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Law and ethics in fashion journalism

It may not seem as important for fashion journalists to grasp media law and ethical codes of conducts as, say, reporters covering Crown Court trials or carrying out news investigations into corruption in high places.

But covering the catwalk or commenting on the hot spring trends can take a fashion writer into dangerous legal and ethical territory which could cause your employer reputational damage or even cost them thousands in pounds in fines or damages.

You may be the best interviewer and writer in the world, with the brightest style ideas, but a good grounding in media law and ethics is essential, particularly in this post-phone hacking and post-Leveson landscape.

Further, you cannot assume, as a fashion journalist, that you may not become involved in breaking news stories with legal and ethical implications - the Kate Moss cocaine allegations, the terrible suicide of Alexander McQueen and the John Galliano anti-Jewish scandal immediately spring to mind.

When the two planes hit New York's Twin Towers on September 11th, 2001, the no-fly zone meant it was impossible for British newspapers and magazines to fly in experienced news reporters to report on the uncovering atrocity.

Instead, they turned to their fashion journalists, already in Manhattan for New York Fashion Week, to roll up their sleeves and pitch in. Some rose to the challenge and worked tirelessly round the clock on the grim news event. Others froze.

A week later, Guardian fashion journalist Charlie Porter wrote an article headlined Catwalk to Carnage, reflecting: "Should I have gone down there when it happened? It is the question that has been troubling me these past days stuck in New York. My hotel is in Gramercy Park, about 50 blocks north of the site of the World Trade Centre. With hindsight, I know that I could have started to report straight away. But at the time it never even crossed my mind. I stayed in my hotel watching the news and not leaving my room until it was over."

Of course, these sort of global news events are thankfully rare. But during your day to day job supplying trend reports, red carpet verdicts, runway reports, there are still legal pitfalls to consider.

Can you say a supermodel looked "off her face on drugs" as she strutted her stuff on the catwalk? Unless you can prove it in court, those five words could cost your employer thousands of pounds in libel damages - and possibly you your job.

What about a scathing verdict on a high street chain's latest womenswear collection? Or, in a round-up of moisturisers, giving one well-known brand zero out of 10, saying it gave you spots? You need to know you can be as critical, bitchy or as negative as you want in opinion and comment pieces without running the risk of a libel writ hitting the Editor's desk.

But how about receiving a gorgeous tissue-wrapped free £1,200 "It" bag, then writing a glowing product review as a thank you to the lovely public relations executive who sent it to you? The Bribery Act 2010, which carries a maximum 10 year jail sentence, is of

growing concern in the fashion industry where journalists are often bombarded with complimentary clothes, accessories, beauty products and other luxury items in the hope of winning favour (and perhaps free editorial mentions).

Or you could do something as innocuous as publishing that actress Nicole Kidman's favourite perfume is Jo Malone's White Jasmine and Mint.

When the Daily Telegraph wrote this seemingly-innocent story in 2007, Ms Kidman sued them and won substantial libel damages. Why? Because she was paid millions of pounds to be a spokeswoman for Chanel, and the inference that she was a hypocrite who took Chanel's money but snubbed their fragrances for a rival high-end brand is indeed defamatory.

Anyone planning a career in fashion journalism should opt for a degree or similar qualification which incorporates media law and ethics, and preferably is accredited to offer the choice of sitting the professional National Council for the Training of Journalists (NCTJ) media law exam.

A large number of glossy magazine editors began their careers on local and national newspapers before moving on to the glossies, and therefore they strongly understand the importance of legal training.

Of course, most major employers have either in-house or contracted media lawyers who cast an eye over the bigger stories before publication. But this is no such safeguard for those journalists who upload their copy directly to a website, tweet on the go, blog, or work as freelancers themselves.

In this multimedia world, you can self-publish in seconds to Twitter, Facebook, Pinterest and the like without any lawyers or senior experienced colleagues as a barrier to costly and embarrassing mistakes.

So this chapter is to give you, at the very least, some warning signs where you may fall foul of the law or ethical codes of conduct as you go about your job.

