**The magazine journalist and the law**

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 *(contributor’s biog and chapter abstract at the end)*

If you’re planning a career in magazines, you may not think it is as vitally important to understand media law as those who, say, want to carry out “hard news” investigations, or cover Crown Court trials and council meetings.

But whether you are interested in covering showbusiness gossip, human interest “real life” stories or fashion for a woman’s weekly or monthly such as Grazia or Glamour, or content for a specialist subject for a B2B title such as Nursing Times or Farmers Weekly, you still need a strong working knowledge of the laws which affect all journalists.

Without it, you pose a real danger to your publication – and yourself. Even a simple Tweet or Facebook post could cost your employer thousands in pounds in libel or privacy damages, and you could end up with a criminal record and a hefty fine if you breach certain laws.

Further, many human interest features favoured by consumer magazines also require a strong understanding of the criminal and civil court processes – for instance, can you fully identify a rape victim who wants to tell her story in a woman’s glossy magazine? Can you write about a soap star who is facing trial for assault? And what about revealing someone’s private health problems such as an eating disorder or a battle with alcohol addiction? How about the salacious details of the divorce of a millionaire footballer? And can you simply download someone else’s picture from a celebrity wedding and use it in your magazine?

Knowing the basics of anonymity, libel, copyright and privacy laws should ring alarm bells when a magazine journalist is researching his story and then writing it up and help him avoid running into costly legal situations such as libel or privacy post-publication. (The use of the masculine ‘he’ includes, throughout this chapter, the feminine ‘she’).

When it comes to traditional print publications, experienced sub-editors play a crucial role when it comes to monitoring legally and ethically risky content. They are often the last line of defence in the magazine production process, and will carefully scrutinise every piece of copy, headline, and picture caption for potential legal problems.

The writer, in turn, needs to look carefully at a proof of his subbed copy to ensure that the sub has not introduced any errors which were not there originally or changed its meaning while editing the word count.

Many decisions on questions of law affecting the media (sometimes, whether a story should be published at all if there are concerns about its legal safety) have to be taken hurriedly by senior editorial staff as the magazine nears deadline.

A ﬁnal publish-or-not decision is unlikely to fall to the subeditor or writer alone, but would be referred up through the chief sub to the Editor or even the Publisher, often in consultation with an in-house or freelance media lawyer.

But these days, of course, magazine journalists do not simply supply words for a print publication with time for this process to happen to a weekly, fortnightly or monthly deadline. The job also often involves working for a website and making sure their stories are promoted or told on a variety of social media platforms from Twitter to Facebook, Instagram to Snapchat.

Here, there is no sub, Editor or media lawyer casting a cynical eye over your work. You are self-publishing in an instant. And the crucial thing here is you are indeed still publishing and that means you are subject to the same legal constraints as you would be on a printed page.

So a short 140-character tweet you send needs to be just as legally-safe as a 800-word cover story in the printed magazine. This applies to anything you write on Twitter, Facebook, Instagram et al – and indeed anything you retweet or share.

Think of controversial columnist Kate Hopkins who falsely suggested in a Tweet that food blogger Jack Monroe had defaced a war memorial during an anti-austerity protest in London. In March 2017, Hopkins was ordered to pay Monroe £24,000 libel damages (and that’s without mentioning the six-figure legal costs she also faced).

So which laws affect magazine journalists? This chapter aims to detail some of the laws you are mostly likely to come across during your career, and how to avoid costly and embarrassing mistakes.

**Libel**

Imagine landing in legal hot water for writing something as seemingly innocuous as actress Nicole Kidman's favourite scent being Jo Malone's White Jasmine and Mint perfume.

When the Daily Telegraph published this information (repeated from a press release) in 2007, Ms Kidman sued them and won substantial libel damages. Why? Because she was being paid millions of pounds to be a spokeswoman for Chanel, and claimed the story therefore implied that she was a hypocrite who pocketed Chanel's money while secretly snubbing their fragrances for a rival high-end brand.

Libelling (or defaming) a person is one of the biggest legal risks most journalists face. If you lose a case, it can cost hundreds of thousands of pounds in costs and damages (see Hopkins expensive tweet above), so it must always be at the back of your mind. However it is a civil, not a criminal offence, so you will not get a criminal record or be jailed for this.

In the highly-regarded media law textbook *McNae's Essential Law for Journalists, (p256, 23e)* authors Mark Hanna and Mike Dodd describe libel law as "protecting an individual's personal and professional reputation from unjustified attack." It doesn't matter if this is printed in a magazine, or online, Tweeted, posted on Facebook or published on other social media platforms.

This could be anything from a calling someone a liar, a cheat, a thief, to (as we have seen above) a vandal who defaces war memorials or even wrongly stating an actress uses a certain type of perfume.

Unless you can prove in court, with credible witnesses and preferably documentary proof, that what you've said is substantially true, you are likely to lose your case.

Further, most media organisations would rather avoid the huge costs of going to court in the first place so are likely to reach an agreed out-of-court settlement instead.

Judges, and therefore journalists, use several definitions of libel and they are worth remembering when penning something which is potentially libellous.

Do your words tend to:

a) Expose the person to hatred, ridicule or contempt.

b) Cause the person to be shunned or avoided.

c) Lower the person in the estimation of right-thinking members of society.

d) Disparage the person in his/her business, trade, office or profession.

Note the use of the word TEND – your words only have to tend to do any one of the above to be potentially libellous.

