembly for Wales (Part 1 of the schedule) (McNae, pp. 267, 269, 448)
- media coverage of matter published by governments or legislatures anywhere in the world (Part 1 of the schedule) (McNae, pp. 210 and 448)
- media reports of the proceedings in public of a person appointed to hold by public inquiry by a government or legislature anywhere in the world (Part 1 of the schedule) (McNae, pp. 210, 269 and 448)
- media reports of copies of or extracts from any register or document required by law to be open to public inspection, e.g. records from Companies House, the Land Registry or case documents in civil court
cases which can be inspected by right in the Civil Procedure Rules (McNae, pp.161-163, 271-272, 448)

- media reports of the proceedings in public of a commission / tribunal / committee / person appointed to hold an inquiry by a Minister of the Crown or by a Northern Ireland Dept, or of such proceedings of any other tribunal / committee / board / body exercising functions by virtue of statutory provision (Part 2 of the schedule) (McNae, pp. 210, 449), e.g. The ‘Fitness to Practice’ panels of the General Medical Council, now administered in the Medical Practitioners Tribunal Service (McNae pp. 200-202, and mcnaes.com ch.17) and when as regards an inquiry held under the Inquiries Act 2005, the media coverage is non-contemporaneous (McNae pp. 209-210)

- media reports of the proceedings in public of local inquiries held under statutory provision (Part 2 of the schedule) (McNae, pp. 209-210, 449)

- media reports of the proceedings of public meetings anywhere in the world, (Part 2 of the schedule) (candidates should also know the Part’s definition of a public meeting) (McNae, pp. 269-270, 450)

- media reports of the proceedings at a press conference held anywhere in the world for the discussion of a matter of public interest (Part 2 of the schedule) and case law which extends this qualified privilege to the inclusion in such reports of the content of material distributed at press conferences (McNae, pp. 269-270, 450)

- media reports of statements / reports issued for public information by police / other governmental agencies anywhere in the world, including UK councils and UK police forces (Part 2 of the schedule) (McNae, pp. 267, 271-272, 449) including official reports thus issued of the findings of a UK local inquiry (McNae, p. 210)

- media reports of the proceedings in public of UK council or council committee or sub-committee meetings (Part 2 of the schedule) (McNae, pp. 267, 268, 269, 449)

- media reports of the findings of certain types of association anywhere in the world exercising powers to investigate or discipline members (Part 2 of the schedule), e.g. the Jockey Club or Football Association (McNae, pp. 272 and 451)

Candidates should be able to demonstrate knowledge of good practice necessary to ensure that such media coverage is fair and accurate, and therefore protected by qualified privilege, e.g. proper attribution of quotes; inclusion of any denials made in relevant meetings, etc.

NB: Any question on qualified privilege in this exam will not require the candidate to demonstrate in any detailed scenario any precise application of the defences to the reporting of matter aired in courts, inquests and courts martial, but the candidate should know that comment protected by the defence of honest opinion can be made about a privileged statement, including about matter reported from courts, see 5.4 and 5.5 above.

5.7: The scope and requirements of the defence under section 1 of the Defamation Act 1996, including the requirement that ‘reasonable care’ is exercised, and the defence’s relevance to ‘live’ broadcasts and to matter published on online bulletin boards/news or comment sites by readers; that the ‘Regulation 19’ defence under a directive of European Union law also protects a publisher who did not know that a reader had posted a defamatory comment; and how, in the light of the nature of the section 1 and Regulation 19 defences, media publishers should react to complaints about posted comments (McNae, pp.275 -278); that section 5 of the Defamation Act 2013 provides a defence for website operators who can show that they did not post the relevant statement on their
website; but that this defence fails if the website operator has received a notice of complaint about the statement but has failed respond to it in accordance with the requirements of the Act’s regulations; and that the section 5 defence also fails if a claimant shows that the website operator acted with malice in relation to the posting of the statement concerned, but is not defeated only because the website operator moderates statements posted on it by others (McNae, p. 277) (see footnote D).

5.8: Risks in agreeing to publish apologies and corrections and in phrasing them badly and therefore the importance of informing the editor/an executive of a complaint about an item published (McNae, pp. 245 and 273) and the nature of the defence of accord and satisfaction (McNae, pp.273).

