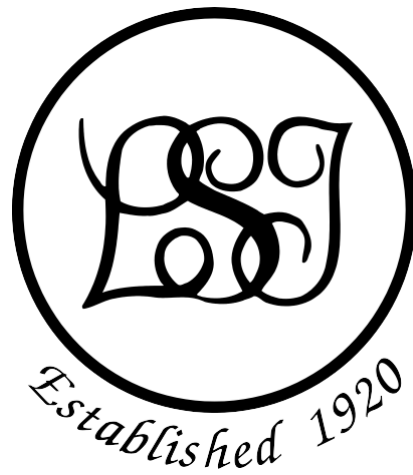


JOURNALISM AND NEWSWRITING



LESSON 8

Journalists and the Law

© LONDON SCHOOL OF JOURNALISM

LESSON 8

JOURNALISTS AND THE LAW

What is a free press? Defamation and contempt. Digital media risks. Reporting crime stories. Reporting the courts. Juveniles and the courts. Sex offences. Contempt of court. Libel risks. Libel defences. Copyright. Breach of confidence. Privacy.

WHAT IS A FREE PRESS?

How much do you know about the law? Most people would say they have a reasonable understanding of what society regards as acceptable and unacceptable behaviour. They will probably be able to name some of the most common or serious crimes, like theft, burglary, arson or murder, and may even have committed a less serious offence themselves, like speeding.

Yet much of what we know about the law will have been picked up not through formal study but by watching detective stories, police dramas or courtroom thrillers on television, where fact and fiction are closely interwoven.

All published writers need to have a much more detailed and accurate knowledge of the law than ordinary members of the public, because we run the risk of breaking less familiar laws than those which provide the storylines for fictional drama.

Libel, contempt of court, privacy, breach of copyright – do these terms mean anything to you? If not, your work cannot be published safely without an experienced editor studying what you have written to ensure you have not broken the law.

This applies whether you are working for newspapers, magazines, radio, TV or the internet. It applies whether you specialise in columns or reviews, travel articles or consumer tests. But it applies most of all if you are a reporter covering hard news stories.

Aspiring journalists, especially those who have gained their initial writing experience on student papers and internet websites, sometimes assume they can write what they like with impunity – that when it comes to freedom of speech, “anything goes”. This is not the case. There are numerous laws restricting what we can write, many of them protecting ordinary people’s rights – the right to a fair trial, for example, or the right not to have one’s reputation unfairly or falsely attacked.

There are two reasons why all journalists need to have a detailed working knowledge of the law.

One is so that they **know their rights** – how far they can safely go when writing a story *without* breaking the law. This means knowing when they are permitted to attend courts and council meetings, understanding what is meant by terms like **freedom of expression**, recognising when a story is **in the public interest** and knowing what **defences** exist in defamation and contempt cases. The other is so that they can recognise potential legal pitfalls and abide by the **legal restrictions** imposed on them.

Most journalists find the law is a fascinating subject to study, but no one would suggest it is easy. It's also a subject where a little bit of theoretical knowledge is *not* sufficient to keep you out of trouble. Working journalists need to know how to *apply* the law to different real-life situations – and this is a skill which trainee journalists find hardest to master.

Why do you need to have such a *detailed* knowledge of the law? Because many trainee newspaper reporters are expected to cover the courts and there are numerous examples of cases where both magistrates and judges have made mistakes when reaching decisions about what reporting restrictions to impose.

In such circumstances, there is no one else present in court who can plead the journalist's case. And if the decision is allowed to stand unchallenged, it may involve a long and expensive legal process to overturn it. The only person who can make a real difference on the spot is the individual court reporter – provided that their knowledge of the law is sound.

This means that, up and down the country, young reporters are required to challenge invalid or inappropriate orders and explain to the magistrate or judge the legal basis on which their challenge is based. It may not sound fair, but that's the way the judicial system operates and journalists have to be quick on their toes to stand up for their rights.

What are the main restrictions? These are among the most important:

- **Defamation** – are you damaging a person's or a company's reputation?
- **Contempt** – are you posing a substantial risk of serious prejudice to legal proceedings?
- **Reporting restrictions** – are you breaking the laws relating to the identification of children and young people, or victims of sexual offences?
- **Copyright** – are you “stealing” somebody else's original work?

It is also important to have an understanding of the differences between the main *divisions* of the law.

Criminal cases will be heard in the **magistrates' court** or **crown court** depending on the nature of the offence. Most cases involving young people will be heard by magistrates sitting as a **youth court**, although such cases may be heard in adult court when the crimes are particularly serious.

Civil cases will normally be heard in county court (usually smaller claims and straightforward cases) or the high court (larger claims and more complex cases), although some civil issues are dealt with by magistrates.

INTERNATIONAL LAW is concerned with disputes between countries, often relating to treaties that have been agreed between different governments.

NATIONAL LAW is the law which applies within each country. Scotland, for example, has a different legal system from England and Wales.

EUROPEAN LAW relates to the law within the European Union, often decided by treaties agreed between member states. Points of European law are decided by the **European Court of Justice** in Luxembourg.

Despite the UK leaving the EU, some legal rulings by the ECJ will still have an impact on UK law, or on companies dealing with countries within the EU, for example.

Human rights issues are decided at the **European Court of Human Rights** in Strasbourg. Individuals may complain to the European Court of Human Rights that their rights have been violated, although this too is technically not an “appeal”. The ECHR may rule on breaches of human rights and may award compensation, but it is up to the UK government to decide what action to take following an adverse finding.

Courts in England and Wales operate a rigid doctrine of judicial precedent which has the effect that every court is bound to follow any decision made by a court above it in the hierarchy.

DEFAMATION AND CONTEMPT

These two areas will form the cornerstones of your legal awareness and you will be studying both in detail during this course. It is important from the outset that you have a clear idea in your mind of what the words refer to and the differences between them. Some exam questions relate to real-life situations where there is a risk of *both* defamation and contempt. In such cases you will be required to demonstrate your knowledge of the different pitfalls involved and what changes would be required in your copy to make it safe. For this reason it is extremely important that you never confuse the two.

The law of **defamation** exists to protect the reputation of individuals from unjustified attack. A defamatory statement is a false statement, injuring the reputation of the person about whom it is made, and published to a third party. An individual, or a corporation, or a company can be libelled, but not a dead person.

Somebody who believes they have been libelled can take **civil action** against the publisher, editor and writer involved and, if successful, can be awarded a large sum of money by way of compensation. Every section of the paper – stories, headlines and picture captions in news, features and sport alike – has the potential capacity to be defamatory.

Note that the journalist does not have to be the author of the offending statement. To report a libellous statement by someone else is to publish a libel. So that if a town councillor says in an interview “The Mayor is a swindler and a thief. He is using council funds for his own purposes”, the newspaper which quotes him as saying so could be sued for libel if the statements are not true. Thus a reporter may have to omit part of a speech or a statement because it is defamatory, even though the speaker may not be aware of the libel. (In spoken form it would be a **slander**.)

Contempt of court, by contrast, is a **criminal offence** which relates to the publication of anything which interferes with the course of justice or prejudices a pending trial. The main trap for journalists is the reporting of matters which are *sub judice* (ie awaiting the decision of the law). When a crime has been committed, newspapers try to tell the fullest possible story, taking pictures of the scene and interviewing witnesses. But they must never suggest that a particular person was responsible, even if they and the police are convinced they know who did it.

DIGITAL MEDIA RISKS

Journalists working on the internet should be aware that the legal restrictions which apply to print journalists will still be relevant to web writers, irrespective of the means by which the information is being 'published'.

For example:

- **newsgroup postings and bulletin boards**
- **chat rooms and discussion forums**
- **e-mails and other file transfer systems**
- **online archives and libraries**
- **uploaded video clips**

A libellous statement is no less libellous simply because it is contained in an e-mail or posted on a bulletin board – so new media journalists need to be very keenly aware of **defamation** risks. The same applies to **contempt of court**.

They may also face problems if the **hyperlinks** they add to their own site take readers to other sites on which, for example, defamatory information is published. Even though you are not the publisher of the libellous material, it is you who are drawing people's attention to it through your hyperlink.

New media journalists also need to be aware that simply because they have the power to publish across international boundaries does **not** automatically mean that they are 'above the law' in the countries concerned. There is also a particular risk of being in **breach of copyright** on the internet – and this applies to sound, pictures and graphics as well as words.

In addition to legal restrictions, there are also a number of codes of conduct which encourage or enforce ethical standards in the media.

The **Editors' Code of Practice** (*Chapter 2*) is a form of voluntary self-regulation endorsed by the print media and giving guidance on a range of issues. Other codes apply to radio and television journalists.

The code – which from September 2014 has been overseen by the **Independent Press Standards Organisation** – tells print journalists how they should handle a range of issues but permits exceptions to certain clauses when it is demonstrably *in the public interest* for journalists to detect or expose crime, protect public health and safety or prevent the public from being misled.

There are plenty of stories which may be *of interest to the public*, but this is not sufficient to justify a breach of the code. The phone-hacking disclosures which led to the closure of the News of the World in 2011 and the subsequent Leveson Inquiry into press standards have thrown an unprecedented spotlight on such issues, paving the way for the introduction of a tougher regulatory regime.

REPORTING CRIME STORIES

When a crime has been committed, newspapers try to tell the fullest possible story of what has happened – and in most cases they will be free to report the incident in considerable detail, taking pictures of the scene and speaking to both victims and eyewitnesses. (This is the case as long as the crime is not a rape or sexual assault, because there are restrictions on identifying the victims of sexual offences.)

It also applies as long as no one has been arrested for the crime and as long as we do not suggest that a particular individual was responsible for it. (As well as any danger of contempt, there would be a serious defamation risk in publishing such a suggestion).

If a man comes home from work one evening, kills his family with an axe and is arrested at the scene, we have to be careful what we write, even where the 'facts' seem indisputable. Everyone may believe that Mr Smith did it. A dozen people may have seen him commit the crime. But it's not our job to decide his guilt before he has even appeared in court – and sometimes those 'facts' will be more complicated than they might at first appear and open to different interpretations.

So initially, the reporter on a crime story will have a great deal of freedom prior to an arrest being made. The situation will change as soon as someone is arrested, so the reporter will make regular checks with the police prior to publication to make sure no one has been caught.

