

Law refresher



Law refresher



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Law refresher



Workshop aims

- Defamation
- Contempt of Court
- Reporting restrictions
- PCC and privacy
- Things to avoid



Mum's anger at 'brutal' police

You have a story about an angry mother who claims she was manhandled from school premises by police after she went to confront the headteacher over her son's exclusion. Explain any concerns you would have about the story.



Defamation

Remember: Defamation is costly



Defamation

Remember: A story can be inaccurate or wrong without being libellous ... there has to be a sting!



Defamation

The test for all of us:

Ask yourself ...

Would I be upset if someone said that about me or my business?

Would friends or acquaintances think less of me?



Defamation

The test for all of us:

Then ask ...

Is what we are saying true?

Can we prove it?



Defamation

To be libellous the story must *tend* to:

- Lower someone in the estimation of right-thinking members of society
- Injure or disparage them in their job/profession/office
- Cause them to be shunned or avoided
- Expose them to hatred, ridicule or contempt



Defamation

Meanings of words ... the test

It doesn't matter what you think you have written or even intended to write

What does the reasonable person understand it to mean?



Defamation

Proving it ... the story must:

- Be defamatory
- Be published
- Refer to the person – must either identify him or be reasonably understood to refer to him



In the college story case ...

Does the story *tend* to:

- Lower someone in the estimation of right-thinking members of society?
- Injure or disparage them in their job/profession/office?
- Cause them to be shunned or avoided?
- Expose them to hatred, ridicule or contempt?



Defamation – main defences

Three main defences

- Privilege
- Justification
- Fair Comment (now also known as Honest Opinion)



Defamation – the defences

Privilege

There are occasions where the public interest demands complete freedom of speech without risk of defamation – even if statements are untrue



Defamation – the defences

□ Absolute privilege

Courts – words don't have to be true ...
as long as report is fair, accurate and
published as soon as possible (only
covers actual proceedings)

Parliament – covers what is said but our
reports only have qualified privilege



Defamation – the defences

□ Qualified privilege

Covers 'public' events like council
meetings, public inquiries, tribunals,
official police statements – report has to
be fair, accurate, published without
malice and the editor must be willing to
publish a reasonably-worded reply



Defamation – the defences

Qualified privilege

Remember: Most of the events we cover day to day only have QP on condition of the right of reply



A teaching union leader calls a press conference and criticises a local head teacher, saying his school is failing. Can you use the remarks?



Qualified privilege

Press conferences

Law Lords ruled (some) press conferences were 'public meetings' and that fair, accurate and non-malicious reports, even if defamatory, are protected by qualified privilege



Qualified privilege

Press conferences

Lords said press conferences were 'an important vehicle for promoting the discussion and furtherance of matters of public concern ...'
Reporters were 'eyes and ears of public'



Qualified privilege

- Be cautious ...

An informal meeting down the pub between a reporter and a few mates does not constitute a press conference



Qualified privilege

- Be cautious ...

Press conference must be 'bona fide':

- Be lawfully organised
- Have a lawful purpose
- Discuss a matter of public interest



What protection to run this? 'Rid us of these kids from Hell'

A Morton family have been branded as "neighbours from hell".

The Smithson family of Eastend Park Estate, Horsham, have terrorised neighbours in the area since they moved into their council home six months ago, according to fellow tenant Bill Meadows.

He claimed the family's three teenage boys - Fred, George and Ron - had made life a misery by demanding cars, hitting close at passers-by and tormenting people living in old people's bungalows in the area.

He claimed the boys had:

- Daubed windows with dog excrement
- Dragged keys down the paintwork of fellow residents' cars
- Set fire to wheeled bins left in

the street.

- Thrown stones and smashed windows on at least 10 different occasions
- Tanned elderly residents late at night by banging on windows and shouting abuse through letterboxes.

Mr Meadows, 65, who has lived on the estate with his wife Lavinia for the last 32 years, said: "They truly are the family from hell. Since they came the neighbourhood has become a nightmare."

"You can't walk past their house without having abuse hurled at you and they make the old folk's life a misery."

"I tried to have it out with the parents but they just laughed in my face and swore at me. The kids are out of control and something needs to be done. Many of our neighbours are desperate to move

and so are we.

"These people are the scum of the earth and they need throwing out. The council needs to act."

The Advertiser made several attempts to speak to the boys' parents, who are understood to be called George and Nancy, but was unsuccessful.

The chairman of Eastend Residents' Association, Mr Arthur Potter, said he was aware of issues with a family on the estate but could not comment further until he had spoken with other committee members. Morton Council Housing were contacted but had not offered a reply as the Advertiser went to press.

Horsham police confirmed that they had attended several public order incidents on the Eastend Estate over the last six months but no arrests had been made.



Public interest

- 1999 qualified privilege defence

A combination of the public's right to know and responsible journalism ...