5.9: The nature of the defence of leave and licence, and that usually the safest course is to have in writing as a signed statement, or in an audio or visual recording, any such agreement that defamatory matter can be published, if this defence is to be relied on (McNae, p. 275).

5.10: The defamation risk in implying insolvency /bankruptcy, and when it is safe to report someone is bankrupt, and why (McNae, pp.137 and 239, mcnaes.com ch.12).

6. Copyright

6.1: The general nature of copyright under the Copyright, Designs and Patents Act 1988, including the copyright inherent in speeches, in text - including documents and journalism, letters to a newspaper and results tables or tide tables - in maps, drawings and other types of images, in photos, film / digital footage and in sound recordings - including in online material (e.g. as published on social networking websites) and in television and radio programmes (McNae, pp. 345-354). Moral rights under the Act in respect of a photograph commissioned for private and domestic purposes (McNae, pp. 348).

Remedies for breach of copyright (McNae, pp. 354) and of such moral rights (McNae, pp. 348), i.e. injunctions, damages, an order for possession of infringing copies.

That defences to an action for breach of copyright include acquiescence (McNae, p. 358) and fair dealing as regards copying for the purpose of reporting of current events (McNae, p. 355-356); that the defence of fair dealing can apply if the copying is for the purpose of criticism or review if the work otherwise protected by copyright has already been lawfully been made available to the public (McNae, p. 356-357); that for either form of fair dealing defence to be successful there must be sufficient acknowledgement of the work and its author, and (e.g. as regards text, film, digital footage or sound recordings) reproduction of the work must be no more than necessary for the permitted purposes (McNae, pp. 355-357); that the fair dealing defence does not apply to still photographs (McNae, p. 356); that there is also the defence of public interest in publication, but that this defence is narrowly-construed in the context of copyright (McNae, pp. 357-358).

D A candidate will not be expected to know what the section 5 regulations say, but should know that this defence, unlike the section 1 defence in the 1996 Act, can apply to readers’ comments ‘moderated’ before publication and that, in the event of a complaint about a comment, the fact that these regulations may need to be complied with is another reason why the editor/an executive must be told of the complaint – see too section 5:8.
The date the 1988 Act took effect, and the ownership of copyright in photos created prior to the Act coming into effect – for example, the commissioner may own the copyright of a picture from this period (McNae, p. 347). That breach of copyright may be prosecuted as a criminal offence (McNae, p. 354).

7. Confidentiality

7.1: The scope of the tort of breach of confidence as regards commercial secrets, and the elements of a breach of confidence, i.e. the criteria courts apply when assessing the relevant information/material/images during the determination of whether an action for breach of confidence should be successful (McNae, pp. 301, 303-305).

Remedies for breach of confidence, i.e. that there may be an injunction granted to prevent publication and/or further publication, and/or a court order to disclose the source of the confidential information and/or to deliver up material and/or for an account of profits and/or an award of damages (McNae, p. 306, 308-309).

That defences to an action for breach of confidence include that disclosure is in the public interest or that there is insufficient quality of confidence (McNae, pp. 309-311).

Examples of successful use of these defences, e.g. the Watford Observer case (public interest to local communities in disclosure, and insufficient quality of confidence due to wide circulation of redundancy proposals) and the Lion Laboratories case (public interest) (McNae, pp. 310-311).

8. Protection of confidential sources

8.1: The scope of protection under section 10 of the Contempt of Court Act (McNae, pp. 405-406). Examples of cases in the UK in which a court or a tribunal ordered a journalist to disclose a source, or the police applied unsuccessfully for such an order (e.g. Goodwin case, Saville inquiry case, Tisdall case, Warner case, McNae, pp.403, 404, 405-406).

8.2: The ethical obligation to protect sources of information who wish their identity to remain confidential, as expressed in Clause 14 of the Editors’ Code of Practice (McNae, pp. 401-402) or practice 7.7 of the Ofcom Broadcasting Code governed by its rule 7.1 (Fairness- section 7) (McNae, pp. 31 and 402).

9. Privacy/Misuse of Private Information

9.1: Protection of privacy in the law
The privacy protection in the first paragraph of Article 8 of the European Convention on Human Rights and that an initial criterion when a court considers a claim that privacy has been or will be breached is whether there is ‘a reasonable expectation of privacy’ in the relevant circumstances (McNae, pp. 315-316, 442).