This is particularly important on weekly papers, where there may be a longer period between the crime being committed and the paper going to press. Indeed, to protect themselves fully, reporters should keep a detailed note of their check calls with the police.

Once someone has been arrested, there are a number of considerations which could affect how much of the original story we can use:

- whereas we could originally report that police have launched a murder inquiry, we should be cautious about using the word 'murder' in case the arrested individual is charged with a lesser offence like manslaughter
- incriminating background information like **previous convictions** or **confessions** could now be seriously prejudicial to the arrested man's trial
- similarly, detailed **eyewitness testimony** which goes to the heart of the case could be very damaging, especially since such witnesses are likely to have to testify at the trial (and might feel obliged to stick to any version of the events which has been published in a newspaper interview)
- in cases where **identification is an issue** – ie when witnesses in court could be asked to identify the person they saw committing the crime, or where an identity parade is to be held – detailed descriptions and/or photographs could be prejudicial by confusing or influencing such witnesses

However **common ground** will be safe to report – who has died and where, for example, along with other undisputed facts relating to the case.

For the above reasons, press reports following an arrest are generally more guarded (although the national tabloids frequently overstep the mark, which has resulted in some high-profile prosecutions for contempt).

REPORTING THE COURTS

There are more than 7,000 criminal offences. The most common include road traffic offences, minor assaults, misuse of drugs, theft, burglary and a variety of offences involving deception and fraud, criminal damage and sexual offences.

There are three different **categories** of offence, and the restrictions on court reporting differ considerably depending which category you are dealing with.

SUMMARY offences are triable *only at Magistrates' Court* – these are generally less serious offences and magistrates will deal with the defendant right through to the point of sentence. They include most driving offences, common assault, obstructing police, criminal damage which has caused less than £5,000 worth of damage, soliciting and kerb-crawling.

INDICTABLE offences are *triable only at Crown Court* – these are serious offences like murder, rape, robbery and arson. But the accused will first appear in front of magistrates who must, after hearing any application for bail, **send for trial** at Crown Court. These include murder, manslaughter, rape, robbery, poisoning, false imprisonment, kidnapping, hostage taking, conspiracy to defraud, incest, blackmail, perjury and perverting the course of justice.

EITHER WAY offences can be tried *either* summarily *or* on indictment at Crown Court. In these cases, the accused must be asked to indicate whether he will plead guilty or not guilty. If he pleads guilty, the magistrates must proceed as for a summary trial. If he pleads not guilty, they must decide whether the case is suitable to be tried summarily or should be committed to Crown Court for trial.

Examples include theft, assault causing actual bodily harm, wounding or inflicting grievous bodily harm, possessing or supplying controlled drugs, sexual assault, burglary and handling stolen goods.

Reporting summary cases rarely poses any serious problems for reporters. But in both of the other categories, reporters can sometimes be confused by the fact that these cases reach Crown Court by a way of a hearing in front of magistrates, when strict reporting restrictions apply.

There are more than 150 Magistrates' Courts in England and Wales. These are local courts, so one will be found in almost every town and there will be several such courts in big cities. You can find out more about how the courts operate by consulting the website for HM Courts & Tribunals Service at www.gov.uk.

So how do you go about reporting the courts? Let's start by considering a straightforward **summary offence** where the defendant has pleaded **guilty**. There will normally be a short prosecution outline of the facts followed by a defence mitigation and then sentencing.

Some offences will be so commonplace and relatively minor that newspaper reports may be restricted to a list of those sentenced, along with their age, address and details of the fines. An example might be non-payment of a TV licence.

But long lists are not very interesting for readers and there is usually a little more detail required to explain the facts. A common difficulty for trainees is to do this in a lively, newsworthy way while still ensuring that all the vital formal details are included.

At this point it is perhaps worth thinking again about your rights and restrictions. You will recall the comments made by senior judges about the importance of a free press and the media acting as the "eyes and ears of the general public".

A fundamental principle of the English judicial system is that the courts should administer justice ***in public*** – that justice should be seen to be done. You will be studying this in more detail when you look at admission to the courts, access to court information and challenging the courts. The only exception is if this would make the proper administration of justice impracticable.

Coupled with this principle of **open justice** are certain specific protections for the court reporter.

Clearly many things that are said in court are defamatory. But the law recognises there are occasions when the public interest demands there shall be complete freedom of speech without any risk of proceedings for defamation, even if the statements are untrue.

To ensure that the press can play their role in the administration of justice, court reports are therefore protected by **absolute privilege**.

Absolute privilege is a complete answer and bar to any action for defamation and this defence applies to court reports of proceedings in the UK as long as they comply with three criteria. Court reports must be:

- **FAIR**
- **ACCURATE**
- **CONTEMPORANEOUS** (published in the first available issue).

This is discussed in more detail under the Defamation heading. There is a similar protection against the reporter being held in contempt for reporting court proceedings – as long as no specific court order is broken and no other reporting restrictions apply.

Look at those conditions again and consider how they apply to what you are writing. Contemporaneity is not usually an issue, because you will normally be writing for the next available issue of your paper, whether it is a daily or a weekly. But you **MUST** ensure your report is FAIR and ACCURATE, or you could be landing your paper in serious trouble.

Let's go back to the Magistrates' Court and a summary case where someone has pleaded guilty to a minor offence. What are the *essential* details you need to include in your report?

The name of the court, details about the defendant, the charge(s), the plea, the sentence – or other arrangements for dealing with the case.

If all the above are included accurately, you will be off to a flying start. You DON'T have to report the whole case verbatim for it to be fair – a summary is fine. You don't have to balance up every statement made in court, particularly if the defendant has pleaded guilty – although you would be expected to report any relevant mitigating circumstances given by the defence, especially if these are given credence by the magistrates and reflected in the sentence.

Other details you MAY wish to include names of magistrates, witnesses, defence and prosecution counsel and solicitors.

The location of the court is an obvious necessity. But why do we need so much detail about the defendant? Newspapers argue it is vital to give as much information as possible to avoid any confusion over the identity of the accused.

This is particularly important if there are two men with the same name in the same street, for example. And the age will identify whether it is John Smith (the father) or John Smith (his son) who has committed the offence.

As well as being in the interests of open justice, this also avoids the potential risk of someone being wrongly identified as a criminal by their friends and neighbours and subsequently suing the paper for libel.

Sentences can also hold a few pitfalls for the unwary. Make sure you understand the difference between *concurrent*, *consecutive* and *suspended* sentences. And be aware too that the courts can order an offender to pay compensation for injury, loss or damage, which is not the same as a fine.

If the magistrates feel their sentencing powers are insufficient in view of the serious nature of the crime, they may commit the convicted offender to Crown Court *for sentence*. ***Don't confuse this with his being sent to Crown Court for trial.***

Study a typical regional paper court report (you will find plenty of examples online) and see how the essential facts (in bold type) have been worked in to the story, with the defendant clearly identified, along with the charge, the location of the court and the outcome of the case.

The main problem in reporting a summary trial where the defendant has pleaded not guilty is that the trial may last a long time because of the amount of questioning involved. This means that the case may have to be reported in instalments – particularly in a daily paper.

The first implication of this is that the paper **MUST** indicate that the trial is **ongoing** and that there is more evidence to be heard. Papers usually have a house style for this, often by adding the concluding line to the court report "The trial continues" or "(Proceeding)".

The second implication is that for papers to produce a **FAIR and ACCURATE** report of the trial, they can't just dip in and out of it when it suits them, because they may miss vital evidence.

Similarly, they can't report one day's proceedings and ignore the next because they may only hear the prosecution evidence. This can be a serious problem for short-staffed papers and is one reason why many local papers no longer cover courts as frequently as they used to, or rely on agency copy rather than sending their own reporter.

The third implication is that because all the evidence has not been heard, the

reporter has to be more careful in **ACCREDITING** statements made in court which may be refuted at a later stage. For this reason, the words "claimed" and "alleged" will appear more frequently in a report of an ongoing trial.

For a full-blown Crown Court trial with a jury, the procedure will depend on whether the plea is **GUILTY** or **NOT GUILTY**, but such cases are normally tackled by experienced court reporters who have passed media law exams going into more detail about what can and can't be reported from the courts.

JUVENILES AND THE COURTS

Juvenile courts were established under the **Children & Young Persons Act 1933** and were renamed **youth courts** in 1992.

The act restricts what may be reported about those under 18 who are involved in **court proceedings**, whether as a **defendant** or **witness**.

In law, a **child** is defined as being aged between 10 and 13. A **young person** is aged between 14 and 17. A child under 10 cannot be charged with a criminal offence. A teenager aged 18 or over is an adult.

Youth Courts

Section 47 of the CYP Act 1933 states that while the general public are barred from youth courts, bona fide representatives of the press are allowed to be present.

Section 49 of the act states that reports of youth court proceedings must not contain:

- the **name, address, school** or any particulars leading to the **identification** of a child or young person involved in the proceedings
- any still or moving **photograph** of, or including, any such juvenile

Thus a youth court report can safely report a young person's age, city or town of residence and job, if appropriate, as long as none of these details could identify the juvenile in question.

A **youth court** or the **Home Secretary** has the power to lift the restrictions on identifying any juvenile concerned in the proceedings **to avoid injustice** to that juvenile.

A youth court, on the application of the Director of Public Prosecutions, may dispense with the restrictions in order to **trace a juvenile wanted for violent or sexual offence or an offence where an adult could be jailed for 14 years or more**.

A youth court can also waive the restrictions on identifying a juvenile **when he/she is convicted** if magistrates believe it would be **in the public interest**.

A **Home Office circular** said that the lifting of restrictions would be particularly appropriate where:

- the offending was **persistent or serious and/or had an impact on a number of people**
- alerting others to the offender's behaviour would **help prevent further offending**

Juveniles in adult courts

There is no automatic anonymity for juveniles appearing as defendant, victim or witness in adult criminal courts, but the court may impose such a ban – and frequently does – under **Section 45** of the Youth Justice & Criminal Evidence Act 1999

Applies to criminal proceedings in adult courts until the age of 18

If made you cannot publish:

- name; address; school; educational or work establishment; still or moving picture; or anything else likely to lead to the identification
- of a child or young person (under 18)
- concerned in the proceedings (defendant, victim, witness)

The order cannot be made in respect of:

- an adult defendant;
- children not involved in the proceedings; or
- dead children.