So it is unlikely that you suddenly hated or ridiculed actress Kate Winslet when you read in *Grazia* that she had secretly visited a diet doctor. However, Ms Winslet won substantial libel damages over this story because, if it had been true, she would have deemed a hypocrite as she has often spoken out against Hollywood's obsession with dieting and body image.

The idea that she would publicly criticise dieting then privately visit a diet doctor would, of course, tend to make you think less of her (as per the third definition above).

Since the introduction of the Defamation Act 2013, anyone wanting to sue a magazine for libel has to prove that what was published tended to cause serious harm to their reputation as well as that they must have been identifiable in the piece.

That usually goes without saying if they are named but you can libel someone (or indeed a whole bunch of people) without naming anyone. Think of those “blind” celebrity gossip pieces asking you to guess which boyband member or politician is in rehab for drug addiction.

Since the 2013 reforms, libel cases are rarely heard before a jury. Instead, a high court judge will decide, after hearing evidence from both sides, if the material is defamatory and will decide on the level of damages if the material is deemed libellous.

Mistake no defence

It is no defence to argue that the defamatory words were published by mistake. The law is concerned with what was in fact published and the meaning which it might convey to a reader, not with what the journalist intended to publish or the meaning which he intended to convey.

Nor is it a defence that you are reporting a mere rumour, even if you say that it is untrue.

Inferences and innuendoes

Double meanings can be very costly too. If you say a politician’s speech was slurred in a Parliamentary meeting, for instance, that could be taken to mean he was drunk while at work.

Often the ‘other meaning’ can arise through circumstances unknown to the journalist but known to other people. In 1928 the Daily Mirror published a picture and caption of a couple who had just announced their ‘engagement’. Unknown to the newspaper and the ‘ﬁancée’, the man was already married. His wife was awarded damages. In order to marry lawfully, he could not be married already. So people who knew that he and his wife had lived together would conclude that they must have been cohabiting outside wedlock. That would seriously harm your reputation back in those days.

An inference is a meaning which anyone could draw, even without any special knowledge. An example is a case in 1945 when a newspaper reported that a bomb-damaged house belonging to a councillor had been repaired by the local council to a better standard than the house next door which had been equally damaged but whose owner was not a councillor. This was factually correct, but the newspaper could not prove the likely inference to be drawn from that fact– that the councillor had pulled strings to secure preferential treatment for himself.

‘Referring’ to the claimant

Don’t think you are safe from legal action if you take someone’s name out of a story – in fact you can make it 10 times worse, as you’ll see below.

Defamation is concerned with damage to a person’s reputation – that is, what other people think of him. The words of which he complains must therefore be reasonably capable of being understood (if by only a few people or perhaps by only one) to refer to him, or to a small group (e.g. a board of directors) to which he belongs. To publish, for instance, that ‘all lawyers are thieves’ would not enable any of the thousands of lawyers in Britain to sue for libel unless there were something in the story which specifically pointed towards them.

However, when a woman was stated to have been sexually assaulted ‘by a detective from Banbury CID’, all ten male ofﬁcers in Banbury CID successfully sued for libel damages.

You cannot libel a local authority, but a disparaging story about a council may well reﬂect on identiﬁable members or ofﬁcers.

Referring with insufﬁcient particularity to an offender – in one classic case, bigamist ‘Harold Newstead, 30-year-old Camberwell man’ – was an invitation to all the other Harold Newsteads in Camberwell who were aged about thirty to sue the Daily Express for libel. One did!

Publication

The defamatory words must have been communicated to at least one person other than the claimant. In media cases there can be no difﬁculty in proving publication, but some points must be borne in mind.

Every repetition is a fresh publication. Where a story appears in several different magazines – as when it is supplied by a press agency – each of those publications can be sued, as can the agency.

There is a common misconception that, once a story has been broken it somehow becomes common property and is therefore fair game for everyone. So, for example, if a newspaper story is published saying that a married soap star has been having an affair with another member of the cast, the fact that the soap star does not appear to have taken or threatened any action against the publication which broke the story does not mean the story is true or safe to publish or comment on in your magazine.

He may be wary of taking on a powerful national newspaper because he knows that he would have a costly ﬁght on his hands. However, he may more readily sue a smaller publication because he knows that the high costs of ﬁghting a libel action might persuade the magazine’s publishers to settle out of court.

There is a one-year limitation period. A claimant for libel must commence his action within one year of publication. So, although a defamatory story may have escaped through lapse of time, a journalist must be careful not to repeat the allegation, otherwise the twelve-month period will begin all over again.

**Libel defences**

Fortunately, there are several defences against libel which journalists can use. The most important ones are truth, honest opinion and privilege.

Truth

Truth is a complete defence to libel – but you need to prove, with evidence and credible witnesses, that your words are substantially true “on the balance of probabilities.”

The most famous case of this was when EastEnders actress Gillian Taylforth sued The Sun newspaper over a story claiming she performed oral sex on her fiancé in a car on a motorway layby and was caught by police. Ms Taylforth sued, saying she was simply rubbing her partner’s stomach as he suffered from stomach problems. The Sun’s lawyers, however, managed to persuade the police officer who attended the incident to give evidence on their behalf – and they won the case.

The full ‘sting’ of the words must be proved. Thus it is dangerous to call a person a ‘thief’ on the basis of only one previous conviction for theft. ‘Thief’ implies that he steals habitually.

If a story consists of more than one allegation and not all are proved to be true, the truth defence will not fail if, in view of the most serious one which is proved, no real harm is done by the others.