Examples of recent cases in which judges have upheld, in civil law, privacy rights against the media, in particular the cases concerning Peck v United Kingdom (McNae, p. 316), Princess Caroline of Monaco [Von Hannover versus Germany] (McNae, p. 314), Naomi Campbell v Mirror Group Newspapers (McNae,
In respect of these cases, the level of understanding candidates should be able to show about them, and to apply principles in respect of similar scenarios in exam questions, is as follows:

- that in the Peck case, the European Court of Human Rights ruled the man’s privacy had been breached by the broadcast of CCTV footage of him in a mentally ill (suicidal) state of mind, even though he was filmed in a public place, because he was recognisable in what was broadcast, and that publication of similar footage now would almost certainly be deemed a breach of the privacy provisions in the Editors’ Code of Practice and the Ofcom Broadcasting Code.

- that in the Princess Caroline case [now also known as Von Hannover versus Germany No 1] the European Court of Human Rights ruled that even though, as regards photographs she complained about, she was without doubt pictured in public places, she nevertheless had, in the circumstances of the events which led to the case (years of harassment by paparazzi) a right of privacy there., including to enjoy social interaction.

- that in the Naomi Campbell case, the House of Lords ruled that even though Campbell accepted that the Mirror newspaper acted in the public interest to expose her use of drugs, the newspaper had breached her privacy (including the health aspects of it) by exposing too much detail of her Narcotics Anonymous therapy, including the publication of a photograph of her outside the premises used by the NA group. This ruling was made even though she was in a public place once she left those premises.

- that in the Max Mosley case, the High Court ruling was that exposure by the News of the World, using footage/recordings gained undercover, of his participation in adulterous, sexual activities in an orgy with prostitutes, was a breach of his privacy because there was no public interest justification.

- that in the Weller case, the judge ruled that publication of photographs taken of Paul Weller’s children, showing the expressions on their faces during on a family afternoon out with their father, with material which also identified them by name, breached their privacy rights, in that they had a reasonable expectation of privacy because of the nature of the occasion, even though they were in a public place, and because there was no relevant debate of public interest to which the publication of the photographs contributed.

Candidates should also know that the actual taking or a photograph or shooting of footage, irrespective of whether it is published, can be deemed intrusive of privacy, and is more likely to be deemed intrusive if the subject is a child. Candidates should also know that in privacy actions journalists/media organisations may be successful in arguing for their rights under Article 10 (freedom of expression and to impart information) to be upheld and that a further criterion courts have to consider – if they have ruled there is a reasonable expectation of privacy - is whether or the extent to which the material contributes to a ‘debate of general interest to society’ (McNae, pp. 7, 314-315, 317, 442), and therefore the extent to which publication can be argued to be in the public interest; and that in Von Hannover versus Germany No. 2 the European Court of Human Rights upheld the right of the media in some circumstances to publish material covering the private lives of ‘public figures’ if
what was published made such a contribution, and that this judgment also said that factors a court should consider included
  o how well known the person concerned was
  o the subject matter of the report
  o the prior conduct of the person concerned
  o the consequences of publication
  o and the method of obtaining the information (e.g. photographs/footage) (McNae, pp. 314-315 and 317).

That UK courts are required to consider the provision of ‘any relevant privacy code’ - which would include in cases involving the media either the Editors’ Code of Practice or the Ofcom Broadcasting Code - when ruling in privacy actions (McNae, pp.311)

9.2: **General provision for protection of privacy in ethical codes** as expressed in Clause 3 (Privacy) of the Editors’ Code of Practice (McNae, pp. 327-328, 444) including the scope of the public interest exceptions (McNae, pp. 15, 334 and 447) or in section 8 (practices 8.2-8.6 and 8.8) of the Ofcom Broadcasting Code, governed by its rule 8.1 (Privacy) (McNae, pp. 327-328, 329 and 330), including that under this code any infringement of privacy in programmes must either be with consent or ‘warranted’, for example, in the public interest (McNae, pp. 31 and 334).

In respect of the Ofcom Broadcasting Code, the candidate should be clear from the code about the meaning/scope of the relevant terms used in the code, i.e. ‘warranted’, ‘the public interest’ and ‘legitimate expectation of privacy’.