The court or appeal court can dispense with such restrictions if it is satisfied:

- it is necessary in the interests of justice
- the effect is to impose a substantial and unreasonable restriction on the reporting of proceedings and it is in the public interest to remove or relax the restriction

In considering whether to impose such a ban, courts are expected to weigh up the balance between the public interest in knowing the identity of the juvenile and any likelihood of harm to the juvenile.

Most successful challenges relate to cases involving:

- serious crimes
- dead children
- young babies
- identities which are already in the public domain
- attempts to protect adult defendants

Jigsaw Identification

Note the phrasing of the identification ban on juveniles specifies that the reporter must not include any information leading to the **identification** of the child or young person. This means reporters must take care that details in their story cannot be pieced together like a jigsaw so that they inadvertently reveal the identity of the young person. This poses particular dangers in cases which involve sexual offences.

Family proceedings

Complex restrictions govern the reporting of family proceedings where children are involved in divorce, adoption or wardship cases, or are being taken into the care of the local authority.

SEX OFFENCES

The law provides protection for victims of most sexual offences by ensuring that they cannot be identified for as long as they live. This anonymity is enforced through the Sexual Offences (Amendment) Act 1992 and extends to the following offences:

- all offences which include the word 'rape'*
- male rape
- sexual assault (on a male or female)
- intercourse with girls under 16
- intercourse with mentally handicapped people
- indecent conduct towards a young child
- procurement of a woman by threats & false pretences
- giving drugs to obtain intercourse
- procurement of mentally handicapped people
- includes attempted rape; aiding, abetting counselling or procuring rape or attempted rape; incitement to rape; conspiracy to rape.

Anonymity also extends to the victims of more sexual crimes introduced under the **Sexual Offences Act 2003** – a major overhaul of legislation which also introduced tougher sentences.

Other offences include sexual activity with a child, engaging in sexual activity in the presence of a child, causing a child to watch a sexual act, meeting a child following sexual "**grooming**", **abusing a position of trust** in any of these offences, indecent photographs of children, abuse of children through prostitution and pornography, **trafficking** for sexual exploitation, **indecent exposure** and **voyeurism**.

More recent legislation has also protected victims of female genital mutilation and, under the **Modern Slavery Act 2015**, alleged victims of economic exploitation (ie those who have been trafficked as modern-day slaves, even if no sexual exploitation is involved).

Offences of abuse of trust relate to people **under 18** – so that a teacher may be jailed for consenting sex with a pupil who is over 16 but under 18. Positions of trust relate to adults working in schools, hospitals, care homes etc.

There is no automatic anonymity for defendants in sex offence cases, although care must be taken not to identify the victim if they are connected in some way.

Reporting restrictions do not apply if someone is charged with perjury or perverting the course of justice by making a false accusation of rape, for example. Nor is there anonymity in sex-trade offences like soliciting, kerb-crawling or running a brothel.

Ethical considerations

In addition to legal restrictions, the Editors' Code of Practice also includes two clauses relating to sex offences.

Clause 7 – Children In Sex Cases

1. The press must not, **even where the law does not prohibit it**, identify **children under the age of 16** who are involved in cases concerning sexual offences, **whether as victims or as witnesses**.
2. In any report of a case involving a sexual offence against a child -
 - I. The child must not be identified.
 - II. The adult may be identified.
 - III. The word 'incest' must not be used where a child victim might be identified.
 - IV. Care must be taken that nothing in the report implies the relationship between the accused and the child.

Clause 11 – Victims of Sexual Assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and, by law, they are free to do so.

Jigsaw identification

As with cases involving the identification of juveniles, newspapers must take steps to avoid jigsaw identification of victims of sexual offences.

CONTEMPT OF COURT

The right to freedom of expression is a guiding principle of life in a democracy and it has become a specific legal right, contained in Article 10 of the European Convention on Human Rights.

The right to a fair trial has always been another guiding principle of the British legal system and since the incorporation of the European Convention on Human Rights into UK law it too become a specific legal right, contained in Article 6 – a right which is defended by the Contempt of Court Act 1981.

A journalist held to be in contempt can be jailed or fined. There is also the possibility of a journalist being prosecuted for common law contempt – ie outside the provisions of the Contempt of Court Act.

Clearly there may be occasions where there appears to be a conflict between these fundamental rights. So how might a journalist be in contempt of court?

- **by publishing material which might prejudice a fair trial**
- **by publishing anything which interferes with the course of justice**
- **by breaching an order of the court**
- **by breaching an undertaking to the court**
- **by bribing witnesses or vilifying jurors**
- **by inappropriate behaviour in court**
- **by scandalising the court (highly unlikely in modern times)**

Most problems for journalists arise in relation to the Contempt of Court Act, which defines circumstances in which contempt by publication is an offence *of strict liability* – in other words, *regardless of intent*.

Section 2 of the Contempt of Court Act 1981 states that a person can be guilty of contempt by publication **under the strict liability rule** only if two conditions are met:

- 1. proceedings are ACTIVE**
- 2. there is a SUBSTANTIAL RISK of SERIOUS PREJUDICE**

When are proceedings active? In **CRIMINAL** cases, when a warrant or summons is issued, an arrest made or the individual charged.

Before an arrest

Before proceedings become active, there will normally be no danger under the strict liability rule of the 1981 Act, although there may still be a possibility of contempt at common law. This means reporters – especially those on weekly papers where an arrest is more likely to occur before publication – should check with the police to confirm that no arrest has taken place or warrant issued.

Police appeals for help

Sometimes when the police have obtained a warrant for a person's arrest, they seek help from the press in tracing him. This might technically be at risk of contempt, but the Attorney-General has said the press has nothing to fear from assisting the police in the apprehension of a wanted man.

After an arrest – the early stages

As soon as a case becomes active, however, reporters and sub-editors should be wary of phrasing the story in such a way as to imply that those in police hands are indeed the culprits. (Note that there may also be libel risks in the way the arrest is reported.)

One can report a post office robbery and say later that a man was arrested but not *THE* man. It would also be dangerous to include descriptions of three men who raided a bank, lest those arrested answer to the same description, or to refer to the victim as being found murdered, in case the accused is not being charged with murder.

Danger Areas

- **saying THE man was arrested, assuming guilt of accused**
- **publishing descriptions, pictures, eyewitness accounts**
- **incriminating background, previous convictions, confessions etc**

The big dangers occur if you publish information which 'goes to the heart of the matter' and prejudices a jury hearing a Crown Court case – so both local and national papers and websites need to be particularly careful when covering major crime stories and trials where the coverage may influence members of the jury sitting in the case.

Section 4(1) of the Act gives specific protection to court reporters by stating that a person will not be guilty of contempt under the strict liability rule in respect of **"a fair and accurate report of legal proceedings held in public published contemporaneously and in good faith"** *as long as no order has been made postponing reporting of certain matters or banning the identification of a name or other information.*

Section 5 – Public interest defence. If you publish a general discussion on a matter of public interest, you will not be held liable for contempt just because someone somewhere is on trial for the type of offence you are discussing. But you will not be able to rely on this defence if your debate is simply an excuse to publish prejudicial information which **does** relate to a specific case

Photographs

Pictures can be as dangerous as words when it comes to contempt. In 1994 a record fine of £80,000 for contempt was imposed on the Sun, which published a photograph of a man accused of murder just weeks before a police identity parade. The paper's then editor, Kelvin MacKenzie, was fined £20,000.

Even if a photograph is not in itself dangerous, it may be rendered risky by the accompanying caption. A picture taken at a protest march apparently showing a confrontation between a policeman and a protester, for example, might not be incriminating until a careless sub-editor decides that the protester is a "thug" or a "vandal". (Such a caption would also pose a defamation risk).

Under the **Criminal Justice Act 1925, section 41** prohibits the taking of any photograph in the court or its precincts (or making any portrait or sketch in court with a view to publication). "Precincts" is not defined in the Act, which can cause practical difficulties for journalists.

Theory and Practice

For trainee journalists learning about contempt for the first time, the emphasis is on identifying potential contempt risks. But there are contradictions in the way the law is applied and the way newspapers and broadcasters react to the risks – some escaping punishment for contempt in cases where it has been judged that there was no *substantial* risk of *serious* prejudice, others being fined for basic errors brought about by confusion or complacency.

Contempt v Defamation

Although some stories may involve you identifying both contempt and defamation risks, it is vital you do not confuse the two.

Remember:

Contempt of court is a **criminal offence** which relates to the publication of anything which interferes with the course of justice or prejudices a pending trial.

The law of **defamation** exists to protect the reputation of individuals from unjustified attack.

Somebody who believes they have been libelled can take **civil action** against the publisher, editor and writer involved and, if successful, can be awarded a large sum of money by way of compensation. Every section of the paper – stories, headlines and picture captions in news, features and sport alike – has the potential capacity to be defamatory.

LIBEL RISKS

In a democratic society, journalists have a vital role to play in exposing crime, deceit, hypocrisy and incompetence. Such freedom of speech also implies that the press should be able to comment, criticise, debate and campaign on behalf of the public.

The courts have long supported this principle while attempting to protect other fundamental freedoms.

The law of defamation – as laid out in the **Defamation Act 1996 and 2013** – exists to protect people (and companies) from unjustified attacks on their moral and professional reputation – both through the spoken word (**slander**) and the written word (**libel**).

Under the **Broadcasting Act 1990**, defamatory statements broadcast on radio, TV or in a cable programme, are treated as libel, as are such statements in a public performance of a play, by virtue of the **Theatres Act 1968**.

Since newspapers attack people's reputations every day, journalists need to have a clear understanding of the law of defamation – of the potential risks they face, what they can do protect themselves from libel actions, what defences may be open to them and how they should respond to complaints.

Three factors make it particularly important that journalists understand this area of the law:

- libel actions can be extremely **costly** to defend
- outcomes (especially those decided by juries) can be **unpredictable**
- most successful libel actions stem from journalists' **mistakes**

The best protection for journalists is for us to abide by a simple **ABC – accuracy, balance and care** – in every story we handle.

WHAT IS DEFAMATORY?

There is no comprehensive definition of what constitutes defamation but judges have told juries a statement about a person is defamatory if it **tends to** do any of the following:

- **LOWER** him/her in the estimation of right-thinking members of society generally
- **INJURE** him/her in his business, trade or profession
- **CAUSE** him/her to be shunned or avoided
- **EXPOSE** him/her to hatred, ridicule or contempt

Note the words **tends to**. The person suing does not have to prove the words actually *did* expose him to hatred or whatever. However under Defamation Act 2013 the claimant must now show the statement “caused, or was likely to cause, **serious harm** to their reputation”. Businesses can only sue if statement “caused, or was likely to cause, **serious financial loss**”. Cases have to be brought within one year of last publication.

