

Introduction

Welcome to *Media Law for Journalists*, which provides an opportunity for those studying journalism or already working in the media to understand the English and Welsh, Scottish, Northern Irish and EU legal systems. The text is a new and completely revised edition of an earlier text focusing on challenges such as social media, fake news, the dangers of online libel (defamation), data protection (GDPR) and invasion of privacy.

The book is intended to provide the reader with two things: first, a detailed introduction to the subject matter and an explanation of what to expect when studying for a journalism, media or communication qualification and, second, a comprehensive revision and reference guide to the main issues in contemporary legal journalism, with plenty of case studies and references to legal and regulatory sources. Today, journalism is a highly qualified occupation, requiring a high level of education and training. National data sources suggest that 87 per cent have a degree or a higher-level qualification, compared with 43 per cent of all those employed in the UK (NCTJ 2018). *Media Law for Journalists* is intended first and foremost as a course textbook to supplement lectures in practical journalism and assist practitioners who are working in the UK from other jurisdictions. It should save you time when revising for exams or preparing assessed coursework, such as the diploma assessed by the National Council for the Training of Journalists (NCTJ) and the Broadcast Journalism Training Council (BJTC).

This book provides you with a comprehensive guide to the commonly taught media, journalism and communication curriculums in England, Wales and Scotland. It is based on the author's own practical experience of teaching law on journalism courses, in conjunction with practical guidelines and advice from a number of UK journalists and practitioners, such as the former editor-in-chief of BBC News Online, Mike Smartt, the former Reuters Bureau Chief, Tom Thomson, and a number of close journalist and media lawyer friends in the industry, such as Mark Stephens CBE and IP Barrister Fiona Clark.

The key to success in your study of law on a journalism course is to learn how to think like a media law specialist. In short, think theoretically, analytically and like a lawyer. This book advises you on how to learn to speak and write using the correct journalists' language when studying or applying your skills. In other words, how to stay on the right side of the law when working as a journalist. The aim of *Media Law for Journalists* is to help you pass the necessary exams and diploma assessments. Most importantly, it should keep you out of jail when court reporting or reporting on individuals or events. It should be used as a main

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course textbook and can assist course teachers with their lecture and seminar notes. If you are a new undergraduate journalism or media student, you will, no doubt, have a compulsory law module as part of your course. All law core curriculum topic areas are covered and up to date at the time of going to print. That said, *Media Law for Journalists* is useful at every level of journalism study – including postgraduate study – and covers professional examinations, such as those run by the NCTJ and BJTC. Core curriculum topics, such as privacy and freedom of expression, contempt of court and defamation and basic copyright law are provided in the contents outline. The text is so structured that you can drop in on themes and make connections to practical work situations. You can use this book to give you a quick overview before starting your journalism course, or familiarise yourself with English, Scottish and Northern Irish jurisdictions before beginning work on, say, an English, Welsh, Scottish or Northern Irish newspaper and their online editions or a local radio station. The book can also be used for reference throughout your course and as a practical legal guide throughout your professional career.

The book's format has been developed with these assessment criteria and learning needs of journalism students. The book is assisted by visual learning symbols and learning charts, tailored to the needs of your core curriculum in all commonly taught curriculums. The author and publishers have consulted practitioners and teaching experts in the journalism field and with their feedback the wealth and knowledge has shaped the book's visual format and content. Each chapter contains within it the following features:

- **Introduction to the topic** – the key purposes and core areas of the law
- **Curriculum**
- **Learning outcomes** – revision objectives an examiner can expect from you
- **'Tip' boxes** – summarising key information, handling the information in exams
- **Illustrative diagrams** – to facilitate the understanding of concepts and interrelationships within key topics
- **Aim higher and common pitfalls** – assessment-focused sections which show students how to get the best marks and avoid common mistakes
- **Key case boxes** – some landmark cases are highlighted in text boxes and summarised at the end of each chapter for ease of reference. The facts, legal principle (precedent) and application for each case are presented to help students understand how these cases are used in legal problems and to support your legal argument
- **Adjudications and decisions** – from regulators, such as Ofcom, IPSO and IMPRESS
- **Questions and tasks** – these are sample exam questions where you are asked to put into practice what you have learned by way of exam questions
- **Taking it further** – suggestions for further reading, help students critique current legal and journalistic issues and assists you to gain higher marks in discursive sections of an exam paper or coursework assessment.