**NB:** whether, as regards any relevant exam question on privacy, a candidate chooses to answer with reference to the Editors’ Code of Practice or to the Ofcom Broadcasting Code, the candidate should know the considerations which apply, as set out in the terms used by the relevant code, when a journalist has to assess if there is a risk of breach of someone’s privacy, e.g. whether there is a reasonable/legitimate expectation of privacy in the relevant location/circumstance, and that even in a public place there may be such an expectation of privacy, and whether it is likely that a public interest exception can be held to apply.

9.3: **Footage or pictures which are user-generated/supplied by third parties/taken from social media websites** - privacy issues (ethical and legal) in use of footage / photographs supplied by the public or on social media sites such as Twitter, Facebook, Tumblr, Instagram or Flickr (McNae, pp. 333 and 335-336) or from CCTV systems (e.g. McNae, p. 316 - the Peck case - and p.329).

9.4: **Avoidance of intrusion into grief, shock, suffering or distress**, as expressed in Clause 5.1 (Intrusions into Grief and Shock) of the Editors’ Code of Practice (McNae, pp. 331-332) or practices 8.16 and 8.18 (Suffering and Distress) of the Ofcom Broadcasting Code, governed by its rule 8.1 (Privacy - section 8) (McNae, p. 328, 329 and 331-332).

**NB:** In respect of sections 9.1-9.4 and 10.1-10.4 of this programme of study it should be noted that there is overlap in the knowledge candidates are expected to exhibit. For example, covert filming or covert audio-recording, and what is published from such activity, could be held to breach the civil law of privacy and Clauses 3 (Privacy), Clause 5.1 (Intrusion into grief, etc) and Clause 10 (Clandestine devices and subterfuge) of the Editors’ Code of Practice or in what is broadcast could breach both rule 7.1 (Fairness) and rule 8.1 (Privacy) of the Ofcom Broadcasting Code and one or more of their associated
‘practices’ (a kind of sub-rule) referred to in these sections of the programme of study.

NB: Candidates who refer to the Editors’ Code of Practice in this context should be able to refer to the PCC adjudication in ‘Kirkland v Wiltshire Gazette and Herald’ (summarised in part in McNae pp. 328 and 331) and to provide a brief synopsis of the findings of that adjudication including that there is ‘a clear need for newspapers to exercise caution when publishing images that relate to a person’s health and medical treatment, even if they are taken in public places’, and that ‘rare and large-scale events such as terrorist attacks and natural disasters involve a degree of public interest so great that it may be proportionate and appropriate to show images of their aftermath without the consent of those involved’ (see also McNae, p. 334). Candidates who refer to the Ofcom Broadcasting Code in this context should be able to provide a brief synopsis of Ofcom’s statement, in the foreword to section 8 of the code, that Ofcom recognises that ‘there may be a strong public interest in reporting on an emergency situation as it occurs’, and that it follows from this statement that broadcasting pictures of people suffering or in distress without their consent may be justifiable if the emergency situation is a major one which is ongoing or which has just occurred (see also McNae, p.334 and mcnaes.com ch.27: ‘Coverage of major incidents’).

9.5: **Provision for protection of children’s privacy and welfare in ethical codes**

as expressed in Clause 6 (Children) of the Editors’ Code of Practice (McNae, pp. 332-333); including as interpreted in the PCC adjudication in ‘Complaint by Mrs Laura Gaddis against the Hamilton Advertiser’ (summarised in McNae, p. 333); or as expressed in practice 7.4 (obtaining informed consent) of the Ofcom Broadcasting Code, governed by its rule 7.1 (Fairness – section 7) (McNae, pp. 30-31), and practices 8.8 (as regards filming in schools) and 8.20 - 8.22 (people under 16 and vulnerable people) governed by its rule 8.1 (Privacy – section 8) (McNae, pp. 328, 330 and 333) including as interpreted in the various adjudications in Ofcom Bulletin No. 116 concerning Whistleblower: Childcare (summarised in McNae, p.334).

Candidates should therefore know that practice 8.8 of the Ofcom code means that filming or recording in ‘potentially sensitive’ places such as schools if a child is to be identifiable in the programme, normally requires the consent both of the institution and a parent of the child, both for the actual filming/recording to take place and for what is broadcast from it.