So what sort of statements could be defamatory? Some are obvious. It would be defamatory to suggest, wrongly, that someone was involved in criminal activity, acted immorally or dishonestly or was negligent or incompetent in their job, for example.

Remember that the context is all-important. It would not automatically be defamatory to say someone lacked financial acumen – but if they were a merchant banker or tax consultant, such a statement could be very damaging to their professional reputation.

Many successful libel actions have been based on arguments over the meaning of words, any innuendo contained in them and any inferences which might be drawn from them by reasonable people.

Note that the danger lies in **false** accusations. However, do not assume that even when you know a controversial statement to be true, you are on safe territory.

One of the defences against a libel action is **truth** (formerly known as justification but renamed and made a statutory defence in the Defamation Act 2013) – that you can prove the words complained of are substantially true.

But it is a difficult defence to mount because the burden of proof rests on the journalist. The claimant does not have to show the words were untrue.

The burden of proof extends not only to obvious allegations but any innuendoes or hidden meanings which may be interpreted as being defamatory.

The difficulties have been illustrated by a number of high-profile cases – including that involving Jeffrey Archer, the disgraced Tory peer, won his 1987 libel case against the Daily Star over claims that he slept with prostitute Monica Coghlan, but was later jailed for four years for perjury and perverting the course of justice during the libel trial. Civil actions launched by the Star and News of the World resulted in him repaying sums of up to £3m to the papers for costs, the original damages and interest.

Who can sue?

Anyone capable of having a reputation is capable of losing it, although those with most to lose are likely to fight hardest to protect themselves. The fact there is no legal aid in libel has meant in the past that claimants with financial backing have tended to pose the most risk. However media law specialists Peter Carter-Ruck and Partners in 1998 became the first company to launch a “no-win, no-fee” scheme for those who cannot afford libel actions, so you cannot presume that those with limited means are in any way safe targets.

A number of organisations are also quick to support libel actions on behalf of members ranging from headmasters to police and prison officers. MPs, judges, diplomats and council executives can also be highly litigious, along with those with large egos and/or substantial bank balances – including rock, TV and film stars, sporting heroes, magistrates, lawyers and even journalists.

Companies and incorporated associations can sue, while local authorities, government departments and most unincorporated associations cannot – but in all cases, the risk is that posed by the individuals who run organisations or hold power within them.

Can children sue? Anyone old enough to have reputation is old enough to lose

it. The first case of a libelled child to come before the courts was in 1991 when a five-year-old boy alleged by The Sun to be “the worst brat in Britain” received substantial damages. The boy, wrongly accused of having cut off his ear and killing the family cat, was in fact registered disabled with a behavioural disorder.

Can criminals sue? Yes – although you could probably falsely call a convicted rapist a careless driver without facing any substantial risk. If the charges were reversed, of course, the risk would be very great indeed.

Can anyone sue on behalf of someone who dies? Beware only those who breathe. The dead cannot sue for libel and angry or distraught relatives have no legal redress unless they are personally targeted.

What a claimant must prove

To succeed in an action for defamation, a claimant must prove three things about the statement:

Defamation – it is defamatory

Identification – it may be reasonably understood to refer to him

Publication – it has been published to a third person

He *does not* have to prove the statement is false. He *does not* have to prove intent – ie that the writer meant to discredit him. He *does not* have to prove he has been damaged in any way, only that the statement *tends* to discredit him. The court will presume damage.

As mentioned earlier, under the Defamation Act 2013 someone bringing a libel action will now have to prove that the statement caused, or was likely to cause, **serious harm** to their reputation.

Most people who start libel actions do so because a statement did cause them serious harm. However the change may have helped to deter trivial, time-consuming complaints that usually go nowhere and libel actions against web-only publications are likely to fail if the page did not attract many clicks.

Of these three elements, **publication** is usually not open to argument – although a third person must be involved. Thus a sealed letter written to an individual is not ‘published’, whereas a postcard, which can be read by other people, including the postman, is ‘published’.

This has implications for e-mail messages, too. There have already been libel actions over e-mails sent to colleagues, but even a single e-mail message sent to someone’s private address may be ‘published’ if anybody else has access to their computer.

Libels contained on web pages, news groups, chat rooms and bulletin boards are also regarded as being ‘published’ – indeed, prior to the Defamation Act 2013 they were published every time someone accesses the relevant site.

This has now changed so that the one-year time limit for starting a libel action begins when an article is first published online and does not restart every time the article is viewed.

(This protection will not help internet service providers who republish libellous articles from another site, however.)

Identification is a thorny issue. Inexperienced journalists sometimes assume

they can protect themselves against libel actions by blurring the identity of the person against whom accusations are made. In practice, this may well make matters worse by extending the libel to other people the journalist had never intended to target.

If a paper mentions that an unnamed former officer in charge of a local children's home has been put on the sex offenders register, the gentleman in question is unlikely to complain to the paper – but every other former officer in charge of the home for the past four decades will feel aggrieved enough to sue.

In court cases, full details should be given to avoid confusion. In 1940, the Daily Express reported that Harold Newstead, a 30-year-old Camberwell man, was jailed for bigamy. The paper was sued by another 30-year-old Harold Newstead who claimed some people felt the article referred to him. If the paper had not omitted Newstead's address, the problem would not have arisen.

This may be a particular problem in those parts of the country where many people in a town or a village share the same Christian name and surname.

A case in 2003 highlighted that publications should be more alert to the risks of libelling someone they have never heard of or intended to libel. The leading dog magazine Dog World carried a lengthy article on allegations of abuse by a dog trainer called Stephen King, but overlooked the fact that there was another Stephen King with a prominent reputation in the canine world.

There was nothing in the article to alert readers to the fact that Stephen Barry King, who was subsequently prosecuted by the RSPCA and convicted of offences relating to cruelty to animals, was **not** Stephen Geoffrey King, a respected pioneer in a particular training technique. The test is whether a reasonable reader might understand the article to be referring to the latter man – and the publication had no option but to apologise and pay compensation.

Former Conservative politician Lord McAlpine won a pay-out of £185,000 from the BBC in 2012 after it aired a Newsnight investigation into child abuse at a North Wales care home. The BBC said the settlement reflected the gravity of the allegations that were wrongly made. Although the peer was not named in the programme, he was widely identified on the internet in connection with the story.

Sometimes the nationals have appeared to take a calculated gamble in publishing such details even when they are aware it might lead to a libel action. However this attitude may have changed following the Leveson Inquiry into press standards. Although the inquiry's focus was on illegal activities by newspapers and in particular intrusions into privacy, concern over massive compensation payouts and political calls for tighter regulation of the press have encouraged many editors to take a more responsible approach towards publishing claims where there are clear libel risks.

There were a number of calls in 2010/11 to reform the libel laws to offer more protection to freedom of expression, taking account of the realities of 21st century publication, particularly on the internet. There was also a widely perceived need to limit the growth of "libel tourism" and cut back "conditional fee agreements" which had become so prohibitively high that they posed a "chilling effect" on free speech by encouraging papers to settle libel claims rather than pursue costly High Court actions, editors argued.

The changes introduced in the Defamation Act 2013 followed some very high-

profile libel actions involving the Fleet Street tabloids.

In 2008 The Express Newspaper group paid out £550,000 in libel damages to Kate and Gerry McCann, whose daughter Madeleine went missing in Portugal the previous year, the size of the payout reflecting the fact that more than four papers were involved in publishing more than 100 stories containing a variety of defamatory allegations.

And coverage of the arrest of retired schoolmaster Chris Jefferies in relation to the murder of landscape architect Joanna Yeates resulted in eight newspapers paying out “substantial” damages in relation to more than 40 articles published in late December 2010 and early January 2011. Mr Jefferies was described by his lawyer as “the latest victim of the regular witch hunts and character assassinations conducted by the worst elements of the tabloid press”.

Damages payouts in the UK have tended to remain relatively low compared to those in some other countries (including Australia and Ireland), but the amounts have been dwarfed by the high court costs involved.

Internet libel

Individuals and companies who host websites, bulletin boards and chatrooms (or who contribute to them) need to be aware that the defamation laws apply as much to the internet as they do to newspaper publishers and broadcasters.

Section 1 of the Defamation Act provides a very limited defence of innocent dissemination. Intended to provide a defence to those who unwittingly providing a conduit enabling another person to publish defamatory material, it is only available to those who are **NOT the “author, editor or publisher”**.

This may sound like a possible defence for internet service providers to claim they had no knowledge of a libel published in a newsgroup, chat forum or another site to which they directed users through a hypertext link.

In August 2009 a judge ruled that Google was *not* responsible for publishing information shown in its search results.

However the case of Godfrey v Demon Internet Ltd in 2001 appeared to establish that under British law, service providers are held as being responsible for defamation if they either store material or have any form of editorial control over its contents. The test of ISPs is whether they take *reasonable care* to ensure defamatory material is not posted on web pages – and whether they take steps to remove such defamatory material once notified of its existence.

The £475,000 bill faced by Demon Internet after it settled two libel actions brought by lecturer and researcher Laurence Godfrey was regarded as a “wake-up call” to online providers. Demon settled out of court, agreeing to apologise to Dr Godfrey and pay him £15,000 damages and £230,000 legal costs.

Demon did not suggest the libels were true, but argued it was not liable for their publication or under any duty to remove them from its news servers, claiming it had a defence under Section 1 of the Defamation Act. At an interlocutory hearing Mr Justice Morland rejected Demon’s arguments, saying the defence was available only to a defendant who had **taken reasonable care in respect of publication and had no knowledge or reason to believe that what it did caused or contributed to the publication of a defamatory statement**.

The same dangers apply to e-mail messages. There have already been libel

actions over e-mails sent to colleagues, but even a single e-mail message sent to someone's private address may be "published" if anybody else has access to their computer. The same concerns apply to other restrictions on publishing like contempt of court or the provisions of the Children and Young Persons Act 1933 and Sexual Offences (Amendment) Act 1992.