The chapters go into the legal core curriculum of the most popular media journalism courses in great detail. They will help you understand the workings of English/ Welsh and Scots law within a practical journalistic setting. What is most important for you as a journalist is to communicate effectively within the permitted legal setting of your profession. Before you start your course or embark on your career in journalism, you should ensure that you have read the syllabus and core curriculum of your course thoroughly and obtained an overall impression of the necessary legal aspects. This book will then help you place emphasis on those areas of law that you find difficult, by way of the 'Tip' and visual features, indicated above.

How to use this book

You can read this book in one of two ways:

- skim read (or speed read):
 - notice the core curriculum topics that form the chapter headings
 - let your eyes skim the page (also called 'diagonal reading')
 - make a note of the 'Tip' text in the form of bullet points to memorise
 - look at the tables and visual charts that summarise topic areas
 - use the index to locate information
 - use the bibliography and endnotes for correct referencing
- slowly and in depth:
 - read each section slowly and carefully
 - read case law in the case precedent boxes, picking up on all principles
 - read with an enquiring mind and make critical notes as you do so
 - tackle some of the recommended questions
 - take regular breaks during this kind of reading.

How should you revise?

A good way to revise, is to first attend to a topic that you do understand, which will leave you on a high note, then return to areas that cause you difficulty – this should be done on another day and the 'Tip' boxes and visual features will help you avoid making unnecessary mistakes.

Common exam and revision questions

At the end of each chapter, you will be given some sample questions. These are based on common journalism syllabuses at universities as well as diploma-type questions commonly used on the NCTJ and BJTC exam papers. Suggested questions and topics are there to help you revise and practise writing answers.

Preparing for a journalism and law exam

This should always include:

- using past papers (including resit papers)
- discussions about relevant issues raised by the exam questions

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- distinguishing between facts and opinions about facts (cite case law)
- taking account of factual information by using primary and secondary reference sources (such as case law, IPSO adjudications, the bibliography).

Learning outcomes

Do not ignore these. Each course at every level of study will present you with ‘learning outcomes’. These are usually mentioned at the beginning of your course handbook or syllabus overview and have been written by the module leader, confirmed and approved by an external examiner for the media law-type module. ‘Learning outcomes’ are elements of reflective practice that are set by your university or course provider in order to ensure successful assessment of student learning. Make a careful list of all the particular learning outcomes for each module or teaching element of your course. No doubt you will be tested on these in your exam or coursework assessment. They summarise what your examiners expect from you in your assessment and exam answers. Make sure they are relevant to each topic area (such as contempt of court).

Taking it further

Each chapter concludes with a ‘Taking it further’ and therein further reading section. This is designed to put the icing on the cake – that is, give you the chance to write a top-class, ‘distinction’-type essay or piece of investigative journalism by undertaking detailed academic research on a given topic. Together with the ‘Aim higher’ boxes and the questions and tasks at the end of each chapter, these features give you guidance on subjects for discussion and are augmented via the bibliography and internet sources listed in the book. Together with the case and statute law, selected bibliography and glossary of legal terms, these sections provide you with the means to advance your legal knowledge and become truly excellent professionals.

Additional resources

The text also includes a glossary of legal terms, a bibliography for source referencing, tables of cases and statutes and useful internet sources. The bibliography and useful internet websites assist you with additional reading, up-to-date sources and contact points in the global world of journalism. *Media Law for Journalists* has concentrated on the legal areas you are most likely to encounter as a journalist working in the UK and the EU. One word of warning: the study of law and its inherent disciplines, such as legal skills, research and ethical understanding, are unlike any other study you may have encountered up to now as a student or media practitioner. Therefore, you may wish to use the legal databases LexisNexis or Westlaw (paid-for, subscription services) or BAILII (British and Irish Legal Information Institute) to find out more about case law, relevant statutes (Acts of Parliament or legislation) and current legal issues.

Thinking like a media law specialist

What does ‘thinking like a media law specialist’ mean? It means being able to understand what is going on in court and the legal world and then communicating it effectively and

accurately to the readers of your publication or broadcast. While the UK Supreme Court now issues press summaries with every major judgment, all other lower courts do not provide this facility; reporting on any legal issue must be factually accurate and contemporaneous. After you have studied this book in detail in conjunction with your course syllabus you should be able to identify and interpret the legal language and separate it from everyday discourse and colloquialisms. The chapters that follow provide you with the legal core curriculum required on most media, communication and journalism courses.

