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MARK SCHEME

Maximum Mark: 50

Published

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General Marking Guidance

This mark scheme includes a summary of appropriate content for answering each question. It should be emphasised, however, that this material is for illustrative purposes and is not intended to provide a definitive guide to acceptable answers. It is quite possible that among the scripts there will be some candidate answers that are not covered directly by the content of this mark scheme. In such cases, professional judgement should be exercised in assessing the merits of the answer and the senior examiners should be consulted if further guidance is required.

The mark bands and descriptors applicable to all questions on the paper are as follows.

Band 1
The answer contains no relevant material.

Band 2
The candidate introduces fragments of information or unexplained examples from which no coherent explanation or analysis can emerge.

Band 3
The candidate begins to indicate some capacity for explanation and analysis by introducing some of the issues, but explanations are limited and superficial

OR

The candidate adopts an approach in which there is concentration on explanation in terms of facts presented rather than through the development and explanation of legal principles and rules

OR

The candidate attempts to introduce material across the range of potential content, but it is weak or confused so that no real explanation or conclusion emerges.

Band 4

Where there is more than one issue, the candidate demonstrates a clear understanding of one of the main issues of the question, giving explanations and using illustrations so that a full and detailed picture is presented of this issue

OR

The candidate presents a more limited explanation of all parts of the answer, but there is some lack of detail or superficiality in respect of either or both so that the answer is not fully rounded.

Band 5
The candidate presents a detailed explanation and discussion of all areas of relevant law and, while there may be some minor inaccuracies and/or imbalance, a coherent explanation emerges.

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Question	Answer	Marks
1(a)	**Explain how the source material will apply to Jethro.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding Jethro will be protected against any claim that the magazine should be banned. **and/or** • Reference to ECHR Art 10 and/or s12 HRA 1998 with little or no development. **Band 4** **[6–7 marks]** Reference to some of Art 10 and s12 with some development and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Jethro will be protected by the HRA 1998. There is a general right to freedom of expression under Art 10(1) subject to the point in Art 10(2) about protecting the judiciary. Since the story is true s12(3) will not apply, under s12(4) the cartoon could be journalistic or artistic and under (a)(ii) it is likely that publication is in the public interest.	**10**
1(b)	**Explain how the source material will apply to Zainab.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Zainab has committed an offence. **and/or** • Reference to Art 10 ECHR and/or s12 HRA 1998 and/or s7 OSA 1989 with little or no development. **Band 4** **[6–7 marks]** Reference to some of Art 10 and s12 and/or s7 OSA 1989 with some development and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion: Zainab has committed an offence as her general right to freedom of expression under Art 10(1) is restricted by national security concerns as referenced in (2). Zainab has broken the terms of her contract and breached s7(1)(a) OSA 1989. Credit an argument that Zainab may have a defence based on public interest as in s12(4)(a)(ii). Credit an argument that Zainab may be covered by s12(4)(a)(i) as publishing her article on social media means it has already been seen by a lot of people but this does not give her a defence.	**10**

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Question	Answer	Marks
1(c)	**Explain how the source material will apply to Claude.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2–3** **[1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Claude will not be able to publish his book. **and/or** • Reference to ECHR Art 10 and/or s12 HRA 1998 with little or no development. **Band 4** **[6–7 marks]** Reference to ECHR Art 10 and/or s12 HRA 1998 with some development and some application. **Band 5** **[8–10 marks]** Full development of the relevant sections. Conclusion Claude will not be able to publish his book. He may argue he has a right to publish under Art 10(1) but there may be a restriction under Art 10(2) relating to the protection of reputation. Claude is likely to be caught by s12(3) as the officer can prove the claims are untrue and so he cannot publish the book. Credit an argument based on the book being literary material and that publication is in the public interest using s12(4)(a)(ii).	**10**
1(d)	**Discuss whether the Human Rights Act 1998 adequately protects the rights of the individual.** **Band 1** **[0 marks]** Irrelevant answer. **Band 2** **[1–6 marks]** Describes and/or discusses the HRA 1998 in very general terms. **Band 3** **[7–13 marks]** Some more detailed references to the HRA 1998 but with a largely factual basis. Some general discussion of whether it protects individuals adequately. **Band 4/5** **[14–20 marks]** Very good detail on the HRA 1998 with relevant examples and good discussion of the adequacy of the protection it provides to individuals. To reach higher marks both aspects of the question need to be dealt with in some detail with good critical awareness.	**20**