Libel

Libelling a person, or a company, is one of the biggest worries most journalists face. If you lose a case, it can cost hundreds of thousands, if not millions, of pounds in costs and damages, so it must always be at the back of your mind. However it is not a criminal offence, so you will not get a criminal record or be jailed for this.

In the excellent media law textbook *McNae's Essential Law for Journalists*, (p238) 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 newspaper, magazine, or online, Tweeted, or broadcast on the TV or radio.

This could anything from a calling someone a liar or a thief to, as we have seen, 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 want to avoid the huge costs of going to court in the first place and 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 writing 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.

What you write only has to TEND to do any one of the above to be potentially libellous.

So it is unlikely that you suddenly hated 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 false story because, if it had been true, she would have been 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).

You might think it would be legally safer sometimes to not name a person and avoid libelling them. But this can actually make matters much worse.

For example, think of those Wicked Whispers gossip titbits where you guess which boy band member or footballer has been dabbling in drugs or cheating on their partner.

If you print, for instance, that an unnamed up and coming British model is addicted to cocaine, you could be sued by several up and coming models, rather than just the one you were actually referring to. This is known as group libel and is a real risk for journalists.

Equally, just repeating a libel, by simply reprinting a defamatory story first published elsewhere, is not safe. This is a fresh libel in the eyes of the law, and the person defamed can sue as many publications as she wishes.

Luckily, there are several defences against libel which journalists can use. The most important ones for fashion writers are those of justification and honest comment. **(Truth and honest opinion)**

Justification **(Truth)** basically means proving your story is **(substantially)** true in court. But this is rarely used, due to the massive financial implications outlined above.

However, honest comment **(honest opinion)** is an excellent defence to use when you are writing comment and opinion pieces such as beauty product reviews, red carpet frock verdicts and catwalk reports. It is the reason why critics can be so vitriolic and bitchy when reviewing gigs, cars, books, TV shows and so on without any legal consequences.

As long as your copy is *clearly recognisable* as an opinion piece, you can be as critical, negative and scathing as you like, as long as what you write is your *honestly-held opinion*.

It is important to remember this is ONLY for opinion pieces, not factual news stories and features, and must be based on *provably true facts* and not involve personal malice.

What this means is that you CAN say a designer's latest collection is her worst-ever, as long as you have actually seen the clothes (a provably true fact) and you don't have any personal grievance against that designer (for example, they sacked you as an intern, or your sister is a rival designer).

If you want to slate a new fake tan for giving you a rash, ensure you have actually tried it, that it did give you a skin problem and be prepared to prove that.

Although the prospect of a libel writ is scary, it is important that journalists are impartial and give their readers truthful opinions and verdicts on products from face creams to frocks.

As long as you are well-versed in the honest comment (**honest opinion**) defence, and seek the advice of a lawyer or experienced colleague if in doubt, you should avoid the stereotype that fashion journalists only write fluffy gushing reviews.

Privacy

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 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 story or photograph published, or compensation if it already has been.

Both the law and the Press Complaints Commission's Editors' Code of Conduct stress that everyone has a right to a private life, whether famous or not.

But it has mostly been celebrities, sportsmen 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 after publication.

And just because someone has sold their wedding and baby pictures to glossy magazines, had their own TV reality show, written their autobiography and endlessly posed on the red carpet doesn't mean they have sacrificed any right to a private life away from the cameras.

The key test is whether a person has a reasonable right to privacy in that particular scenario. This is why no British magazine or newspaper printed the photographs of the Duchess of Cambridge sunbathing topless in a private villa. Should she have stripped off on Blackpool beach, where she should and could not expect privacy, the pictures would 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 particularly seriously and you could expect to pay substantial damages if successfully sued.

Just because a friendly fashion contact tells you that a high-profile model is battling cancer or is two months' pregnant does not mean you can reveal that very private intimate information.

Just because a paparazzi has snapped a model in a hotel lobby with her children does not mean you are free to upload it.