When using the truth defence, the magazine bears the burden of proof. If the defence depends on the evidence of a star witness, what happens if that witness dies before the case comes to trial? A journalist should always preserve carefully his tape recordings of interviews, notebooks and other evidence. But what happens if important exhibits become lost, or the judge rules them to be inadmissible?

The claimant in a libel action is often rich and powerful. If truth is pleaded unsuccessfully, damages are likely to be even higher.

Honest opinion

Many journalism students wrongly believe that inserting the words “I think,” “in my opinion” or “allegedly” into their copy is protection against libel. It isn’t.

What the honest opinion defence protects is genuine comment and opinion pieces, not factual news or features.

It is an incredibly useful defence for magazine columnists who want to take a strong view on current affairs or for reviews of anything from beauty products to cars or movies.

The requirements of this defence are that the opinion pieces must be the critic’s “honestly-held opinion” as well as clearly recognizable to the reader as opinion and “based on a provably true fact.”

So, yes, you can slate a moisturizer that gives you a rash (if it did) or completely condemn a judge as a disgrace for letting a serial burglar walk free from court (if he did). If you want to trash a terrible movie, give specific details of why it is bad, rather than just saying the actor is awful in general (that may still be libellous, rather than that he was awful in this particular film).

Privilege

The law accepts that there are occasions when journalists, in reporting matters on which the public have a right to be informed, need protection from libel claims, provided that they produce fair and accurate reports.

There are two defences here – absolute privilege and qualified privilege.

Journalists covering court cases in any UK or international court (whether magistrates, crown, coroners or civil court) cannot be successfully sued for anything libellous they report from those proceedings if their copy is fair, accurate and published contemporaneously (that means as soon as practically possible after it was said in court – whether that day, the next day or the next week depending on your publication’s next deadline).

If not published contemporaneously the protection is qualiﬁed privilege (that is, it is protected if it is a matter of public interest, reported fairly and accurately and not shown to have been published with malice).

Qualiﬁed privilege is a very useful libel defence as it also protects reports of various press conferences, council meetings and ofﬁcial statements released by authorities and companies.

In most cases, the magazine will lose his protection if it does not publish, at the request of a person who has been criticised, a “reasonable letter or statement by way of explanation or contradiction.” To be clear, this is NOT an apology, but an opportunity for the aggrieved person to have a right of reply and put their side of the argument, whether through a follow-up story or a letter in the magazine.

Consent to publication

There is a general legal rule that he who consents to a wrong cannot afterwards complain about it. If a Grammy-winning singer releases a press statement to deny a rumour that she has been cheating on her husband, she obviously consents to publication of the defamatory rumour together with her denial of it. If a damaging allegation is to be published – for example, against a company – it is important to ensure that any consent to publication comes from a person who has authority to speak on the company’s behalf.

It is important that there is a categorical consent. A mere ‘no comment’ will not sufﬁce. If possible, tape record it or get it in writing.

Offer of amends

Sometimes there are cases of unintentional libel.

In these cases, a magazine can make an offer to publish, in an appropriate position, a suitable correction and apology, to pay the complainant’s costs and, possibly, to pay a suitable sum by way of damages, and that will be seen as resolving the problem.

If the offer is not accepted the publisher may rely on it as his defence against any future libel claim and it will succeed if the court considers that it was adequate.

Corrections and apologies

Here the magazine must tread carefully between being too profuse or inadequate. The correction should remove the full sting of the libel, but do no more. It is easy to escape from one libel and commit another.

Unless published with the consent of the complainant, a correction will not absolve the publication from action for libel, and may well give the complainant more ammunition. It is always best to seek professional legal advice first.

Death

You cannot libel the dead. While it may be seen as distasteful to trash the reputation of a dead person, you cannot be sued by his next of kin or estate. If someone suing you for libel dies before the case comes to court, the action dies with him.

**Slander**

While words have to be published (whether on social media, online or in print, or indeed broadcast on TV or radio) to be libellous, spoken defamatory words are called slanderous.

Slander concerns transitory words so rarely is a problem for journalists. However, a magazine writer needs to take care how he phrases his interview questions, and to whom he addresses them, when investigating a person’s alleged misconduct. Otherwise the subject of his investigation may well sue for slander.

**Malicious falsehood**

Much rarer than libel, this consists of an untrue, albeit not defamatory, story of a kind likely to cause ﬁnancial loss (e.g. that a business is to close down). Publication will be deemed to be ‘malicious’ if the reporter does not check it out before publication.

**Privacy**

Privacy is the fastest growing area of media law and becoming the most troublesome for journalists.

Even if you can prove your story is true (and therefore avoid libel claims) you can still be sued for substantial damages for invading someone’s right to privacy.

Further, if someone knows in advance of publication that you are planning to publish something “private” about them, they can seek to obtain an injunction to prevent you publishing it in the first place.

Until 2000, there was no privacy law in Britain. But since then, UK courts can award substantial damages if you are successfully sued for invading someone's privacy, either by writing something about their private life, publishing a photo taken in a private place or revealing something they would rather was kept secret.

This is because, since the turn of the millennium, the European Convention on Human Rights (ECHR) became ingrained in UK law. Part of the ECHR is Article 8 which says everyone has "the right to respect for his private and family life, his home and his correspondence."

Judges, and therefore journalists, balance this important right to privacy with the often-conflicting Article 10 which gives everyone (including, crucially, journalists) a right to freedom of expression - ie the right to speak our minds and, as journalists, write what we want, within the boundaries of existing laws.