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Question	Answer	Marks
2(a)	**Explain whether Maria's injunction under the Anti-social Behaviour, Crime and Policing Act 2014 is lawful.** **Band 1 [0 marks]** Irrelevant answer. **Band 2–3 [1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Maria's injunction is lawful. **and/or** • Reference to s1 and/or s2 Anti-social Behaviour, Crime and Policing Act 2014 with little or no development. **Band 4 [6–7 marks]** Reference to some of s1 and/or s2 with some development and some application. **Band 5 [8–10 marks]** Full development of the relevant sections. Conclusion: Maria's injunction is lawful. It is covered by s1(1) as Maria is over 10. It specifies a period of three months which is valid under s1(6)(a) and it is granted by the correct court under s1(8)(b). Maria's conduct meets s2(1)(a) as Elsie is frightened and the injunction comes within s1(4)(a) as Maria is required to stay away from Elsie and her property.	**10**
2(b)	**Explain whether Euan's injunction under the Anti-social Behaviour, Crime and Policing Act 2014 is lawful.** **Band 1 [0 marks]** Irrelevant answer. **Band 2–3 [1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Euan's injunction is lawful. **and/or** • Reference to s1 and/or s2 Anti-social Behaviour, Crime and Policing Act 2014 with little or no development. **Band 4 [6–7 marks]** Reference to some of s1 and/or s2 with some development and some application. **Band 5 [8–10 marks]** Full development of the relevant sections. Conclusion: Euan's injunction is lawful. He is covered by s1(1) as he is over 10. The requirement for Euan to do something meets s1(4)(b), the time he has to be indoors complies with s1(5)(a) and the injunction is valid under s1(6)(b) as it is for 6 months. It has been made by the correct court under s1(8)(a) and his behaviour meets either S2(1)(a) or (b).	**10**

Question	Answer	Marks
2(c)	**Explain whether Kelvin's injunction under the Anti-social Behaviour, Crime and Policing Act 2014 is lawful.** **Band 1 [0 marks]** Irrelevant answer. **Band 2–3 [1–5 marks]** A candidate needs to be selective in choosing the correct part of the source material. • Principle without section – understanding that Kelvin's injunction is not lawful. **and/or** • Reference to s1 and/or s2 Anti-social Behaviour, Crime and Policing Act 2014 with little or no development. **Band 4 [6–7 marks]** Reference to some of s1 and/or s2 with some development and some application. **Band 5 [8–10 marks]** Full development of the relevant sections. Conclusion: Kelvin's injunction is not lawful. He is covered by s1(1) as he is over 10 and he meets both S1(4)(a) and (b) as he is prohibited from going near the restaurant and required to be at home by a certain time. He does come within s2(1)(a) as the restaurant manager is being targeted but the injunction is unlawful under s1(5)(a) as it means he will not be able to go to work and under s1(8)(a) because the wrong court has been applied to since Kelvin is 18.	**10**
2(d)	**Injunctions are remedies which have their roots in Equity. Describe the role of Equity in the modern English legal system and critically analyse its effectiveness.** **Band 1 [0 marks]** Irrelevant answer. **Band 2 [1–6 marks]** Discusses Equity in very general terms. **Band 3 [7–13 marks]** Some more detailed references to the role of Equity today and its effectiveness but there may be an over-reliance on factual material and a lack of detail or range. **Band 4/5 [14–20 marks]** Very good detail on the modern role of Equity and good discussion of its effectiveness. To reach higher marks all aspects of the question need to be dealt with in some detail with good critical awareness.	**20**

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