Chapter 1 introduces you to the legal systems of England and Wales, Scotland, Northern Ireland and the European Union. As English law is based on case law (also known as common law), learning about at least some of the leading cases is essential. For this reason, some of the most important cases and their precedent (legal principle) have been summarised in this book. Even though the UK is in the process of exiting the European Union (EU) – also known as Brexit – you will still need to have some knowledge of EU institutions, how EU law was supreme over UK law and the way the Court of Justice of the European Union (CJEU) has shaped British case law since 1972. The chapter explains the difference between civil and criminal courts in England and Wales and the main differences in the devolved jurisdictions will be highlighted (Scotland and Northern Ireland).

Chapter 2 deals with human rights legislation. Human rights issues and law permeate every area of public life and every area of law, public and private. The main focus in this text will be on Art. 10 of the European Convention on Human Rights (ECHR) ('freedom of expression') and Art. 8 ECHR ('right to privacy'). Closely linked to freedom of expression is media freedom. The chapter centres on the important issue of human rights and fundamental freedoms enshrined in Convention and the UK Human Rights Act 1998 (HRA). It is therefore imperative that you distinguish between the European Court of Human Rights in Strasbourg (ECtHR) and the Court of Justice of the European Union in Luxembourg (CJEU). Britain is unique in that it has no written or codified constitution – unlike other democracies such as the USA, Spain, Germany, Greece and so on. The nearest we have come to enshrining fundamental human rights in UK legislation has been the HRA. We will be concentrating on case law post October 2000 whereafter the HRA 1998 came into force relevant to journalism.

Chapter 3 focuses in detail on the law of defamation and changes brought about by the Defamation Act 2013 in England and Wales. It is intended that this chapter informs you about the dangers of a slander or libel action, particularly acute in online publications. Scotland and Northern Ireland have not – as yet – incorporated the 2013 legislation into their jurisdictions and continue to rely on the common law (case law). For this reason, the chapter contains a number of existing old common law cases. It will be argued that 'libel tourism' by foreign litigants has decreased – at least in the English courts – since claimants now have to prove the 'serious harm' threshold test.

Chapter 4 deals with court reporting; another important area of law – other than defamation and contempt – which every journalist working in the UK should pay attention to. Administration of justice in Britain is carried out in public – known as the 'open justice' principle. The journalist has a vital role in this in his or her court reporting to the public who cannot always attend each court hearing. Journalists need to understand that this process is often far from straightforward. There are many legal rules that affect and often constrain the way court hearings can be reported, laid down by a number of statutes. Failure to follow the law here can land you and your media organisation in trouble and – in the most extreme cases – in prison. There will be situations when names and addresses of defendants in criminal proceedings are withheld from the public, and reporting restrictions may be imposed to prevent or postpone any publication of proceedings. This means in addition to statutes there is plenty of case law in this area. It is therefore imperative that every trainee or foreign

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journalist should visit the various courts mentioned at least once since court reporting is different to any other form of reporting. Chapter 4 focuses inter alia on the reporting on children and juveniles and how the anonymity of a young person under the age of 18 must be adhered to by law.

Chapter 5 guides you through the legal obstacle course of ‘contempt of court’, peculiar to the British legal system. The Contempt of Court Act 1981 covers all jurisdictions of the United Kingdom and must be strictly adhered to by journalists. This is known as ‘strict liability contempt’. The statute raises important issues of what can and cannot be reported during criminal proceedings, for example, when a case is ‘active’ (also known as *sub judice*). At the end of this chapter you should be able to recognize the common pitfalls when following a story – as highlighted by some examples, such as the reporting on the ‘Yorkshire Ripper’ (Peter Sutcliffe) during the late 1970s and early 1980s.

Chapter 6 looks at the changing landscape in relation to data protection and the impact of the General Data Protection Regulation (GDPR) on your personal and journalistic practices. The GDPR which is a piece of European legislation has been incorporated into the UK Data Protection Act 2018. We will look at the complexities of recent CJEU case law on the ‘right to be forgotten’ whereby individuals can now ask search engines, such as Google, to have their details ‘delinked’ or ‘delisted’ as the *Google Spain* case demonstrated. The chapter also focusses on one of the most important and useful pieces of legislation for a journalist: The Freedom of Information Act 2000 (FOIA). This provision enables you to access all kinds of public information by way of a ‘subject access request’ (SAR). A number of legal challenges will be highlighted when such request was refused, such as *The Guardian’s* Rob Evans’ repeated FOIA requests to gain sight of the Prince of Wales, Prince Charles’ letters to and communication with government ministers. The chapter closes with the controversial topic of journalistic sources and practices, questioning whether such sources should be disclosed to the courts when requested to do so.