In 2004, there were a number of cases in which the courts upheld the right, in principle, of individuals to sue for libel in the English courts over statements published on internet websites run from other parts of the world. But the Defamation Act 2013 sought to limit the risk of "libel tourism" by insisting that claimants from outside the EU will now have to prove that the UK is the most appropriate jurisdiction to hear a case.

A new defence introduced under the **Electronic Commerce (EU Directive) Regulations 2002** protects ISPs in situations where they act as a temporary conduit for information, have no prior knowledge that the information is illegal and, as soon as they are informed that is, remove it quickly.

Initially few internet libel cases reached the courts, but in July 2008 a businessman whose personal details were "laid bare" in fake libellous entries on Facebook won £22,000 damages against a former friend who created the profile – £20,000 for libel and £2,000 for breach of privacy.

Online publishers may also need to vet the "tagging" system used for accessing associated archive stories.

A court case with tags to earlier stories containing damaging background information might pose a contempt risk – and there could be similar problems in terms of libel if archives are not monitored to eliminate links to a previous defamatory statement, for example.

However, giving judgement in *Smith v ADVFN Plc* in 2008, Mr Justice Eady drew comparisons between postings on bulletin boards and a casual conversation, in that both can be informal, sometimes ill-conceived and, crucially, not always taken as the literal truth by participants.

Legal actions are increasingly likely to involve an overlap between different areas of the law, with a libel claim perhaps being brought alongside other actions, such as privacy, false attribution, breach of copyright and data protection.

The Defamation Act 2013 introduced a new **section 5 defence** under which responsible website operators provide a '**report and remove**' system that people can use if they believe they have been defamed on a website message board.

Larger publishers have tended to favour the less complication Section 1 defence. However, Tweets written by staff writers have proved very expensive.

In 2017 a claim made by Jack Monroe against Katie Hopkins over defamatory comments made on Twitter resulted in a damages payout of £24,000 and costs of £300,000 for the Mail Online columnist when it was settled at the High Court. Hopkins was refused leave to appeal in January 2018.

We know that libel actions can be extremely costly to defend and outcomes (especially those decided by juries) can be unpredictable.

Accusations of **hypocrisy** or **deceit** are dangerous, especially when they involve high-profile celebrities with big egos

Innuendo

Many statements which sound innocuous may carry a defamatory inference to those readers with special knowledge who read between the lines of your report.

It is not automatically defamatory to describe someone as having socialist leanings – but if the person in question is known by your readers to be a Tory councillor, the statement may well imply that he is politically dishonest and a hypocrite. This is a danger area because a defamation can occur which was never intended on the part of the newspaper.

Your choice of words is important in this context, especially in comment and diary columns. Former PA court correspondent Tom Corby accepted damages from the Daily Mail and an apology over comments in the Ephraim Hardcastle column in December 2003 which suggested he was honoured with an MVO (membership of the Royal Victorian Order) for “diligent crawling”. The Daily Mail had previously denied the piece was defamatory.

Identification

The examples demonstrate just how complex and dangerous this aspect of libel law can be. Can you avoid liability by avoiding the full name, age, address of the target? Possibly, but only by blurring the identity to the point where the story is hardly worth using. In many cases, the victims of your accusation will be able to show that they could be identified by someone reading your paper, even if their names were not used. Worse still, blurring the identity may draw in people you never intended to attack.

Pictures

Cock-ups account for more problems with identity – using the wrong picture alongside defamatory comments, for example, or picking a fictitious name for a target which happens to coincide with that of a real person or company.

In May 2000, for example, the Daily Mail had to print an apology about a photograph of a clown who had given evidence in the court case. Instead of showing Banjo the Clown – alias Paul Thorlsog – the picture showed Brillo the Clown – Mr Brian David Russell, who had nothing to do with the trial.

Group libels

These are discussed in more detail in McNae and include the 1971 case where a group of journalists regularly reporting the Old Bailey each received £150 damages when The Spectator attacked the “beer-sodden hacks” reporting on an obscenity trial.

Companies

Particular care must be taken by business journalists because of the potentially catastrophic problem of claims being based on the company’s fall in value following the publication of a defamatory article.

Libel defences

There are a number of defences against an action for defamation, some of them very powerful indeed.

The main defences are:

- Truth
- Honest opinion
- Privilege
- “Public interest”
- Accord and satisfaction
- Offer of amends

Other possible defences are:

- Innocent dissemination
- Consent
- The claimant has died
- Proceedings were not started within the limitation period
- The matter has already been dealt with

The truth defence

“Truth” is a complete defence to a libel action. The defence (formerly known as justification) applies to **statements of fact**, where the **burden of proof** rests with the defendant – although the journalist must convince the court that his story is true **on the balance of probabilities**, which is a lower requirement than **beyond reasonable doubt**, the standard in criminal cases.

This may sound straightforward, but in practice is likely to be costly and complex, with no guarantee of success.

The **passage of time** is one problem – witnesses who were eager to speak out at the time may have changed their minds, moved away or forgotten the incident before it comes to court.

Cases can be costly. The cost of proving the truth can sometimes be prohibitive for a small or impecunious paper.

The credibility of witnesses is a factor, too.

Persistence may be penalised. Pursuing a truth defence can be dangerous because, if it fails, the court is likely to take a critical view of your persistence in sticking to a story it has decided is not true – and the jury may award greater damages accordingly.

Honest opinion

Newspapers frequently rely on this defence, which relates only to **comment**, made **honestly** and **without malice** (improper motive).

Comment, not facts – The defence does not provide a defence for the publication of defamatory facts. But the comment must be based upon true facts.

Honest opinion – We are all entitled to hold and express strong views on matters of public interest, provided they are honestly held. Our views may be considered exaggerated, obstinate or prejudiced by other people, but that does not matter as long as they are honestly held.

Without malice – For the defence to succeed, it is essential that the statement was made without malice. In legal terms, this means more than spite or ill-will, but extends to any dishonest or improper motive. An editor making remarks because of a personal grudge, for example, would be acting with malice. So would a journalist who comments on facts he knows to be untrue.

What happens if your facts are wrong? Getting key “facts” wrong could seriously undermine or destroy your defence. Actor David Soul accepted £20,000 damages and costs estimated at £150,000 from the Mirror in 2001 over a review of a black comedy, *The Dead Monkey*, which he helped produce in London’s West End.

The review was attributed to Matthew Wright, the Mirror’s showbusiness columnist, although he had actually sent a freelance journalist to review it on his behalf. Soul’s solicitor highlighted the fact Wright had dubbed the play as being “without doubt the worst West End show” he had ever seen – yet referred to a Monday performance where there had not been one and had included other inaccuracies. Soul said afterwards: “I stand strongly on the side of fair comment and information about the theatre. I think it is the cornerstone of the theatre. But you have to see the play, you have to be there. You have to have the facts”.

Imputing **improper motives** to someone may negate your defence and is a common cause of libel actions. You may fairly criticise someone’s conduct or judgement, but should not imply a corrupt or dishonourable motive to their behaviour you cannot possibly prove.

Absolute privilege

The law recognises there are occasions when the public interest demands that there shall be complete freedom of speech without any risk of proceedings for defamation, even if the statements are defamatory and even if they are untrue. Such occasions are said to be privileged.

Absolute privilege is a complete answer to any action for defamation, irrespective of whether the words are true or false or spoken maliciously. Section 14 of the Defamation Act 1996 clarifies that this applies to a **fair, accurate and contemporaneous** report of judicial proceedings in public within the United Kingdom and permits journalists to safely cover the courts, where statements are often highly defamatory.

Reports **MUST** be fair, accurate and contemporaneous to be covered by absolute privilege. A report which only carries the prosecution case, which does not report an acquittal or which contains incorrect charges, will lose the protection.

Inaccurate headlines which misrepresent the story lead to many complaints. Privilege extends only to the actual report of the proceedings – it does not apply to defamatory statements shouted out in court or comments made by solicitors in the court corridor after a case.

Qualified privilege is another powerful defence for journalists.

This relates to occasions where it is considered important that the facts should be freely known in the public interest.

A paper claiming the protection of qualified privilege must ensure their report is:

- **fair**
- **accurate**

- **published without malice**
- **in the public interest**

Circumstances in which qualified privilege applies are explained in the **schedule** to the Defamation Act 1996.

There are two categories: Part I defines statements privileged *without explanation or contradiction*. Part II defines statements privileged *subject to explanation or contradiction*.

Part I – Not subject to explanation or contradiction

This protects fair and accurate reports published without malice of the proceedings in public of a legislature or court anywhere in the world, of a copy or extract from any register or other document which must be open to public inspection and to notices published by or on the authority of the court.

Part II – Subject to publication, on request, of a *reasonable* letter or statement by way of explanation or contradiction

This covers the findings or decision of a body with power in its constitution to deal with people under its control in a charity, sport, trade, industry, profession, art, science, religion or learning.

It covers the proceedings at any public meeting or sitting of any local authority or local authority committee, magistrates not sitting as a court, or any commission, tribunal, inquiry or committee appointed by any Act of Parliament or by a Minister of the Crown.

It covers a general meeting of a **public** company and, following a House of Lords decision in 2001, extends to fair and accurate reports of press conferences and press releases issued at them. This was reinforced by statute in the Defamation Act 2013.

Finally, it also applies to any notice or other matter issued for public information by or on behalf of a government department or body exercising governmental functions, including the police.

These definitions clarify just how powerful and far-reaching the qualified privilege defence is for journalists, encompassing council and public meetings and official statements by a police or local authority spokesperson.

Notice the obligation on editors under Part II to publish a ‘reasonable letter or statement by way of explanation or contradiction’. Failure to publish such a statement would destroy the qualified privilege defence. However, the word **reasonable** is important.

Editors will need to take legal advice to ensure such a statement does not risk libelling another person – for example, by contradicting what he has been reported as saying and therefore branding him a liar.

Accord and satisfaction

This is a plea that the matter has been otherwise disposed of, for example by the publication of a correction and apology that has been accepted by the claimant in settlement of his complaint.

Another way a paper can ‘satisfy’ a claimant is by making a payment into court. A

sum of money is lodged which the claimant can take at any time to end the litigation – if he does not accept it, the action continues.

Offer of amends

This was a new defence introduced by the Defamation Act 1996. To use it, a defendant must make a written offer to make a suitable correction and apology, publish the correction in a reasonable manner and pay the claimant suitable damages – although the precise terms may be left to be agreed at a later date.