Candidates should therefore be aware that breach of a child’s privacy – for example, the interviewing of a child or publication of material in circumstances which will stress, embarrass or humiliate a child - needs a particularly strong public interest justification under either code (McNae, pp. 15-16, 31 and 334), that normally under both codes parental consent is needed before a journalist can interview a child about a matter concerning his/her or another child’s welfare (Editor’s Code) or privacy (Ofcom code) and that even if public interest exceptions apply obscuring the child’s identity, e.g. by pixellation of footage, may still be necessary in whatever is published.

Candidates should also therefore be aware that, in respect of publication of material about or showing the children of famous people, they need to know that Clause 6 of the Editors’ Code says that editors should not use a parent’s position as sole justification for the publication of details of a child’s private life and that practice 8.20 in section 8 (Privacy) of the Ofcom Broadcasting code says that broadcasters should pay particular attention to the privacy of people
under sixteen and that they do not lose their rights to privacy because, for example, of the fame or notoriety of their parents.

10. Other ethical (including regulatory) considerations

10.1: *That if a person or organisation makes clear that no comment will be offered, journalists should not persist in seeking comment unless persistence is justified/warranted,* as expressed in Clause 4 (Harassment) of the Editors’ Code of Practice (McNae, pp. 330-331) and the public interest exceptions (McNae, pp. 15-16 and 334) or in practice 8.7 of the Ofcom Broadcasting Code (McNae, p. 330-331), governed by its rule 8.1 (Privacy – section 8) (McNae, p. 328) unless an exception to the rule is warranted, e.g. by a public interest consideration (McNae, pp. 31 and 334).

10.2: *The regulation of ‘door-stepping’* in practice 8.11 of the Ofcom Broadcasting Code (McNae, pp. 329-330), governed by its rule 8.1 (Privacy- section 8) (McNae, p. 328) unless an exception to the rule is warranted, e.g. by a public interest consideration (McNae, pp. 31 and 334).

10.3: *That covert photography, covert filming or covert audio-recording needs particular justification to be ethical,* as expressed in Clause 10 of the Editors’ Code of Practice (McNae, pp 16-18), and the public interest exceptions (McNae, pp. 15-16) or in practices 8.12 to 8.14 (surreptitious filming and recording) of the Ofcom Broadcasting Code, governed by its rule 8.1 (Privacy – section 8) (McNae, pp. 32-34) and ‘warranted’ exceptions e.g. if in the public interest (McNae, p. 31); and that Ipso or Ofcom will, in the event of a complaint, expect to be shown that there was prima facie evidence of wrongdoing, etc, needing investigation by such covert method, to demonstrate that there was a reasonable belief before the method was used that the public interest exception applied.

NB: candidates answering about the Editors’ Code of Practice should be aware of the PCC adjudication that a journalist recording his/her own phone conversation is not deemed to be using a ‘clandestine listening device’ (McNae, p. 18-19).

10.4: *That deception, subterfuge or misrepresentation by journalists needs particular justification to be ethical,* as expressed in Clause 10 of the Editors’ Code of Practice and the public interest exceptions (McNae, pp. 16-18) or in practice 7.14 (deception) of the Ofcom Broadcasting Code (McNae, p. 32), governed by its rule 7.1 (Fairness- section 7)(McNae, p. 30) and ‘warranted’ exceptions, e.g. if in the public interest (McNae, pp. 31); and that Ipso or Ofcom will, in the event of a complaint, expect to be shown prima facie evidence of wrongdoing, etc, needing investigation by such method, to demonstrate there was a reasonable belief before the method was used that the public interest exception applied.

NB: no exam question will expect a candidate to demonstrate knowledge of the provision in this section as regards ‘wind-ups’ or ‘set-ups’ for entertainment value.

11. The impartiality requirements in respect of broadcasting
11.1: The requirement in section 5 of the Ofcom Broadcasting Code for ‘due impartiality in news’ (rule 5.1); the special impartiality requirements for the specified types of broadcasters in respect of news and other programmes covering ‘matters of political or industrial controversy and matters relating to current public policy’; and – in respect of local or community radio broadcasters - the requirement not to give ‘undue prominence to the views and opinions of particular persons or bodies’ in respect of such matters (McNae, pp. 22, 28-30). Candidates should know and understand the terminology in quotation marks above, but in other respects will not be expected to recite these rules verbatim. They should be able to express in general terms the principles/concepts involved, and have in broad terms knowledge of good practice - for example, that a broadcast station cannot campaign on such a matter, and that news coverage must present opposing viewpoints.