Chapter 7 looks at the impartiality of the media, the responsibility of editors and operators of websites and whether online news publications can or should be regulated. We look at the increase of digital online hate speech in form of blogging, trolling, harassment and sexting – most of which is against the law and various EU parliaments have by now passed legislation in this field. It is a fact that young people now get their news almost entirely on social media which in turn is almost entirely visual. It is important then that journalists understand how news is packaged – for example, filtered through humour or comment, possibly mediated by personalities who command enormous followings among young people but are little known amongst the older generation. Examples include YouTuber Ben Shapiro, a US conservative controversialist who, aged 17, had 876,000 subscribers; or Germany’s Rezo with 1.16 m subscribers who went viral with a rant against old and rich people and particularly the Christian Democratic Union, the party of Angela Merkel; or Felipe Neto, a Brazilian YouTuber (35 m) who earned 30 m reais in 2019 (\$7.5 m), started out telling jokes to adolescents but has evolved into a fierce critic of Jair Bolsonaro, the president. In September he made headlines for distributing 14,000 gay-friendly books at Rio de Janeiro’s book fair after the city’s evangelical mayor censored a graphic novel that featured a gay hero. It is important then to be aware that teenagers obtain their news from other young people who largely express their personal opinions and are barely any better informed than themselves. The section on ‘fake news’ examines the difference between comment, conjecture, fact or fiction, and what questions the boundaries of a free press? Coupled with citizen journalism and increasing public debate via social media, it is difficult to discern what is deliberate misinformation (for advertising, commercial or political reasons) and what amounts to ‘the truth’ in media reporting.

Chapter 8 explains the functions and complexities of regulators in the press and communication industries. The practicalities of statutory and self-regulatory organisations will be explained and the recommendations and implications of the Leveson Inquiry in relation to press regulation will be highlighted. Present regulation via IPSO and IMPRESS and their respective editors' codes of journalistic conduct are one of the central features of this book, together with broadcasting regulations and the increasing importance of Ofcom. There follow case studies in the form of adjudications and decisions by these regulatory bodies which will assist you with practical guidelines in your journalistic writing and future career. The chapter closes with a look at advertising regulations and standards and how elections and party political broadcasts are regulated in the world of social media today.

Chapter 9 offers you a brief introduction and overview of intellectual property (IP) legislation, with 'copyright' being the main focus. Some knowledge of IP law will help you protect your own original pieces of work, such as photography; though you will also learn that 'news' cannot be copyright protected and there are difficult issues relating to online publications and the use of hyperlinks. As this chapter is not intended for law students per se, it does not go into great legal detail, as IP is a difficult subject that is often left to postgraduate law study. By the end of the chapter, however, you should be aware that copyright is vital to the protection of a journalist's, photographer's or author's work. You should certainly know by the end of it what 'passing off' and breach of copyright means.

As professional media lawyers (from the BBC, Reuters, the Scottish press, the music and entertainment industries etc.) have acted as consultants for this book, you will gain a realistic insight into the fast-moving world of newscasters, journalists and celebrities seeking super injunctions. Finally, it is my aim to enthuse you about law in general and broaden your horizons in terms of policy decisions (such as the outcome of the Leveson Inquiry) and the reality of media and broadcasting issues, such as the regulation of streamed or on-demand services, such as Netflix or Amazon Prime. If there is one thing that I would like to achieve with this book, it is that you become a fully rounded journalist who engages in and benefits from all the learning opportunities available to you on your course and during your career in journalism. I hope that this book will help you achieve that. It is hoped that *Media Law for Journalists* motivates you and builds your confidence in studying this subject and ensures that, when writing about the law, you keep within it. Hopefully, this book will serve you well in your academic study and help you become an excellent journalist. I have made every effort to keep this book up to date, despite legislation and Brexit. You should additionally keep yourself up to date on new legal developments by using the recommended websites given at the end of the book.

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