Public interest

Until 1998, Britain had no defence of the publication in good faith of factual matter in the public interest where the truth of the allegation could not be proved. However in 1999 the House of Lords upheld a 1998 High Court decision that there may be a **qualified privilege defence at common law** where a newspaper has a legal, moral or social duty to the public to publish the material in question, the public has a corresponding interest in receiving it and the nature, status and source of the material are such to invite privilege in the absence of malice.

This defence depends on information being presented in as fair, reasonable and even manner as possible.

Consent

The so-called “journalist’s defence” depends on balanced reporting and making an honest effort to give full weight to the opinions of the person under attack both in the headline and in the text. It will probably apply if someone approaches you to help them refute a defamatory rumour, as long as your motives are honourable. It will not protect you against publishing malicious, unfounded rumours.

The claimant has died

The action for libel is personal and an action begun by a claimant cannot be continued by his heirs and executors – the action dies with him.

Proceedings were not started within the limitation period

The period was reduced to one year under the Defamation Act 1996.

The matter has already been dealt with

The court will not entertain a second action based on the same complaint against the same defendant. However that does not stop the claimant taking action against any number of defendants who are separately responsible for publishing the statement and it will not prevent a second action from a claimant if he were defamed a second time, for example by a poorly phrased apology.

The main defences outlined here can provide powerful protection for journalists and a detailed knowledge of them is a vital requirement of all journalists.

COPYRIGHT

While there is no copyright in **facts, news, ideas** or **information**, there is copyright in the way information is expressed, selected and arranged if it involves skill and labour. This means that alarm bells should start ringing for any journalist considering copying material from any particular source for their own use, particularly if such “lifting” is done on a persistent basis. Print journalists also need to be aware this applies to information sourced from the web unless specific

authorisation is granted.

Breach of copyright

Remedies for breach of copyright may involve **civil action** or **prosecution**:

Criminal law: Under the **Copyright, Designs and Patents Act 1988** a person guilty of infringement can be prosecuted – although this is more likely to involve fraudulent activity such as counterfeit DVDs or illegal file-sharing.

Civil action: The copyright owner may obtain an **injunction** restricting someone from infringing his copyright. He can also seek **damages** and an order for the possession of the infringing copies. In certain circumstances, the owner's first approach is likely to be in the form of a demand for **payment** for the unauthorised use of copyright material – with the subsequent threat of civil action if no payment is forthcoming.

How old is the contested material? The law changed with the introduction of the above Act, which applies to work created after 31 July 1989. If you are accused of copyright infringement, you will need to establish whether it was created before or after this date to establish the law regarding its ownership.

Moral rights: The 1988 Act introduced the concept of moral rights to protect those commissioning a photograph **for private and domestic purposes**. A newspaper publishing such a photograph could therefore find itself facing two people who claim their rights have been infringed – the photographer who took the picture and owns the copyright (who may seek payment for its use) and the person who commissioned the photograph (and who seeking damages for its unauthorised publication).

DEFENCES

Innocent infringement – This will protect you from a claim for damages if you did not know **and had no reason to believe** that the work was subject to copyright. But since you are aware that copyright does not have to be registered and protects the products of people's skill, labour, creativity and time, you will not be able to claim innocent infringement simply because you did not know who the specific owner was.

Fair dealing – The most commonly used defence when copyright material is used **either** for the purposes of **reporting current events** **or** for the purposes of **criticism or review** of that work or of another. However this is subject to you giving **sufficient acknowledgement** of the work and its author and will not justify "substantial" extracts.

What is "substantial"? Clearly we would expect a short review which includes a couple of relevant quotes to provide the reader with a flavour of the work concerned as being protected by the fair dealing defence. But dangers arise when reviewers and sub-editors decide, for example, that the book in question is of sufficient interest to devote a substantial amount of space to extracts.

Test questions journalists should ask themselves in such circumstances include whether they are using a "review" as a means of filling space without having to pay for the material concerned, and whether such use is preventing the copyright owner from gaining financial benefits from the sale of rights to his work. In such cases, fair dealing is unlikely to be an acceptable defence.

Similar considerations will apply to lifting large sections from published news

stories without proper attribution.

Public interest – The Act does not specifically provide a public interest defence to the infringement of copyright although there may be circumstances in which such an argument is relevant.

Freedom of expression – This does **not** appear to be a defence with any reasonable prospect of success against a claim for breach of copyright.

Acquiescence – If the owner of copyright material has encouraged or permitted its use without complaint, this may destroy a claim for infringement of copyright. But note that this will not be a convincing defence if the owner was unaware of any such prior infringement.

MAPS, DRAWINGS AND PICTURES

A £20m settlement in 2001 between Centrica and Ordnance Survey over the unauthorised use of copyright maps should provide a salutary warning to newspaper and web artists and picture editors about the dangers of “adapting” published material and passing it off as their own original work.

COPYRIGHT AND CONFIDENTIALITY

Copyright issues can be closely connected with breach of confidence arguments, especially when, for example, journalists obtain access to private diaries. In June 2007 the House of Lords rejected the Mail on Sunday’s bid to appeal against a December Court of Appeal ruling that the paper should return Prince Charles’s journals about the 1997 handover of Hong Kong.

The appeal court said the Prince had an overwhelming case that his copyright had been breached by extracts from the journals, and that the disclosure was an interference with his private and family life under the Human Rights Act.

PLAYING FOR HIGH STAKES

As the Centrica case above illustrates, breach of copyright can have costly repercussions. Two authors who claimed their work was plagiarised by Dan Brown to produce his bestseller *The Da Vinci Code* faced financial ruin in March 2007 after losing their court appeal. The pair faced a legal bill estimated at around £3m.

Journalists need to be increasingly aware of the online risks of copyright infringement, particularly when potentially linked to privacy, libel or harassment actions – for publication of “private” copyright images from someone’s Facebook profile, for example.

BREACH OF CONFIDENCE

The law regarding breach of confidence has developed rapidly over the past 20 years to encompass attempts to prevent the divulging of sensitive commercial, business, Government, security and matrimonial information as well as a means to prevent intrusions into privacy.

At one extreme it has even been used, in the case of the killers of the child James

Bulger, to protect the killers' **right to life** at the expense of the press's right to the **freedom of expression**.

It has also been used by the Government – alongside prosecution under the **Official Secrets Act 1989** – to silence former members of the security services.

The main means of preventing a breach of confidence is through an **interim injunction** preventing a publication from disclosing confidential information – and an important Court of Appeal decision in 1987 confirmed that **an injunction against one paper is an injunction against all others**, who may be found in **contempt of court** if they publish information when an injunction is in force.

Journalists have expressed concern that governments have used breach of confidence as a means of enforcing news management in cases when no genuine issue of confidentiality is involved, and that individuals have used the law to introduce a privacy law “by the back door”.

A major dilemma is that in order to balance and stand up contentious stories – and to protect against libel actions – it is a natural journalistic instinct to approach the person against whom a serious allegation is being made. Yet if this results in an injunction, it could kill the story by preventing the use of the information.

One way round this is to seek to obtain the facts from a different, non-confidential route before confirming them with the original source. However there is also the danger that a court could insist on you “delivering up” confidential material which could lead to your source being identified and even jailed. Yet to deliberately mutilate or destroy a document likely to be called for in a pending action could be construed as contempt of court.

Last-minute injunctions may pose a publisher or a broadcaster serious problems by generating considerable expense and inconvenience, yet defiance of a court order would represent a serious contempt of court.

What are the possible consequences of a breach of confidence?

- **obeying an injunction may be costly and inconvenient**
- **disobeying an injunction may result in prosecution for contempt**
- **challenging an injunction can be costly**
- **a journalist can be ordered to reveal the name of his informant**
- **a court can order that confidential matter be delivered up or destroyed**
- **a person misusing confidential information may be asked to account for the profits to the person who confided the information**
- **if confidential matter is published, the person whose confidence has been breached may be able to claim damages**

What are the key elements of a breach? Mr Justice Megarry clarified this in a judgement in 1968:

- **the quality of confidence**
- **the obligation of confidence**
- **unauthorised use to the detriment of the party communicating it**

Breach of confidence may thus be used to protect not only information which is

marked “confidential” or “top secret”, but other information which has been obtained by an employee who has a contractual obligation to keep his employer’s secrets.

This may extend not only to a diary or private correspondence but to marital secrets, kiss-and-tell stories and pictures taken with a telephoto lens of someone engaged in a private act, as well as to information obtained through other unethical means such as trespass, theft or listening devices.

Sensitive medical or commercial information, for example, might be at the “upper” end of the confidentiality “scale”. But cases which go to court are once again likely to hinge on a debate over the issues discussed earlier:

- Is the information already in the **public domain**?
- Would publication be in the **public interest**?
- Has the journalist adhered to the relevant **privacy code**?

Despite the importance accorded to freedom of expression by the Human Rights Act and the long-standing principle that the **rule against prior restraint** is designed to prevent censorship and protect press freedom, the limitations imposed by paragraph 2 of Article 10 clearly extend to “*preventing the disclosure of information received in confidence*”.

Public interest defence

Lord Denning made it clear in 1984 that there is public interest in *preserving confidence* as well as in *making known to people matters of public concern*. These competing interests have to be balanced by the courts.

Section 12 of the Human Rights Act says that any court considering a matter affecting freedom of information must have particular regard to “any relevant privacy code”.

The Editors’ Code of Practice has a number of clauses relating to privacy, but stresses that there may be exceptions to these rules if the information can be demonstrated to be in the public interest. The code offers its own, non-exhaustive list of what this includes:

- **detecting or exposing crime or a serious misdemeanour**
- **protecting public health and safety**
- **preventing the public from being misled by some statement or action of an individual or organisation**

An editor must be able clearly to demonstrate how the public interest is served by publishing private or confidential information. People in the public eye, like celebrities and politicians, still have the right to privacy, in the right circumstances.

But a public interest defence may apply in circumstances where the individual has courted publicity in the past, particularly if the new information reveals a different aspect to their “image” and it can be shown that it is in the public interest for this to be made known.

A seminal case in clarifying the press’s position on the reporting of confidential information was the high-profile 2002 clash between supermodel Naomi Campbell and the Daily Mirror.

Campbell had conceded that she was having therapy for drug addiction and – because she had previously lied about this – that the Mirror was entitled, in the public interest, to publish this otherwise confidential information in order to set the record straight. However she contended that there was no public interest in the publication of details of her treatment, such as photographs of her emerging from a Narcotics Anonymous centre and that therefore the Mirror had published these in breach of confidence. Her argument was initially accepted by Mr Justice Morland, who awarded Campbell £3,500 damages against the paper.