They should know, in respect of the special impartiality requirements, that these can be achieved over time in a series of programmes as a whole, and that the code permits ‘personal view’ and ‘authorised’ programmes if the nature of these is clearly signalled to the audience at the outset (McNae, pp. 28-30).

NB: for rule 5.2 of the Ofcom code, see also the Accuracy section of this Programme of Study, above.

A candidate should be aware, in brief, general terms, of the Ofcom adjudication in respect of Bloomberg Television (28th April 2005). A candidate should not suggest that the BBC is subject to the Ofcom code in this respect, in that the BBC has similar but separate guidelines. Candidates will be expected to know how the impartiality requirement of the Ofcom code contrasts with Clause 1.iii of the Editors’ Code of Practice which permits the press to be partisan (McNae, pp. 11, 16 and 443).

12. Freedom to photograph and shoot footage in public places

12.1: That there is no criminal law restricting the taking of photographs, filming, videoing or recording in public places, e.g. in streets (McNae, pp. 422); that journalists who experience an attempt by police, community support officers or other officials to prevent such activity should point out that guidelines issued by the Association of Chief Police Officers (ACPO) confirm this freedom in respect of filming and photography; and that the guidelines state that police should not prevent filming and photography in public places and that it is good practice for police to give the media a good vantage place if an area is cordoned off (McNae, pp. 422-423).

12.2: That the ACPO guidelines also state that police can only seize film or a camera at the scene on the strictly limited grounds that it is suspected to contain evidence of a crime, and that once a photographer has left the scene police can only seize images if empowered to do this by a court order (McNae, p. 423); and that police at the scene have no power to insist that images be deleted (McNae, p. 423).

Subjects to be studied, NOT examined

E The ACPO guidelines are to be replaced by guidelines, due to be finalised, issued by the College of Policing. Check mcnaes.com for updates. Until further notice, a candidate who refers to ACPO guidelines rather than those of the College will not be penalised in the exam.
It should also be noted that the NCTJ media law board has decided that, until further notice, it will not set, in this exam, questions on:

- The status, responsibilities and powers of Ipso and Ofcom and their codes other than those parts of the codes detailed in the 'Subjects to be studied and examined' section of this programme of study.

Nevertheless, candidates should study the following:

- All parts of the Editors’ Code of Practice (see McNae, pp. 443-447 for the code in full, and the book’s index entry for the Editors’ Code for other relevant material); how Ipso and Editors’ Code Committee are constituted; the ability of Ipso to require that an adverse adjudication is published (McNae, ch.2).
- How Ofcom is constituted and its legal status; its powers and penalties, e.g. power to order publication of corrections and apologies, power to fine (McNae, ch.3).
- The key differences between the Ofcom system of regulation and the Ipso system of self-regulation
- The full scope of the Ofcom Broadcasting Code in respect of its Section 1 - Protecting under-18s and children under 15, including the concept of the television 'watershed'; Section 2 - Harm and Offence; Section 3 - Crime; Section 5; Due Impartiality and Due Accuracy, etc (McNae, ch.3); Section 6: Elections and Referendums (McNae, ch.32) – and the candidate should be taught that the BBC is not subject to Ofcom regulation in this respect but has similar but separate guidelines; Section 7 – Fairness; Section 8 – Privacy (McNae, chs 3 and 27); Candidates should be directed to read Section 4– Religion and Sections 9 and 10 on separation of commercial/advertising and editorial content (McNae, ch.3).

The following are examples of Ofcom adjudications which may assist in teaching, in addition to the summaries of various adjudications in McNae:

Ofcom Broadcast Bulletin No. 222: Fox News Channel - suicide shown live and pre-watershed
http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb222/

Ofcom Broadcast Bulletin No. 68: Various news organisations - use of CCTV images of fatal stabbing
http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb68/

Ofcom Sanctions Committee 20th March 2008: TalkSport: The James Whales Show - lack of impartiality in comment on elections for London Mayor
http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/talksport.pdf

Ofcom Broadcast Bulletin No. 232 - Bay FM Radio – presenter who was an election candidate

Ofcom Broadcast Bulletin No 82: Toughest Seaside Resorts in Britain– adjudicated as unfair to council and councillor
http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb82/
Anonymity provision in respect of teachers who are alleged to have committed an offence against a pupil in their care or control (McNae, p. 45).

