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MEDIA LAW

Duration 2 Hours

100 Marks

EXAMINERS

FIRST

SECOND

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This examination question paper consists of 7 pages plus instructions for the completion of a mark reading sheet

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THE QUESTIONS IN THIS PAPER COUNT A HUNDRED (100) MARKS. THE PAPER CONSISTS OF TWO (2) PARTS, MARKED A AND B YOU MUST ANSWER BOTH PARTS A AND B PART A CONSISTS OF TEN MULTIPLE CHOICE QUESTIONS EACH QUESTION COUNTS THREE (3) MARKS, WHICH MEANS THAT THE QUESTIONS IN PART A COUNT A TOTAL OF THIRTY (30) MARKS. IN PART B, THE ANSWERS TO THE QUESTIONS MUST BE WRITTEN IN THE EXAMINATION SCRIPT ITSELF. THE QUESTIONS IN PART B COUNT SEVENTY (70) MARKS.

PART A (MULTIPLE CHOICE QUESTIONS)

IMPORTANT NOTICE: THE QUESTIONS IN THIS PART HAVE TO BE ANSWERED ON THE MARK READING SHEET WHICH WILL BE ISSUED WITH YOUR EXAMINATION ANSWER BOOK YOU HAVE TO READ THE INSTRUCTIONS IN CONNECTION WITH THE USE OF THE MARK READING SHEET CAREFULLY. FAILURE TO DO SO MAY MEAN THAT YOUR ANSWERS CANNOT BE MARKED BY THE COMPUTER

Ten questions (marked 1-10) follow. Each question contains three (3) statements (marked (a)-(c)). Some of the statements are correct and some are incorrect. You must decide which of these statements is/are correct. The three statements are followed by five (5) allegations (marked (1)-(5)). Each of them alleges that a certain statement or combination of statements is correct. You must decide which allegation accurately reflects the conclusions to which you have come

Also bear in mind that if a composite statement is partly correct and partly incorrect, then the statement as a whole, is incorrect

[TURN OVER]

Question 1

X and Y are two well-known personalities who have asked for a divorce

- (a) The court's eventual order in the divorce proceedings may be published in a newspaper
 - (b) The circumstances leading to the divorce may be published in a newspaper
 - (c) No information may be published about X and Y if one of them is under the age of 18
- (1) Only statements (a) and (b) are correct
 - (2) Only statements (b) and (c) are correct
 - (3) Only statements (a) and (c) are correct
 - (4) All these statements are correct
 - (5) Only statement (a) is correct

Question 2

- (a) The Bill of Rights does not contain a hierarchy of values in respect of the various fundamental rights
 - (b) The term "justifiability" can be determined only after the meaning of the characteristics of human dignity, equality and freedom have been considered
 - (c) The fact that a right is acknowledged in the Bill of Rights means that every aspect of that right is now determined constitutionally
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statements (a) and (c) are correct

Question 3

- (a) Although photographs may not be published of an accused who is in custody while waiting for the commencement of criminal proceedings, a drawing of that person may be published
 - (b) The Public Protector will only intervene to protect a citizen when the citizen was treated unlawfully by a state department
 - (c) While a prisoner is serving a sentence in prison, he can write his life story and publish it in order to earn an income to help him adapt to life when he is released
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (b) are correct
 - (5) None of the statements is correct

Question 4

- (a) According to the Legal Deposit Act 54 of 1997, the South African Library (Cape Town) and the National Film, Video and Sound Archives must compile a national bibliography and statistics of the South African production of published documents
 - (b) The Legal Deposit Act 54 of 1997 prescribes that for each document that is published, the publisher must bear the costs of the documents supplied to the various places of legal deposit
 - (c) In *S v Harber* 1988 (3) SA 396 (A), where the court had to adjudicate on a matter dealing with contempt of court, the court refused to adopt the "real risk test" and confirmed the "tendency test"
- (1) All of the above statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) Only statement (b) is correct

Question 5

- (a) The privilege with regard to defamation means that the defendant need not prove strict liability
 - (b) Journalists allege that they are bound to journalistic privilege which means that they have the right to refuse to reveal their informer's identity
 - (c) Media privilege means that the news or television crew who is first at the scene of a crime and corroborates their facts, has the right to publish their report first
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statements (b) and (c) are correct

Question 6

ABC and XYZ are registered trademarks of two competing fast food chain stores that sell hamburgers. In an advertisement ABC compares the quality and price of their hamburgers with that of their competitor XYZ and states that their product is better value for money.