The difference between privacy and libel is that the person using Article 8 to suppress a story or sue for damages is not denying the story is true, just that they don't want that particular story or photograph published, or compensation if it already has been.

In recent years, it has mostly been celebrities, sports stars and public figures such as bankers and politicians who have used privacy laws to stop publication (via a court-imposed injunction) or to sue for damages post-publication.

And just because someone seems to regularly invade their own privacy – perhaps by selling their wedding and baby pictures to glossy magazines, appearing on their own TV reality show, writing an autobiography or endlessly posing on the red carpet - doesn't mean they have sacrificed every right to a private life away from the cameras.

The key test is whether a person has a reasonable expectation of privacy in that particular scenario. This is why no British magazine or newspaper printed the photographs of the Duchess of Cambridge sunbathing topless in the grounds of a private villa. Should she have stripped off on Blackpool beach, where she should and could not expect privacy, the pictures would probably have appeared on every front page!

Equally, revealing something private about someone's life is just as risky. Judges take invasion into the privacy of children and of someone's health (and that includes pregnancies and addictions) particularly seriously and you could expect to pay substantial damages if successfully sued.

Famously, Harry Potter author JK Rowling and singer Paul Weller have

both taken legal action to protect their children’s privacy. Other famous names have successfully gained injunctions to prevent revelations about their private lives being exposed in the press.

Remember to ask yourself: "Would I reasonably expect privacy in that situation?" If the answer is yes, seek legal advice.

Famously, supermodel Naomi Campbell won damages when *the Daily Mirror* revealed she was undergoing treatment for cocaine addiction. A court ruled the paper had invaded Ms Campbell's privacy by publishing a photo of her taken in public outside a Narcotics Anonymous meeting, a place where she should have enjoyed a reasonable expectation of privacy.

However, the judges believed *the Mirror* WAS right to tell its readers the bare details about the model's treatment as she had consistently given interviews insisting she had never abused drugs.

This is an important argument used by journalists for invading someone's privacy if the story is in the public interest.

The phrase "public interest" does not simply mean the story is interesting to the public, but that it serves some public good like exposing crime or, in the Campbell case, exposing a public figure who has misled her fans.

The then*-Mirror* Editor, Piers Morgan, was outraged at the case, which left his paper with more than £1 million legal costs and famously said outside court: "This is a very good day for lying drug-abusing prima donnas who want to have their cake with the media, and the right to then shamelessly guzzle it with their Cristal champagne."

A journalist can always try to defend a privacy claim by saying that people who are role models (such as pop stars, models, footballers, politicians) should be exposed if they lie to or deceive the public or, in legalese, that the media have the right to "correct a misleading image."

This does not mean you can write anything you like about role models. They still have a right to privacy unless they are misbehaving or lying.

Don’t forget, “ordinary” people too have a right to privacy and may well sue. For instance, if you publish a photo (without permission) of someone receiving medical treatment on the ground after a road traffic accident.

**Copyright**

As the saying goes, a picture tells a thousand words. Magazines, both printed and online, rely on their journalists having an eye for visuals and every story is accompanied by appealing relevant images. Selecting appropriate eye-catching photos will be an important part of the job, and images are often used to promote stories via social media such as Instagram and Twitter.

An untrained journalist might think this is easy and that it’s acceptable to just search Google images, find a lovely picture and download it. This is where you would run into copyright problems.

The Copyright, Designs and Patents Act 1988 protects people’s work from being re-used without permission, and often without a fee too. This applies to photographs and videos, but also all sorts of other work such as other people’s interviews, music lyrics, sketches, maps and speeches.

If you do just “lift” someone else’s work, they can sue you through the civil courts for damages and in some exceptional cases the courts can order your magazine is pulled from the shelves and pulped.

The crucial issue here is identifying who is the “author” of that work (ie the photographer, the songwriter, the mapmaker) and seeking their written permission to republish it in your magazine. You will often see on Twitter, for example, a member of the public has posted a newsworthy image from a big news event such as a terrorist attack or a plane crash. They will then be asked on Twitter by newspapers, TV stations and others for permission to use their photo, often with a name credit.

Copyright lasts for seventy years from the end of the year of the author’s death. If the author is not ascertainable, or if the copyright belongs to a corporation (as in the case of most newspaper and magazine articles), copyright runs for seventy years from the end of the year of publication.

Sometimes, you also have to consider the “moral rights” of the person who commissioned the photograph. Say, for instance, you want to publish an old wedding photo of a bride who has now tragically died, you would need to secure the permission of the author (ie the professional wedding photographer) and that of whoever hired them (traditionally, the bride’s parents or more often the couple themselves these days).

A common misconception is you need the permission of the people pictured in the image – this is not the case when it comes to copyright but you may run into privacy issues!

A journalist who “lifts” a story from another publication will no doubt ‘rejig’ it in the hope of disguising his misdemeanour. He may fail, however, if the original story contains an error which the rewritten version repeats. And, in any event, one can usually recognise one’s own story, whatever efforts have been made to disguise it.

Don’t confuse a ‘lifting’ with a ‘follow-up’. You can always follow up a rival’s story, unearthing your own material. A judge once said that there is no copyright in news, but there may be a copyright in the way in which it is presented.

If you are working online and quoting from another publication’s interview, it would be good practice to also insert a hyperlink to the original story as well as name-checking them in relation to the exclusive quotes.