The Court of Appeal reversed that ruling, finding that the information published by the paper was **“justified in order to provide a factual account of Miss Campbell’s drug addiction that had the detail necessary to carry credibility”**. The court considered that where the publication of particular confidential information is justified in the public interest, journalists must be given **“reasonable latitude”** as to the manner in which that information is conveyed to the public.

Master of the Rolls Lord Phillips said the appeal court did *not* consider the information that Campbell was receiving NA therapy was to be equated with disclosure of clinical details of medical treatment.

However the court also clarified that confidential information does extend to aspects of an individual’s private life that he or she does not choose to disclose and which a fair-minded person would think it offensive to publish.

The fact that an individual has achieved prominence on the public stage does not mean their life can be laid bare by the media, the court said – once more emphasising the distinction between information that is in the public interest and information in which the public is interested.

The Naomi Campbell case went to the House of Lords, where the judges held unanimously that English law provides a cause for action for the unjustified publication of private information. The main issue in the Naomi Campbell case lay not in revealing the fact of her addiction or that she was receiving therapy, but in showing her leaving a Narcotics Anonymous meeting, discussing details of the treatment and her reaction to it.

An important press victory came in October 2004 when the House of Lords ruled that the Liverpool Echo *could* run a story about alleged financial irregularities involving the nightclub promoter Cream, despite these being based on information obtained from the former financial controller of Cream.

The ruling overturned a provisional High Court injunction on the basis that to succeed in obtaining an injunction gagging a newspaper when a breach of confidence is alleged, the individual or company will have to persuade a judge that they are “more likely than not” to get the injunction upheld at trial.

Protecting your sources

Despite such a range of different ways in which authorities may attempt to prevent journalists from disclosing sensitive information, there were signs that the introduction of the Human Rights Act might safeguard freedom of expression to a greater degree than had been previously demonstrated by the UK courts.

In particular, the Bill Goodwin case highlighted a difference in attitudes between

the UK courts and the European Court of Human Rights. Goodwin was fined for failing to comply with a judge's order to reveal his sources, but his appeal was unsuccessful in both the Court of Appeal and the House of Lords, which both maintained that disclosure was "necessary in the interests of justice".

But the European Commission found for Goodwin in 1994, saying: **"Protection of the sources from which journalists derive information is an essential means of enabling the press to perform its important function of 'public watchdog' in a democratic society."**

In 1996 the European Court reached the same decision, stressing the protection of journalistic sources was one of the basic conditions for press freedom. An order of source disclosure could not be compatible with Article 10 of the Convention unless it was justified by **"an overriding requirement in the public interest"**.

August 2007 saw the closing chapter in a seven-year court wrangle over a journalist's right to protect their sources. The case relates to a story published by The Mirror in 1999 and provided by freelance journalist Robin Ackroyd. It concerned the alleged mistreatment of Moors murderer Ian Brady at Ashworth mental hospital and Mersey Care NHS Trust demanded to know the source of the confidential medical information provided. But the claim was thrown out by the Court of Appeal, and the House of Lords refused permission for the Trust to mount a further appeal. In an earlier hearing, High Court judge Mr Justice Tugendhat had ruled in Ackroyd's favour and described him as "a responsible journalist whose purpose was act in the public interest".

However another case in 2007 illustrated the bewildering consequences that can befall a journalist suddenly caught up in a police investigation. Reporter Sally Murrer of the Milton Keynes Citizen was bugged and tracked by police, locked in a cell for hours, strip searched and warned she could face life imprisonment when she found herself suspected of corrupting a policeman to give her stories.

Police raided her office and home, produced a search warrant and seized her laptop and files. She was arrested as a suspect "alleged to have committed a serious offence", said Banbury Police. She said: "I'm a mother of three, I work 12 hours a week. I don't know why they are treating me like some sort of spy."

In March 2008 Murrer denied obtaining police information illegally and charges of aiding and abetting misconduct in a public office. The charges were thrown out in November 2008 when the case came to Kingston Crown Court and the judge decided her Article 10 rights had been breached. The policeman in the case, a detective sergeant, also walked free.

The editors' code

Launched in 1991 as a replacement for the much-criticised Press Council, the Press Complaints Commission's role was to deal with complaints from members of the public about possible breaches of the editorial code of practice and aims to resolve complaints swiftly and amicably. Central to its work was "the protection of the vulnerable".

During the Leveson inquiry into press standards in 2012, the PCC confirmed that it would close, to be replaced by the **Independent Press Standards Organisation**, which began dealing with code complaints in September 2014.

The code itself is fairly short, although settling disputes relating to the code may not be as easy as it sounds. You can find out more about past adjudications on ipso.co.uk.

In general, the code provides guidance on ethical matters where certain forms of journalistic behaviour are not specifically prohibited by law and is particularly designed to help ordinary people temporarily caught in the spotlight of media attention.

Note that when a publication accepts that it has broken the code but is claiming a public interest defence, the editor is required to give a full explanation of how the public interest was served.

In cases involving children, this must be an “exceptional public interest” to override the normally paramount interests of the child. A change in the code in September 2009 meant that editors must now demonstrate “a reasonable belief” that they were acting in the public interest.

Criticism of the PCC for being “toothless” in its treatment of the press led to the commission introducing some reforms following the creation of Ofcom, including an increase in the number of lay commissioners.

The code itself is buttressed by a series of useful editors’ guidance notes on specific issues which are of use to writers – and a codebook for editors is also available to view online: editorscode.org.uk.

Although IPSO has also come under fire from critics and only regulates those publishers who sign up to its conditions, IPSO pledged in 2015 to increase its authority and restated its determination to “condemn unfair and abusive intrusion” while recognising the need for “bold and unruly” journalism.

A revised code of conduct came into force on January 1, 2025.

Key changes in recent years have included:

- Specific reference is now made to headlines not supported by the text of the article beneath.
- The reporting of suicide became a stand-alone clause, reflecting concerns about the publication of excessive detail about methods of suicide.
- Gender identity was added to categories covered by the discrimination clause, which protects individuals from prejudicial and pejorative reporting.
- The duty of editors to maintain procedures to resolve complaints swiftly, and to co-operate with the Independent Press Standards Organisation, was enshrined in the code’s preamble.
- The Code’s definition of the public interest, and the circumstances in which editors can invoke it, was updated and expanded in line with the Defamation Act, Data Protection Act and Crown Prosecution Service guidance.

Clause provisions on privacy are now contained in Clause 2, with Clause 3 dealing with harassment, Clause 4 with intrusion into grief or shock and Clause 5 the reporting of suicide.

The public interest definition has been expanded. The code now says public interest “includes, but is not confined to”:

- Detecting or exposing crime, or the threat of crime, or serious impropriety.

- Protecting public health or safety.
- Protecting the public from being misled by an action or statement of an individual or organisation.
- Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.
- Disclosing a miscarriage of justice.
- Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.
- Disclosing concealment, or likely concealment, of any of the above.

The code reasserts the fact that there is a public interest in freedom of expression itself.

It goes on to say that editors invoking the public interest will need to demonstrate that they reasonably believed publication – or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.

In its annual reports successive IPSO chairs have maintained the body remains the only effective way by which members of the public could complain and seek redress from papers following intrusion and inaccuracy. However critics – particularly members of the Hacked Off campaign – continue to insist that IPSO had failed in its duty and remains “toothless”, complaining that it has not used its powers to issue fines or initiate standards investigations.

Ofcom

New legislation was introduced in 2003 to merge the functions of five existing watchdogs into a new radio and TV watchdog, Ofcom.

Ofcom has powers to criticise and fine broadcasters. In 2004, it fined a British porn channel £50,000 for showing hard-core sex scenes before the 9pm watershed. Ofcom also adjudicated that a blasphemous outburst by celebrity chef Gordon Ramsey in the series *Hell's Kitchen*, broadcast in May and June 2004, in which he used the phrase “fucking Jesus”, was a breach of the television programme code. ITV admitted it had made a mistake in allowing the phrase to “slip through” under high pressure and against very tight deadlines.

In 2006, the watchdog imposed its largest ever financial penalty of £175,000 on Kiss FM in relation to 10 complaints about the London-based dance music station's breakfast show, received over a seven-month period.

In 2008 Ofcom fined ITV £5.67m for abusing premium-rate phone services in viewer competitions. Channel 4 was fined £1.5m for misconduct in a Richard and Judy phone-in contest, Channel Five paid out £300,000 for faking the winner of a quiz on *Brainteaser* and the BBC was fined £50,000 over a *Blue Peter* phone-in.

Music station MTV was fined £255,000 in 2008 for broadcasting offensive language on four of its channels. The same year saw the BBC fined a total of £400,000 for numerous breaches of its broadcasting code relating to deceiving viewers and listeners in competitions run on a variety of shows, including *Comic Relief*, *Children In Need*, the *Liz Kershaw* show on 6 Music and *Jo Whiley Show* on Radio 1.

From April 2017, the BBC was brought under Ofcom regulation for the first time after more than 90 years of self-regulation, following criticism of confusion in the role played by the BBC Trust.

Information about Ofcom and its rulings can be found on ofcom.org.uk.

PRIVACY

Until 2000 and the introduction of the Human Rights Act the law of England did not specifically protect the right to privacy. Now that right is enshrined in Article 8 of the European Convention on Human Rights and has been incorporated into UK law.

In the years immediately following the introduction of the Act, the PCC tried to stress that the Act had not given rise to the “creation” of a privacy law. However case law in the intervening years has heralded some important developments in the interpretation of privacy issues, culminating in the phone-hacking scandal which engulfed the News of the World and the subsequent revelations in the Leveson Inquiry about press intrusions into privacy.

In 2015 the publishers of the Daily Mirror and Sunday Mirror were ordered to pay £1.2m in damages to eight phone-hacking victims, including Sadie Frost and footballer Paul Gascoigne. Frost’s payout of £260,250 was thought to be the single biggest privacy damages payout since the scandal broke in 2010, with other large payouts to Gascoigne, soap stars and BBC executive Alan Yentob.

More significant awards followed – phone-hacking victims included actor Steve McFadden, TV presenter Natasha Kaplinsky and comedian Les Dennis, Lord Archer, former home secretary Charles Clarke and actress Patsy Kensit.