Of course, if someone chooses to tell you something private about themselves, in an interview or by Tweeting it to thousands of their followers, they have no one but themselves to blame if it is published. Just make sure you have recorded any interview, and have good shorthand notes to prove the interview took place.

Equally, if they decide to parade their children on the red carpet at a film premiere, or to kiss someone other than their husband in the middle of Trafalgar Square, they cannot reasonably expect any journalist not to publish the photos or write about it.

If you remember nothing else, just remember to ask yourself: "Would I reasonably expect privacy in that situation?"

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 outside a Narcotics Anonymous meeting, a place where she could have a reasonable expectation of privacy.

However, the judges believed *the Mirror* WAS right to tell its readers 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 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. But it is why England footballer Rio Ferdinand lost his bid to sue *the Sunday Mirror* for up to £50,000 after they published a "kiss and tell" story on him.

What all this means for fashion journalists is that they must view privacy issues just as seriously as libel problems. It can be just as expensive and embarrassing to lose such a case.

And, as with libel, it is important to consult an experienced colleague or lawyer if in doubt.

Of course, privacy does not just apply to surreptitious photographs of the likes of Prince Harry in a Vegas hotel room or publishing information about someone's health.

It is illegal to hack into anyone's phone, email or intercept their mail, and there are several different laws under which you can be prosecuted and imprisoned for doing so. The now-defunct *News of the World* Royal Editor Clive Goodman was jailed for four months in 2007 after admitting intercepting phone messages, including some involving Prince William.

There are very rare occasions when journalists, even those from respected broadsheet newspapers such as *The Guardian* and broadcaster *Sky News* say it is perfectly justifiable to hack into someone's phone or email, if there is a serious public interest reason. However, it would be wise to seek legal and senior editorial advice before ever taking this approach.

Copyright

An essential part of being a fashion journalist is having a eye for visuals. A picture from a catwalk or the red carpet tells a story much better than any amount of words.

So selecting images, whether for a trend report, fashion feature or Oscars frock special, will be an integral part of your day to day job.

If you work on an established magazine, website or for a fashion retailer, there may well be a full-time picture researcher or picture department who will work alongside you.

However, there will be occasions you might want to research pictures yourself (from designers' online look books or simply via Google, to use to illustrate your article. Or you may see a brilliant picture on Twitter and decide it's perfect for you to use too.

but you cannot just pick and choose any picture you want from the web and download it for publication. Photographers, professional and amateur, have the right for their work not to be reused without their permission and possibly a payment too.

This comes under copyright law and applies not just to photographs, but all sorts of things from other people's interviews, graphics, videos, music and sketches.

Under the Copyright, Designs and Patents Act 1988, you can be sued in court for damages if you reproduce a substantial part of anyone's work without permission, be it copying a large chunk of an interview with a top model or re-using a fashion photographer's picture available on her website.

Fortunately, most designers, clothing chains, cosmetic companies and public relations agencies will happily provide you with images for free. After all, it's free publicity for them! Fashion journalists spend hours poring over different websites and look books trying to find just the right products needed for, say, a "Best 10 satchels" trend report.

But it is a different matter when it comes to using a professional photographer's work without permission. *The Mail on Sunday*, for instance, paid substantial damages to Madonna in 2009 when they reproduced, without permission, pictures of her wedding to Guy Ritchie. The paper had bought the snaps after they were taken from Madonna's private album without her knowledge.

When *The Daily Mirror* secured a photo of supermodel Kate Moss allegedly snorting cocaine in 2005, they splashed it across their front page. One glossy fashion magazine thought it would be okay to reproduce that front page in a subsequent story about the scandal. However, the *Mirror* owned the copyright to that picture and the magazine had to pay them a four-figure sum as compensation.

Another complication is when photos are taken for "private and domestic reasons" such as a wedding, christening, or a birthday party. You might find these, for instance, on a social media site and think it's all right to use them.

But not only do you need the permission of the "author", ie. the photographer who took them, but also the "commissioner" ie the person who hired the photographer to take the pictures because they have moral rights over those images. When it comes to a wedding, for example, that is often the bride's father or the couple themselves.