Fair dealing defence

There are occasions when it is permissible, to a limited extent, to quote from a copyright literary work, or even to reproduce a copyright artistic work, with acknowledgement.

1. When criticising or reviewing. What would be ‘fair dealing’ for this purpose has never been judicially quantiﬁed. When reviewing a book a critic may quote from it for the purpose of making his point. It may not be so much a question of how many words as which words he quotes. If, for instance, in reviewing a thriller, he were to give the game away, this would exceed fair dealing.

2. Reporting current events. It is permissible to quote from a copyright work where the words relate to a current event – again, within limits. For instance, if a cabinet minister sent a letter of resignation to the Prime Minister, a quotation from the letter setting out his reasons for resigning would be likely to be protected as fair dealing.

However, there is NO fair dealing defence when it comes to still images.

Spoken words

Copyright in a report of spoken words belongs to the ﬁrst person to put them in writing unless the speaker reserved copyright in his speech before making it. But, as fair dealing permits limited inclusion of copyright material for reporting current events, to this extent a reporter could report the speaker’s words despite his reservation of copyright.

Public interest

There is a very limited public interest defence to copyright, and this does include still images.

For example, if the police give you a picture of a missing child to help trace them, you would not reasonably be expected to track down the photographer.

**Breach of confidence**

McNae’s (p320) outlines confidence law as being based “upon the principle that a person who has been given information in confidence should not take unfair advantage of it.”

This covers situations such as whistleblowers leaking secret documents to the press or celebrities’ friends, ex-lovers or staff revealing salacious or newsworthy secrets to journalists.

Sometimes an injunction may be granted against, say, a ‘kiss-and-tell’ ex-lover telling their story.

Basically, the court will decide on a case by case basis:

Is the material conﬁdential in its nature?

Would disclosure be likely to damage the legitimate interests of the claimant?

Was it communicated in breach of conﬁdence?

If the answer to each of these questions is ‘yes’ an injunction is likely to be granted.

Any injunction issued doesn’t just apply to the one media organization, but to everyone.

However, there is a public interest defence to publishing confidential information. This was used by the Daily Express in 1984 when they published a secret internal memo, leaked from a firm making breathlyser equipment used by police forces across the country, that revealed the kit was not giving accurate results.

A-list couple David and Victoria Beckham failed to obtain an injunction against the News of the World in 2005 when their former nanny wanted to tell of “blazing rows” between the couple. The newspaper argued the story was in the public interest as it corrected a false image of their marriage.

**The courts**

Few magazine journalists report on ongoing court cases and tribunals, although some may need to do so for specialist magazines such as Private Eye or the New Statesman, or B2B titles.

But court cases are a rich source of stories for most magazine writers in terms of opinion pieces, follow-up in-depth human interest interviews (say, a victim of an assault or a relative of a murder victim) or analytical news features after the case. And any cases involving celebrities, sports stars and high profile figures also provide excellent copy.

Therefore, it is essential to have a good insight into the different types of law, how courts work and crucially the laws covering anonymity for certain people, and potentially prejudicial material.

**The difference between civil and criminal law**

Criminal law is concerned with wrongs against the sovereign: anything from speeding to murder. That’s why cases are always called R v surname (R stands for Regina or Rex, ie the reigning monarch). There are a range of penalties including fines, community service or imprisonment for the most serious crimes.

Civil law, meanwhile, is concerned with disputes between people, or organisations. A civil case may involve trying to get compensation (known as ‘damages’) for medical negligence, for instance, after a botched surgery, or to restrain one person from, for example, assaulting or pestering another, or, another common example, to get a divorce.

A person may ﬁnd himself in trouble with both the civil and criminal law over the same incident. A motorist who causes a traffic accident may be both prosecuted in a criminal court for careless driving and sued for damages in a civil court for any injury he caused to another party.

**The criminal courts in England and Wales**

Magistrates’ courts

All criminal cases start life in a magistrates’ court, and around 95% stay there and are dealt with there.

Most benches of magistrates, when trying a case, consist of at least two (more commonly three) magistrates. Most are not legally qualiﬁed, and are unpaid except for travel and subsistence. They are guided on the law and sentencing guideline by a legal adviser. Some courts, especially in large cities, are presided over by district judges (previously called stipendiary magistrates). These are experienced barristers or solicitors who sit as professional magistrates. They are paid a salary and sit alone to try cases.

There are three types of criminal offences:

Summary offences

These are cases which must be tried by magistrates. They are generally the least serious such as speeding or common assault. Some defendants plead guilty and are sentenced, others deny the charge(s) against them and there is a summary trial, after which the magistrates decide if they are guilty or innocent, and sentence those convicted.

Either-way offences

These sort of cases can either be tried by magistrates or sent up to the Crown Court to be tried by a jury, either because the magistrates decide the alleged crime is too serious for them to deal with, or because the defendant chooses to have a trial by his own peers. Theft is an example of this.

Indictable-only offences

These are the most serious crimes which must be dealt with in the Crown Court, where a jury decides after a trial if someone is guilty or not guilty, and a judge sentences those convicted. Murder and rape are examples here.

Crown Courts

The main Crown Courts, such as the famous Old Bailey in London and those in most major towns and cities across England and Wales, try the most serious cases, such as murder, before the more senior judges (usually High Court judges). Others, presided over by circuit judges, recorders or assistant recorders, try lesser offences.