The power of a youth court to lift the anonymity under section 49 of the Children and Young Persons Act 1933 in respect of a juvenile unlawfully at large after being charged with or convicted of a serious violent or sexual offence, or to avoid injustice for a juvenile (McNae, p. 94).

Anonymity provision in respect of children involved in family law cases, including cases concerning wards of court (McNae, pp. 139-143 and mcnaes.com ch.13).

Anonymity provision in respect of people involved in employment tribunal cases (McNae, pp. 205-207) and in respect of people whose cases are being dealt with by mental health tribunals (McNae, p. 200 and mcnaes.com ch.17); that lifelong anonymity applies in respect of victims/alleged victims of sexual offences in reports of employment tribunal cases (McNae, pp. 206-207).

Contempt danger under section 12 of the Administration of Justice Act 1960 in the reporting of some categories of private hearings/hearing in chambers including those involving a child’s upbringing, e.g. a feature writer should be very wary of quoting from a social worker’s report on a child, even if the child is not to be identified in what is published (McNae, pp. 120-122, 143-145 and see mcnaes.com ch.13).

The risk of common law contempt if jurors are identified in the media (McNae, pp. 118-119).
The common law contempt of interference with witnesses/their evidence (McNae, pp. 214-215).

As regards the period before a case becomes 'active' under the 1981 Contempt of Court Act, the risk of common law contempt in publishing detail of or comment on a case deemed 'pending' or 'imminent' (McNae, p. 214).

A basic awareness that there may be an order under section 4 of the 1981 Act which postpones media reports of court cases, including inquests, and examples of circumstances in which a court may make such an order (McNae, pp. 228-229).

Liability for financial penalty under the Courts Act 2003 for 'serious misconduct' which results in an aborted trial (McNae, p. 227).

The defences available in libel law for publishing someone's previous criminal conviction (i.e. 'truth' and qualified privilege) and for inference created by such publication (i.e. 'honest opinion'); the requirements of such defences in this context, and the effect of the Rehabilitation of Offenders Act 1974 on them (McNae, pp. 290-293).

The defence in section 4 of the Defamation Act 2013, which requires that a statement complained of (whether of fact or of opinion) was or formed part of a statement on a matter of public interest, and that the defendant reasonably believed that its publication was in the public interest; that the defence requires the court deciding the public interest issue to have regard to all the circumstances of the case, and to make appropriate allowance for editorial judgment; that the court will take account of what steps defendant took to verify the truth of the imputation conveyed by the statement, unless the statement was, or formed part of, an 'accurate and impartial' account of a dispute to which the claimant was a party, in which case, the Act says, the court must disregard any omission in such steps (i.e. the defence relies on the account of the dispute itself being 'accurate and impartial'); that this section abolishes the Reynolds defence but, according to the 2013 Act's explanatory notes, takes into account the principles of that defence as set out by the Supreme Court in Flood v Times Newspapers Ltd (McNae, pp. 280-288).

The libel defence of offer of amends (McNae, pp. 274-275).

That slander is defamation by the spoken word, and the type of circumstance in which a journalist may be at risk of an action for slander when conducting an interview or making an investigative inquiry (McNae, pp. 294-295).

The nature of malicious falsehoods (McNae, pp. 295-296).

That the defence of absolute privilege also covers media reports of the proceedings in public of any international court or tribunal established by the Security Council of the United Nations or by an international agreement, if requirement of the defence are met (McNae, pp. 264-265).

The extension in the Defamation Act 2013 (by amendment to Part 2 of the schedule to the Defamation Act 1996) of the defence of statutory qualified privilege to protect media reports summarising articles published in peer-reviewed academic journals, media reports of proceedings of a scientific or
academic conference held anywhere in the world, or a copy of, extract from or summary of matter published by such a conference, if the defence’s requirements are met (McNae, pp. 269-270)

- The reporting of bankruptcy matters (that is, matters other than those concerning bankruptcy which are in the ‘Subjects to be studied and examined’ part of this programme of study) (mcnaes.com ch.12)

- Trespass; the danger of prosecution for aggravated trespass, e.g. during the reporting of protest activity (McNae, pp. 425-426).

- Crimes under the Data Protection Act; how the Act may be wrongly cited to thwart journalists’ lawful inquiries; the Act’s protection of privacy; the Information Commissioner’s Office plans to issue finalised guidance to the media about data protection law (McNae ch.28 and check mcnaes.com for updates on the guidance).