- (a) The ASA does not approve of this type of advertisement, and therefore has a number of prerequisites that have to be fulfilled before it will be acceptable
 - (b) This is a case of passing off because ABC and XYZ both sell hamburgers
 - (c) XYZ can only claim damages from ABC if they can prove that they have suffered damage
- (1) Only statement (a) is correct
 - (2) Only statement (b) is correct
 - (3) Only statement (c) is correct
 - (4) Only statements (a) and (b) are correct
 - (5) Only statements (a) and (c) are correct

[TURN OVER]

Question 7

- (a) If X receives a document relating to a prohibited place, and X proposes to sell this information to a neighbouring country, X will be guilty of espionage
 - (b) If A writes a newspaper article containing electoral matter and pays to have it published in a newspaper, the word "advertisement" need not appear as a heading in the article
 - (c) In terms of the Human Tissue Act of 1983 the district surgeon may give permission that the identity of the donor of a human organ may be revealed
- (1) All of the above statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) Only statement (b) is correct

Question 8

- (a) In terms of the Public Protector Act 23 of 1994, a journalist relying on his own sources, may disclose information regarding maladministration in the public service, if the Public Protector has already commenced an investigation
 - (b) In practice, a witness who has testified before the Public Protector, may not reveal this information to any other person
 - (c) In terms of the common law, the only information one is obliged to disclose to the police is information relating to the crime of treason
- (1) All of the above statements are correct
 - (2) Only statements (a) and (b) are correct
 - (3) Only statements (a) and (c) are correct
 - (4) Only statements (b) and (c) are correct
 - (5) Only statement (a) is correct

Question 9

Mr X was a patient at a hospital. At a stage when he was unconscious, he fell off a trolley and suffered severe injuries. He is sure that the injuries were caused by the negligence of the hospital personnel. However, he needs more information before he can institute proceedings against the hospital to claim damages.

- (a) According to the Constitution, Mr X has a right of access to information which is more important than the hospital's right to privacy, therefore the hospital should supply all the information X needs.
 - (b) In terms of the Promotion of Access to Information Act 2 of 2000 Mr X can claim the information from the hospital regardless of whether it is a state hospital or a private hospital.
 - (c) In terms of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 Mr X can obtain permission from a judge to intercept the telephone conversations of the hospital to get information.
- (1) Only statement (a) is correct.
 - (2) Only statement (b) is correct.
 - (3) Only statement (c) is correct.
 - (4) Only statements (a) and (b) are correct.
 - (5) Only statements (b) and (c) are correct.

Question 10

- (a) Unclassified publications cannot be freely distributed.
 - (b) X18 classification includes publications that contain explicit infliction of extreme violence which constitutes incitement to harm.
 - (c) Publications containing harmful or disturbing material against which children should be protected are classified as F18.
- (1) All the statements are correct.
 - (2) All the statements are incorrect.
 - (3) Only statement (b) is correct.
 - (4) Only statements (a) and (c) are correct.
 - (5) Only statement (c) is correct.

[30]

[TURN OVER]

PART B

THIS PART CONSISTS OF THREE QUESTIONS EACH QUESTION IS SUBDIVIDED INTO A NUMBER OF SUB-QUESTIONS YOU MUST ANSWER ALL THREE QUESTIONS SUBSTANTIATE YOUR ANSWERS AND REFER TO DECIDED CASES WHERE NECESSARY. IN DECIDING UPON THE LENGTH OF YOUR ANSWERS YOU SHOULD BE GUIDED BY THE MARKS ALLOCATED TO EACH QUESTION.

Question 1

Write **NOTES** on **FOUR** (4) of the following

- (a) protection for whistleblowers in terms of the Protected Disclosures Act 26 of 2000,
 - (b) the procedure for obtaining information from public bodies in terms of the Promotion of Access to Information Act 2 of 2000,
 - (c) the full and clear particulars which have to appear in writing on each trade coupon in terms of regulation 2 (issued in terms of the Consumer Affairs (Unfair Business Practices) Act 71 of 1988,
 - (d) the orders that can be issued by the Independent Communications Authority of South Africa (ICASA) in cases of non-compliance with their Code of Conduct,
 - (e) the courts' definition of a newspaper,
 - (f) the prohibition on the disclosure of information in terms of the National Key Points Act 102 of 1980
- 4X5 (20)
[20]

Question 2

- (a) Freedom of expression is guaranteed in the South African Constitution. There is nevertheless a variety of statutes where free speech is prohibited in some or other form. Does it mean that all these statutes are unconstitutional? Discuss. Refer in your answer to **all** the various circumstances where limitations placed on the right to freedom of expression will be constitutionally acceptable (15)
- (b) What is the difference between a broadcasting-signal-distribution licence and a broadcasting licence? (5)
[20]

[TURN OVER]

Question 3

- 3.1 What is the purpose of the following tribunals? Indicate whether a journalist would be able to claim a general right to attend their proceedings
- (i) maintenance courts
 - (ii) inquests (4)
- 3.2 What provision is made in the Films and Publications Act 65 of 1996 to ensure that the classifying of a film by a classification committee is not merely the expression and enforcement of the government's view of morality? (6)
- 3.3 Contempt of court by the media usually occurs in one of two forms, namely publication of commentary on a case that is *sub judice* (pending) or scandalising the court. Discuss these two forms of contempt of court in detail. Make sure that you refer to all the elements of the crime of contempt in your answer (20)
- [30]

TOTAL: [100]