If the accused pleads not guilty, he will be tried by a jury of 12 ordinary people. Both the prosecution and defence barristers will call witnesses who will give evidence and answer questions from both sides before the judge advises the jury on the law and sends them off to decide on their verdict(s). The standard of proof needed to convict someone is “beyond reasonable doubt.”

If the jury of 12 cannot reach a unanimous verdict then a majority verdict, of usually 11-1 or 10-2, may be accepted after at least two hours and ten minutes of deliberations.

If they acquit the defendant (find him not guilty), he is freed. If they convict (find him guilty), the judge will either sentence the accused there and then, or at a later date if he needs more time and possible reports from experts before deciding on his sentence.

**The main differences between English and Scots law**

To be supplied by another contributor

**Civil courts in England and Wales**

County courts

This is where most civil disputes are handed from insolvency and bankruptcy cases, divorce, debt recovery, and child custody arrangements.

The High Court

The High Court consists of three Divisions whose role is, to a great extent, similar to that of the county courts, but on a larger scale.

The Queen’s Bench Division often awards huge damages in cases such as medical negligence and libel.

The Chancery Division deals with cases not involving monetary damages –things like property rights, tax law, probate, trust funds, and intellectual property.

The Family Division hears some extremely sensitive cases, perhaps involving

parents arguing over child custody, local authorities seeking to take vulnerable children into care, or adoption cases. These courts are covered by a myriad of laws which severely restrict a journalist’s ability to report on them.

Coroners’ Courts

Inquests are inquiries into deaths, either suspicious ones or others that are not simply due to natural causes.

The inquest is held to decide the identity of the deceased, and how, where and when he died. They are open to the public and Coroners Rules say journalists can only be excluded on the grounds of national security. In the cases of suicides, notes left behind by the deceased are rarely read out.

Inquests are also held, rarely, to decide whether any ancient gold or silver, which has been buried for decades or centuries and then unearthed, is to be ruled as ‘treasure’ and offered to museums as a historically-important find.

Tribunals

The tribunals most commonly covered by journalists are employment tribunals which deal with, among other matters, cases of unfair dismissal, redundancy, and discrimination at work on grounds of race or gender.

Admission to courts

All courts must admit the public unless they have power to exclude them – the principle is open and transparent justice. A court cannot exclude the press and public simply because it thinks that the case should not be reported, or to spare a person embarrassment.

Members of a court cannot hide their identities from the public. However, any court may exclude both public and press if it considers that justice cannot otherwise be served, or if it has power by statute to exclude the public – for instance, a criminal court trying a case under the Ofﬁcial Secrets Acts, or where a witness might be intimidated. In the latter case, one journalist, representing himself and his colleagues, must be allowed in and then share his notes with the others.

In youth courts (where 10-17-year-olds are prosecuted) the press, but not the public, have a right of admission under Section 47 of the Children and Young Persons Act 1933.

In family proceedings the press have a right of admission, but may be excluded during the taking of indecent evidence or when the court is exercising powers under the Children Act 1989 in relation to a child.

Some courts do sit in private, for example when dealing with patents, welfare of children, and cases involving persons of unsound mind.

Admission rights to various kinds of tribunal vary. You must research the appropriate procedural rules for any given tribunal in order to ascertain admission rights.

**Contempt of court**

A person who is involved in a court case, whether criminal or civil, is entitled to a fair trial which will not be inﬂuenced by prejudicial stories in the press, more commonly known as “trial by media.”

The Contempt of Court Act 1981 forbids journalists publishing any material which is likely to cause “a substantial risk of serious prejudice” to court cases that are “active.”

By active, the law means upon an arrest in criminal cases, when an inquest opens, or when a date is set for civil cases, right through the proceedings until they end (and a defendant is sentenced in criminal cases).

This is to stop anything published online or in print, or on social media, prejudicing jurors (or future potential jurors) in their decision-making and to stop witnesses’ evidence being tainted by what they have read.

Breaching this law is a criminal offence. You can be prosecuted in court and jailed for up to two years and / or given an unlimited fine.

GQ magazine fell foul of this law in 2014 when they published a background feature about the British tabloid phone-hacking scandal that seriously risked prejudicing the then ongoing trial of former News of the World executives Rebekah Brooks and Andy Coulson.

The article, headlined “The Court Without A King” implied that Brooks was a “disreputable woman”, and represented an “improper attack” on a defendant during the course of her trial at the Old Bailey, it was said in court. Publishers Conde Nast were fined £10,000.

Photographs can also land you in contempt of court. The Sun and Mail were fined for publishing online a photo of a man posing with a gun at a time when he was on trial for murder.

Anything which implies guilt or bad character risks the Attorney General initiating contempt proceedings against your publication.

Your intention, as a journalist, in publishing the story is irrelevant, though you have a defence if you can show that, having taken all reasonable care, you had no reason to believe that proceedings were ‘active’.

A description, or picture, of the accused in a criminal case may amount to a contempt if a question of identiﬁcation may arise (eg eye-witnesses may need to attend a police identity parade to pick out a defendant). Eye-witness quotes may similarly cause a risk of prejudice.

The risk applies until the accused is acquitted or, if he is convicted, until he is sentenced. However, once a jury has given its verdict it is most unlikely that a background story would inﬂuence the judge when passing sentence.

When the accused has been sentenced proceedings cease to be active until he lodges notice of appeal, if he does so. But again, as an appeal from the Crown Court will be heard by experienced judges in the Court of Appeal, there can be little risk of serious prejudice here.