By June 2017 the total number of victims exceeded 100 – and in October 2017 Steve Coogan won a six-figure payout and said senior figures like former Mirror editor Piers Morgan had not yet been put under proper scrutiny over the scandal.

Payouts from News International over phone-hacking are thought to have exceeded £1bn, with numerous journalists investigated and some prosecuted for breaches of criminal law. Mirror Group Newspapers are thought to have paid out more than £100m in damages and costs.

In July 2018 Sir Cliff Richard won £210,000 in damages (and £850,000 costs) in a high court privacy action against the BBC over “serious and sensationalist” coverage of a police raid on his home. He was never arrested or charged over historical child sex allegations dating from the 1980s.

And yet in the 1990s, there seemed to be little action that celebrities could take to stop the tabloid press from focusing in minute detail on every aspect of their lives.

But when DJ Sara Cox won a £50,000 out-of-court payment from The People in 2003 after the paper published pictures of her topless on a private beach, the PCC stressed that there had been no judgement in the case and therefore it had no bearing on the UK case law.

Previously Amanda Holden reached a £40,000 settlement with the Daily Star after it published photos of her bathing topless in the garden of her Tuscany villa, but again this took place out of court.

By 2016, when Princess Beatrice complained about gratuitous long-lens bikini photos being taken of her on board a private yacht off Monaco and published by Mail Online, IPSO ruled there had been a serious breach of Clause 2 of the code.

Similarly, in 2017 IPSO ruled pictures taken of Prince Harry in his swimming trunks while on holiday with his girlfriend Meghan Markle – taken on a private beach using a long-lens camera – were a breach of the code.

A PCC complaint brought by TV news presenter Anna Ford, who was upset after pictures were published of her and her partner on a beach in Majorca taken with a long-lens camera, was rejected in 2000. But in the Naomi Campbell case referred to in Lesson 9 under breach of confidence, the law lords held in 2004 that English law provides a cause of action for the unjustified publication of private information.

The main issue in the Naomi Campbell case lay not in revealing the fact of her addiction or that she was receiving therapy, but in showing her leaving a Narcotics Anonymous meeting, discussing details of the treatment and her reaction to it. The implication of the ruling is that the media will need to adopt a structured approach to any article containing private information.

1. Is the information sufficiently private in nature to engage Article 8 (the right to privacy)?
2. Can each element of private information contained in the article be justified?
3. Photographs must be considered separately – and if they have been taken surreptitiously, their publication is likely to be regarded as intrusive.
4. To what extent is any such private information in the *public interest*?

However, fears began to grow over the development of a law of privacy in England after a couple of high-profile cases in the summer of 2004.

The European Court of Human Rights in Strasbourg held that respect for the private life of Princess Caroline of Monaco was breached by photographs from her daily life showing her shopping or on holiday with her children in public places. German courts had originally rejected her claim, but on June 24 the ECHR held that pictures of Princess Caroline either on her own or with other people “falls within the scope of her private life.”

The pictures had shown the princess involved in a variety of activities of a purely private nature.

Although the court recognised the essential role played by the press in a democratic society and the importance of freedom of expression, the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photographs and articles made to a debate of public interest.

The court considered there was no public interest in the princess’s case, and that the public did not have a legitimate interest in “knowing where the applicant is and how she behaves generally in her private life, even if she appears in places that cannot always be secluded and despite the fact that she is well known to the public.”

In July 2004 Trainspotting Ewan MacGregor won payouts from The Sun and Daily Record – thought to be £5,000 damages plus £35,000 costs – over an agency picture showing him relaxing on holiday with his children on a beach in Mauritius and in 2007 actress and model Elle Macpherson had a complaint to the PCC upheld that Hello! Magazine had breached her privacy by taking pictures of her

and her children on holiday at a private house in Mustique.

However, in October 2016 IPSO ruled that pictures showing Andy Murray's baby daughter in a pram pushed by her mother at Wimbledon did *not* constitute a breach of the codes clauses of privacy and children. IPSO concluded that Gate 16 was a public location overlooked by photographers where there was no reasonable expectation of privacy and that both taking and publishing the photographs was not a breach of Clause 2, particularly in view of the fact the pictures were taken within the grounds of Wimbledon during the championship.

IPSO added that the photographs did not feature information about the baby's welfare or private life, and there was therefore no breach of Clause 6 either.

In 2006 the PCC upheld a complaint by Harry Potter author JK Rowling that the Mirror had intruded into her privacy by publishing a picture of her London home along with the name of the road. The PCC accepted that the author had "gained her fair share of stalkers and obsessive fans" and said the information was not sufficiently in the public domain to justify publication.

Privacy arguments could also impact on the activities of press photographers, where other legislation may be used to restrict their movements or behaviour.

The **Protection from Harassment Act**, for example, could be used to prosecute persistent reporters and press photographers who "stalk" celebrities, and by 2009 injunctions under the Act were increasingly being used by stars – including Sienna Miller, Amy Winehouse and Lily Allen – as civil remedies, enforceable in the criminal courts, to keep paparazzi away from their front doors. The PCC code was changed in 2009 to require journalists in situations where harassment might be an issue to identify themselves if requested to do so.

Technological advances are likely to pose new challenges for journalists in the field of privacy. Using videos or stills from social networking sites, for example, could breach personal privacy or amount to harassment. YouTube tightened their privacy policy in 2009, warning contributors not to post other people's personal information online.

Care should be taken with images provided by third parties like a pub or nightclub, for example, where the images could be regarded as infringing individuals' privacy.

By December 2009 there were indications that the Royal family were wanting to clamp down on intrusion by photographers following a separate incident involving the England football manager Fabio Capello and his wife on a Spanish beach earlier that year.

The News of the World and Daily Mail published pictures of Capello and his wife enjoying a mudbath on a public beach – ostensibly not in breach of the PCC code. But the Football Association had been proactive in writing to every editor to explain that Capello wanted his privacy respected.

Capello would give the sports journalists interviews and briefings, but he would not be seeking publicity beyond that. He refused requests for interviews and picture sessions with magazines.

In other words, he was not seeking the limelight and, most definitely, neither was his wife. Just the reverse. The FA made it clear that she wished to remain an entirely private individual. The errors certainly proved costly. The News of the World paid out a five-figure sum to the Sir Bobby Robson foundation while the

Mail's donation was "close to five figures".

The payments show just how far the law of privacy has developed since 2000. The early victory of Ewan MacGregor in 2004 in protecting his children's privacy, for example, has paved the way for claims from other stars.

In April 2010 Jude Law accepted £9,500 in damages and legal costs from Hello! after the magazine breached his privacy by publishing pictures of him and his children on a beach in the Caribbean.

The public debate was reignited by pictures published in 2012 after nude pictures of Prince Harry were posted online when he played a stripping game in a hotel room in Las Vegas.

The publication in 2013 in the foreign press of the princess pregnant in her bikini again raised questions about how to police privacy issues online and in the international press, although UK papers – whether fearing a public backlash or because of concerns over Article 8 – were reluctant to publish the images.

Topless pictures of Kate Middleton published in the French magazine Closer culminated in criminal charges being brought against the editor, publishing director and photographers. In December 2017 Closer was fined £92,000 over the photographs.

In 2018 Meghan Markle sent her estranged father a five-page letter which became the centre of a lengthy legal battle between the royals and Associated Newspapers, publishers of the Mail and Mail on Sunday, on the grounds of breach of privacy and copyright violations.

Identifying individuals arrested on suspicion of involvement in a crime but never charged could lead to claims for intrusion into privacy (as well as possible libel actions). The Mail Online faced an £83,000 bill for damages after naming Alaedeen Sicri, who was arrested on suspicion of involvement in the 2017 Manchester Arena terror attack but never charged.

It was the third major ruling setting a precedent that suspects should not be named before charge, following Cliff Richard's landmark privacy win against the BBC and an anonymous businessman's win against Bloomberg. The BBC was told to pay Sir Cliff £210,000 in damages while Bloomberg was ordered to pay £25,000.

ASSIGNMENT EIGHT

Give detailed answers to the following questions:

- 1) What restrictions exist on identifying young people in:
 - a) youth courts;
 - b) adult courts?
- 2) A newspaper publishes photographs of a celebrity couple taken in the following circumstances:
 - a) a picture of the couple enjoying a candlelit anniversary meal in a local restaurant;
 - b) a long-lens picture of the couple walking hand-in-hand on a public beach;
 - c) a long-lens picture of the pair, with the woman sunbathing topless on the balcony of her holiday home.

What arguments would the Independent Press Standards Organisation consider in adjudicating a subsequent claim for intrusion into privacy under Clause 2 of the Code of Conduct?

- 3) You have a story scheduled for publication tomorrow, which includes a detailed description of a man the police wish to trace in connection with a string of burglaries. You get a call from the police this afternoon telling you they have now arrested and charged a man in connection with the offences.
 - a) can you publish your original story?
 - b) What information, if any, would you be able to print?
- 4) A commercial photographer sends a newspaper a wedding picture 'with compliments' asking for an acknowledgement if it is used on the paper's weddings page. The picture has been sent with the permission of the bride's father, who ordered the wedding photographs. The newspaper publishes the picture and files it. Ten months later, the bride is killed in a boating accident and the paper publishes the picture again. What is the position under the law of copyright with regard to:
 - a) the newspaper;
 - b) the photographer;
 - c) the bride's father?

- 5) A junior reporter has filed the following report for publication and says there was no mention in court of any reporting restrictions. What changes would you make to the copy – and why?

A teenage cinemagoer told a court today how he saw a bearded man sitting in the front row indecently assaulting a terrified young girl soon after the main film started.

Fred Merton, 15, of Westfield Terrace, Melford, a pupil at St Saviour's school, said in evidence at Newtown Magistrates Court that he saw the man fondle the girl.

The girl protested but was told to be quiet by people around her who did not realise what was happening. But eventually the cinema manager was called and the man was arrested.

Lawson Pickering, 42, of Central Avenue, Newtown, denied the assault on 13-year-old Sandra Spacek at the Palace Cinema in Melford. He was found guilty and fined £500.

- 6) A sports report says a well-known international rugby referee "opted out of making difficult decisions" when it came to dealing with players fighting on the pitch. "He earns a match fee and should have had the courage to send them off, but bottled out," the report adds. Where's the legal danger?