When it comes to reproducing someone else's words, there is a defence called fair dealing if there is a public interest reason to report on a current news event. Say a top designer announces in a big interview in a national newspaper that she is quitting fashion to become an author, you can reuse some of her words in your follow-up story.

However, it would be ethical journalistic practice to credit the original source, the newspaper, and not use too much of the article. You couldn't just copy the whole thing, for instance. If you are working online, perhaps it would also be a good idea to insert a hyperlink to the paper's story.

It is important to remember there is NO fair dealing defence for still images.

Anonymity issues

It is fairly unlikely a fashion journalist report on crime and a court case. But there are occasions when a high-profile figure in the fashion industry becomes involved in a criminal case and you need to have an overview of some issues surrounding anonymity.

Under law, anyone who makes a complaint that they have been the victim of a sexual offence - that can range from rape to the less serious indecent assault - has automatic

lifetime anonymity. You cannot reveal his or her name, address, where they work, any pictures of them, or any details which might give away who they are.

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

Similarly, any children under 18 usually have anonymity when they appear in courts as either defendants, witnesses or victims under the Children and Young Persons Act 1933.

Victims of blackmail also have lifelong anonymity, along with a few notorious criminals who could face reprisals if their new identities were revealed once they had been released from jail.

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

Contempt of Court

At first glance, you may not think issues involving court cases and prejudice will matter in your line of business.

But, as before, you could find yourself reporting on fashion figures caught up in crimes, either as the accused or the victim. Or, as explained in this chapter's introduction, you may just find yourself in the wrong place at the wrong time when a big story breaks, such as the September 11th attacks.

Under the Contempt of Court Act 1981, a journalist can be jailed for up to two years and/or fined an unlimited amount if they publish anything which could cause a "substantial risk of serious prejudice" to a case which is active. This usually means when someone is arrested.

This is to stop trial by media, that is prejudicing potential jurors and witnesses by publishing something that makes the accused person look guilty when they have the right to a fair trial and are innocent until proven guilty in the eyes of the law.

There have been several well-publicised cases of the media being heavily fined for prejudicing cases, such as the terrible Joanna Yeates murder in 2010.

You are much more likely to want to get an interview with a witness or a victim in a case. It is best not to approach them before the case ends, and certainly not before they give evidence in court. It is also ethically wrong to offer payment to a witness before a case as this might affect their evidence.

Also under contempt law, it is illegal to approach jurors to ask them about their experiences and how they voted in their deliberations.

Freebies

When you are a student, the prospect of lots of lovely free clothes, make-up and expensive lunches is probably an exciting one. And influential fashion journalists are

bombarded daily with tissue-wrapped gifts from designers and public relations executives who want them to look favourably on certain brands (and hopefully get some free publicity too).

Of course, it's human nature to want all these luxury goodies, especially if you are just getting by on a lowly wage. But there are legal and ethical considerations.

Columnist Liz Jones is almost alone in exposing the freebie culture enjoyed by fashion journalists. She told *The Independent* in 2011 that one of the reasons she was sacked as Editor of *Marie Claire* was because she had revealed a long list of freebies she'd received in just one month, including a week on a yacht in Capri courtesy of luxury handbag designers Tod's.

Ms Jones added: "if a Westminster reporter took money from the Government or a football reporter took money from a club, it would be a scandal." She also claimed she is now barred from attending shows by Armani, Louis Vuitton, Chloe, Chanel, Marc Jacobs and Victoria Beckham.

Another anonymous fashion writer has told how she has thousands of pounds worth of freebies under her desk, ranging from a £850 leather handbag to sparkly diamond ear rings.

The Bribery Act, which came into force in July 2011, has raised concerns that accepting such presents when you are supposed to be an impartial journalist could put you, and the company who sent them, at risk of committing a criminal offence.

The law defines bribery as giving a financial, or other, advantage (which would include clothes and accessories) with the intent to persuade someone to "improperly" do their job which they would normally perform impartially.