Criminal proceedings will also cease to be ‘active’ if an arrested person is released without charge (but not if he is released on police bail); if the person named in a warrant is not arrested within twelve months; if a charge is ordered not to be proceeded with; if the accused is found to be unﬁt to plead or to be tried; or if he dies.

It is rare for contempt to arise in respect of civil proceedings, since most civil cases are tried before a judge sitting alone, and the risk of prejudice is therefore minimal. Furthermore, the liberty of the subject is not at stake.

Civil proceedings become ‘active’ when an action is set down for trial (in the High Court) or a date ﬁxed for the trial (in the county court). They continue to be ‘active’ until the case is over, or until it is withdrawn or abandoned.

Defence for general features

There is a Section 5 defence for contempt which protects articles discussing a general matter of public interest at the time a relevant case happens to be “active.”

For instance, you may have prepared and be about to publish an in-depth feature on mercy killing when you discover a man is about to go on trial somewhere in the UK for killing his terminally-ill wife. This should not prevent you running your article, but it would be wise not to mention the active case at all.

**Anonymity issues**

When covering court cases, or follow-up stories, be aware that some people involved in court cases will have been granted automatic or discretionary anonymity in court, and this extends to your subsequent articles.

In short, you need to check particularly when it comes to:

Children under 18 who have been defendants, victims or witnesses in court cases you are going to refer to.

Victims of sexual offences (these range from someone whose drink was spiked with the intent to have sex with them through to grooming, indecent assault and rape)

Blackmail victims.

Some of Britain’s most notorious criminals.

Other circumstances outlined below.

Children

In England and Wales, children only become legally responsible for crimes at the age of 10.

From the age of 10 through to 18, most crimes are dealt with in youth courts (usually inside the magistrates court complexes).

All juveniles appearing at youth court – the accused, victims and witnesses – have automatic anonymity via section 49 of the Children and Young Persons Act 1933 until their 18th birthday.

This means you can’t report (and this includes follow-up magazine stories and opinion pieces) their name, address, school, any still or moving image, or any other detail which would lead to someone identifying them. This is a grey area but imagine an extraordinary detail – eg an identical triplet who once appeared on The Voice: Kids TV talent show.

If someone under 18 appears as a defendant, witness or victim in a Crown Court case, they have no automatic anonymity but the judge usually imposes an order giving them anonymity under Section 45 of the Youth Justice and Criminal Evidence Act 1999. It is basically the same requirements as above.

When it comes to civil cases, a court can order anonymity under section 39 of the Children and Young Persons Act 1933.

It is your responsibility to call the relevant court and check whether an order was made at the time.

For instance, you may be interviewing a woman about her ordeal at the hands of her husband who has now been jailed for assaulting her and her children. Before you blithely go ahead and name those children and publish their pictures, check there isn’t an anonymity order in place.

Breaking these anonymity orders is a criminal offence and, if convicted, your magazine faces an unlimited fine.

Sexual offence victims

From the moment anyone makes a complaint of a sexual offence, ranging from a “minor” indecent assault through to a serious offence such as rape, they have the right to automatic lifetime anonymity, whether or not a case goes to court and whether or not anyone is ever convicted.

You must not publish that victim’s name, address, place of work or educational establishment (a vague occupation such as “nurse” or “teacher” is usually fine, along with age), still or moving image, or any other detail which might lead to their identification by someone reading the article.

Again, you would be breaking the law, specifically The Sexual Offences (Amendment) Act 1992.

Take real care here, as there is also the chance you could make the victim’s ordeal even worse by revealing their identity.

The Sun and the Daily Telegraph were both fined over a photo they published of the teenage victim of England and Sunderland footballer Adam Johnson. When Johnson was jailed for six years for sexual activity with the girl, these papers published a picture of his victim taken from Facebook but thought they were legally-safe by digitally altering the background, the girl’s hair colour and other details. However, some readers recognized the image having seen the original on social media, and this led to her being identified.

If you want to identify, interview and photograph a victim of a sexual offence - you may want to conduct a in-depth human feature interview, for instance - you must get their permission in writing and they must be aged 16 or over.

Other anonymity issues

A court may, under section 11 of the Contempt of Court Act 1981, prohibit the publication of any ‘name or other matter’ in a court case, most often used in cases of blackmail or those involving state secrets and national security. But such an order cannot be made unless the ‘name or other matter’ has been held from the public during the proceedings. The High Court has held that such an order should not be used for suppressing details of an accused person in a criminal case.

A few notorious high-profile criminals who could face reprisals if their new identities were revealed once they had been released from jail have gone to court citing their right to life and won lifetime anonymity orders. Infamously, Jon Venables and Robert Thompson, who aged 10 murdered Liverpool toddler Jamie Bulger, now have new identities and have lifelong anonymity which means the press cannot reveal their new names, where they live, their jobs or any photos of them.

If any of your stories involve these sort of cases, it should ring alarm bells immediately.

Postponement

A court may direct that all, or part, of a court case cannot be reported until some speciﬁed future time, if it considers that immediate publication may prejudice the case in question, or any other connected case which is being heard or shortly to be tried. This is called a Section 4 (2) postponement order under the Contempt of Court Act. The High Court has ruled that such an order must be no more draconian than necessary.

**Journalists’ sources**

Every journalist collects invaluable contacts over his career. And no journalist worth his salt would dream of ever betraying a contact. A reporter may be ordered to reveal his source if, in the opinion of the court, such revelation is necessary in the interests of justice, national security, or for the prevention of disorder or crime.