- The prohibitions against hacking into/intercepting phone systems or communications or hacking into computers, as specified in law and in the Editors’ Code of Practice, and as implied in rule 8.1 of the Ofcom Broadcasting Code; and ‘public interest’ justifications (McNae, pp. 18-19, 327, 328, 334, 413-414, 418-420)

- The offence of ‘misconduct in a public office’, and that journalists have been charged with conspiracy to commit the offence, or adding and abetting it, as regards allegedly illegal payments to public officials and that such alleged payment may also be lead to charges under other laws against corruption; and ‘public interest’ justifications (McNae, pp. 413-418)

- The bans under the Representation of People Acts on publication of false statements about candidates at election time, and on publication of exit poll data, or forecasts based on it, while polling continues (McNae, pp.388-389, 391-392); the scope of section 6 of the Ofcom Broadcasting Code concerning impartial coverage of elections and referendums, and its prohibition of broadcasts of opinion poll or exit poll data during polling (McNae, pp. 390-391, 392)

- The Official Secrets Acts (McNae ch.33 and mcnaes.com ch.33)

As indicated the topics listed above should be studied, in addition to topics listed as potential exam content.

If required to, centres must be able to produce material (and student representatives) to assure the NCTJ, e.g. during accreditation visits, that all such topics are covered.
<table>
<thead>
<tr>
<th>Grades</th>
<th>Content and Characteristics</th>
<th>Examples and Application</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A (70+) Excellent</strong></td>
<td>The candidate has an excellent knowledge which they demonstrate in practical work to achieve the learning outcomes. The candidate demonstrates excellent knowledge and understanding of professional methods when meeting learning outcomes.</td>
<td>The candidate provides excellent explanations with reference to relevant examples and practical application to local/national stories. There are no basic legal errors and no legal risks have been created in journalistic output. Significant analysis and good application.</td>
</tr>
<tr>
<td><strong>B (60-69) Good</strong></td>
<td>The candidate has a good knowledge which they demonstrate in practical work to achieve the learning outcomes. The candidate demonstrates good knowledge and understanding of professional methods when meeting learning outcomes.</td>
<td>The candidate provides good explanations with reference to relevant examples and practical application to local/national stories. Candidate is very unlikely to make basic legal errors or create legal risks in journalistic output. Provides evidence of analysis and application.</td>
</tr>
<tr>
<td><strong>C (50-59) Satisfactory</strong></td>
<td>The candidate has a satisfactory knowledge which they demonstrate in practical work to achieve the learning outcomes. The candidate demonstrates satisfactory knowledge and understanding of professional methods when meeting learning outcomes.</td>
<td>The candidate provides satisfactory explanations with reference to relevant examples and practical application to local/national stories. Candidate is unlikely to make basic legal errors or create legal risks in journalistic output.</td>
</tr>
<tr>
<td><strong>D (40-49) Limited</strong></td>
<td>The candidate has a limited knowledge which is demonstrated in practical work to achieve the learning outcomes. There may be errors. The candidate demonstrates a limited knowledge and understanding of professional methods when meeting learning outcomes.</td>
<td>The candidate provides limited examples and/or use of irrelevant examples, lacks application to local/national stories and only a limited appreciation of the demands of practical journalism. The candidate may make basic legal errors or create legal risks in journalistic output.</td>
</tr>
<tr>
<td><strong>E (30-39) Poor</strong></td>
<td>The candidate has a poor knowledge which they demonstrate in practical work to achieve the learning outcomes. There may be errors which may alter understanding. The candidate demonstrates poor knowledge and understanding of professional methods when meeting learning outcomes.</td>
<td>The candidate makes poor and/or misplaced references to examples. Far too generalised. The candidate is very likely to make basic legal errors or create legal risks in journalistic output.</td>
</tr>
<tr>
<td><strong>F (0-29) Fail</strong></td>
<td>The candidate has little or no relevant knowledge of the subject and fails to demonstrate the principles in practical work. Work will be error strewn. The candidate does not demonstrate knowledge and understanding of professional methods and does not meet the learning outcomes.</td>
<td>The candidate shows no understanding of context and will almost certainly make serious legal errors and create serious legal risks in journalistic output.</td>
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