Giving or receiving such a bribe carries a maximum 10 year prison sentence.

Ethically, many magazines and publishing companies already had stringent policies about freebies long before this became law. Many insist all gifts sent to their Editors and writers are given to charity. Others hold staff sales and give the money raised to charity.

Of course, some less scrupulous journalists do keep these gifts, and have been known to sell them on eBay to supplement their wages.

Fashion journalism is often criticised for being too fluffy and positive to keep advertisers happy. This is not a legal issue. Writing a gushing review of some £200 designer heels because you have been given a free pair and would not ordinarily write that, is much more problematic.

Ethics

As well as abiding by a whole slew of 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 newspapers, magazines and accompanying websites are 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.

In the light of the *News of the World* phone-hacking controversy and subsequent Leveson report into the media, the whole issue of how the press is regulated is still under debate at the time of writing.

However, it is widely considered that the Press Complaints Commission's long-established Editors' Code of Practice and its 16 clauses is a solid responsible model for journalists to follow. It is reproduced in full in the excellent 21st edition of *McNae's Essential Law for Journalists*.

(Julie: have deliberately omitted website PCC.org.uk in case this doesn't exist or is replaced/renamed before publication. I assume we will reproduce the code so haven't put it in here)

Journalists, whether reporting on Chelsea FC or Chanel, are under more scrutiny and regarded more warily than ever before.

As a journalist, you are expected to be accurate, impartial and professional at all times. On duty or off, you represent your employer and your behaviour must reflect that.

When going about your job, you should be polite, and always announce your name and who you work for. There are circumstances when reporters use subterfuge and disguise their identities, but that is really the domain of the investigative journalist.

Further, you should ensure your spelling is immaculate and you always check how to spell someone's name. Imagine misspelling the name of a major beauty advertiser in your article. This would be hugely embarrassing for your Editor who won't be offering you a promotion anytime soon.

To ensure accuracy, it is important to have learned shorthand to keep a good note of any interviews and conversations (100 words a minute is recommended) and to also record your interviews.

Legally, you do NOT have to tell the person on the other end of the phone that you are recording the conversation. You must, of course, tell them who you are and who you work for.

Of course, most celebrities and fashion figures used to dealing with the press would expect you to use a recording device if they are sitting down for a face-to-face interview with you,

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.

A hugely important ethical issue for journalists is protecting your sources. People secretly give you stories for all sorts of reasons - they want revenge, they want money, they genuinely want to expose some wrongdoing. Whatever their motive, they are risking their jobs, reputation and sometimes a jail sentence by giving you confidential information.

Morally, journalists must protect the identities of these sources at all costs. Say, for example, a friendly contact gives you documentary proof that a well-known high street fashion chain is putting staff at risk by not adhering to health and safety guidelines.

It is important to investigate this story. But if the company, or even a court, demands to know who gave you this information, you must refuse to name them.

You would be extremely lucky to go through your career as a journalist without receiving a single complaint from either a reader or a person involved in one of your stories. Someone may complain that they have been misquoted by you, libelled by you, or that you have got the price wrong on a product review.

Certainly as a junior journalist, you should not try to deal with these complaints by yourself. Everyone's first thought is to say sorry, hope it goes away and that your boss never finds out! That is the worst thing to do.

For a start, by apologising, you could be admitting legal liability if it is a serious complaint and you have only made matters worse. The best practice is to simply take a note of the complainant's name and all her contact details (email, mobile phone, other phone numbers) along with the nature of the complaint and say you will pass this on to someone more senior to handle.

If you are in a full-time job, your boss will know what to do, sometimes after seeking advice from a media lawyer. If you are freelance, it may be worth seeking legal advice if it appears to be a serious costly issue.

Hopefully, if you are a responsible and accurate journalist, these scenarios will be extremely rare. As a student, regular attendance at your media law and ethics lectures will ensure you have a good grounding in all the issues which may crop up throughout your career.

And keeping up to date with changes in the law and press regulation will mean any employer will have confidence that you are a legally-safe and ethically-responsible person to hire.

Ends

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