However, the European Court of Human Rights has ruled that a penalty imposed on Bill Goodwin, a trainee reporter on The Engineer, for refusing to reveal his whistleblower source was in breach of his Article 10 right to freddom of expression, including the right to receive and impart information.

Further, the Editors' Code of Conduct (more on this later) clearly states under Clause 14 that a journalist has a “moral obligation” to protect confidential sources.

**Ofﬁcial secrets**

Since 1911 it has been unlawful to disclose, or attempt to discover, military secrets, and for unauthorised persons to be present for unlawful purposes in prohibited places such as Army and RAF bases and naval dockyards.

Under the Ofﬁcial Secrets Act 1989 it is an offence to make a ‘damaging’ disclosure. This may relate to the strength and/or disposition of troops, aircraft and naval vessels, their equipment, armaments and capabilities (particularly state-of-the-art equipment), the nature and standard of their training and logistics, and to defence strategies. The Act can penalise journalists and their publications, and also Crown servants and government contractors. There is a defence if they can show that they did not know and had no reason to suspect that the disclosure would be ‘damaging’.

If in doubt a journalist should seek guidance from the Ministry of Defence. Such advice would be most desirable when reporting, for example, the embarkation of troops, or the departure of aircraft or ships, for an overseas trouble spot, or before publishing a photograph of a crashed military aircraft. The Defence and Security Media Advisory Committee issues ‘DSMA Notices’ which ask editors to seek the government's advice before publishing articles on speciﬁed topics. It is believed one was issued to prevent the media reporting the fact Prince Harry was serving a four-month tour in Afghanistan, as this would pose a real threat to the prince and also other military personnel.

A ‘damaging disclosure’ may relate also to the police or prison service, if it is of a kind which may facilitate crime or escapes from custody.

**Ethics and good practice**

As well as understanding and applying all these laws, journalists need to bear in mind how they conduct themselves as professionals while going about their job on a daily basis. This is ethics.

Most of the larger magazine groups have signed up to a clear code of conduct which outlines acceptable and unacceptable behaviour ranging from accuracy, giving people the right of reply to harassment.

The Editors' Code of Practice is regulated by the Independent Press Standards Organisation (Ipso) and its 16 clauses give clear guidance on areas such as privacy, harassment, reporting details of suicide methods, children, entering hospitals and others.

If a publication is found to be in breach of the code, Ipso may order it to publish an apology in a prominent position in the magazine (or online) and can in severe cases fine a publication up to £1 million.

Legally, you do NOT have to tell the person on the other end of the phone that you are recording the conversation. You will probably want to record any face-to-face or phone interviews for the sake of accuracy. You must, of course, tell them who you are and who you work for.

A good shorthand note and a recording of any interview should be stored for at least 12 months as good evidence in case you are later sued for libel.

Hopefully, if you are a responsible and accurate journalist, any legal or ethical problems will be rare. Keeping up to date with changes in the law and press regulation will mean any editor will have confidence that you are a legally-safe and ethically-responsible person to employ.

(8,840 words)

**Recommended reading**

Hanna, M & Dodd, M (2016) *McNae's essential law for journalists*. 23rd ed. Oxford University Press.

Quinn, F (2015) *Law for Journalists*. 5th ed. Pearson Education Ltd.

Caddell, C & Johnson, H (2010) *Blackstone's Statutes on Media Law*. 3rd ed. Oxford University Press.

McCormick-Watson, J (1994) *Essential English Legal System.* Cavendish Publishing.

Rozenberg, J (2010) Privacy and the Press. Oxford University Press

**Websites**

BBC

[www.bbc.co.uk/journalism/](http://www.bbc.co.uk/journalism/)

Courts Service

[www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

Courts and tribunals Judiciary

[www.judiciary.gov.uk](http://www.judiciary.gov.uk)

Daily Telegraph law reports

[www.telegraph.co.uk/news/newstopics/lawreports](http://www.telegraph.co.uk/news/newstopics/lawreports)

The Guardian

<http://www.theguardian.com/media/medialaw>

Hold The Front Page

[www.holdthefrontpage.co.uk/category/news/law](http://www.holdthefrontpage.co.uk/category/news/law)

Home Office

[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

Independent Press Standards Organisation

[www.ipso.org.uk](http://www.ipso.org.uk)

The Leveson Inquiry website

[www.levesoninquiry.org.uk](http://www.levesoninquiry.org.uk)

McNae’s latest legal news and updates

[www.mcnaes.com](http://www.mcnaes.com)

Press Gazette

<http://www.pressgazette.co.uk/category/news/media_law/>

You Be The Judge

[www.ybtj.justice.gov.uk](http://www.ybtj.justice.gov.uk)

**Biography**

*Carole Watson is a senior lecturer in media law and programme leader for BA (Hons) fashion journalism at the University of Sunderland. She is also a member of the National Council for the Training of Journalists' media law examinations board. Previously, she was a journalist and executive at the Daily Mirror, Grazia and News of the World.*

**Chapter abstract: (121 words)**

Every magazine journalist needs a strong working knowledge of the laws which may impact on their work. This has never been more vital now that journalists can find themselves falling foul of the law in an instant by publishing material online and to social media platforms as well as the printed publication.

This chapter will give an overview of the key areas of media law including libel, copyright, confidentiality and privacy, all of which could pose costly dangers for your publication if not fully understood.

Further, you will learn the basics of the criminal and civil court system, and how reporting of cases may be restricted in the cases of children, victims of sexual offences and by the law of contempt.

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