□ Albert Reynolds



Public interest

- 1999 qualified privilege defence

The better the journalism, the more chance of getting the defence



□ Albert Reynolds



Public interest

- The Reynolds defence

Times Newspapers lost a libel case against Albert Reynolds in 1999, but the court recognised, for first time, that journalists have a duty to tell readers about matters of public interest



Public interest

□ The Reynolds defence

House of Lords ruled qualified privilege would also include publishing information which the public is entitled to know ... provided the journalist *acted responsibly in researching and presenting it*



Public interest

□ The Reynolds defence

The defence will protect a newspaper which publishes an untrue defamatory statement - if the story was in the public interest and as long as the journalist who wrote it has acted responsibly and professionally in trying to get all sides of the story



Public interest

- The Reynolds defence
- You must get the other side of the story if you want to rely on this privilege defence
- The investigations you carried out before publication will be scrutinised by the judge
- Ten points to consider



Public interest

- Key elements of the defence ...

A judge will want to know:

- What steps were taken to verify the information
- Whether comment was sought from the complainant
- Whether the article contained the gist of the claimants side of the story



Public interest

- Key elements of the defence ...

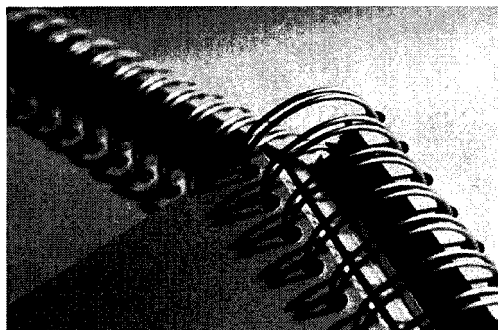
A judge will want to know:

- What the tone of the story was – whether the story raised queries or called for an investigation as opposed to adopting the allegations as facts
- Who the source was – did they have an axe to grind?



Keep a good note

- Notebooks can be the key



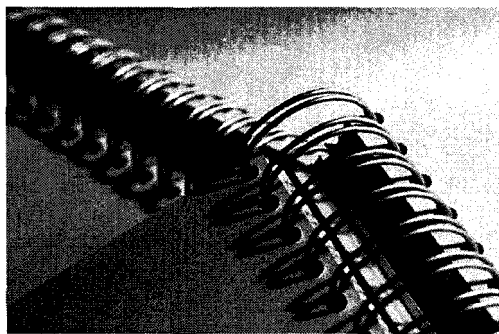
- A court will rely heavily on the accuracy of a shorthand note

- Keep them for 18 months



Keep a good note

Notebooks can be the key



Record date, time and details of interviewee

Make a note of no comment etc



Defamation – the defences

Justification – the truth

... the statement is true, but you have to prove it was true – and that can be difficult



Defamation – the defences

Honest Opinion (Fair Comment)

Tests:

- Is the opinion recognisable as opinion?
- The opinion must be on a matter of public interest



Honest opinion/fair comment

Honest Opinion (Fair Comment)

Tests:

- Could an honest person express these views, on the facts known at the time of publication?



Honest opinion/fair comment

Honest Opinion (Fair Comment)

Tests:

- The opinion must indicate, at least in general terms, the facts on which it is based (Singh judgement means it is no longer necessary for the reader to evaluate the opinion)



Honest opinion/fair comment

Proving it

The writer (or publisher) must be able to show there was no malicious intent behind the comment – this includes not only spite or ill-will, but also reckless disregard for getting the true facts



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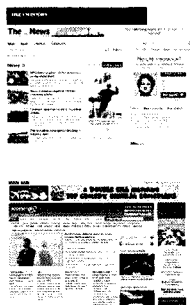
Libel danger areas

□ How safe is your website?



Libel danger areas

How safe is your website?



Material may not have protection after period of time – websites are different from print (fresh publication)



Libel danger areas

How safe is your website?



Rehabilitation of Offenders Act dangers



Libel danger areas

How safe is your website?



Safe story now
could be contempt
if arrests are later
made ... or it is
more widely read



Libel danger areas

How safe is your website?



Post moderation of
comments is safest



Libel danger areas

How safe is your website?



It is best to remove a dangerous story as soon as a complaint is made



Law refresher



Contempt of Court

- ❑ Material must create a substantial risk of serious prejudice when proceedings are active



Contempt of Court

- ❑ Active (the official version)

Warrant for arrest issued
Arrest made
Summons issued
Orally charged



Contempt of Court

- Active: In reality – remember ...
- The case should be about to be heard in full



Contempt of Court

- Active: In reality – remember ...
- Even if proceedings are active and an arrest has been made our story has to create a substantial risk of serious prejudice to affect a case



Contempt of Court

- Active: In reality – remember ...

- You will only get into trouble if the accused is pleading not guilty – if the defendant is going to admit the offence we cannot be in contempt



Contempt of Court

- Active: In reality – remember ...

- There is only a real danger when a jury trial is going to be involved – magistrates would generally be above being influenced ... the same with a judge



Contempt of Court

- Active: In reality – remember ...

- The case must be listed to be heard at a local crown court. Distance eliminates risk ... if a crime took place outside your area you are likely to be safe



Contempt of Court

- Active: In reality – remember ...

- The case must be less than a month or so away – time diminishes risk



Contempt of Court

- Safe steps for risk takers ...
- Don't use a picture if ID is an issue
- Be cautious over running any admissions of guilt
- Take care with eye-witness reports – although generalisations are okay
- Don't use previous convictions
- ...and always watch the website



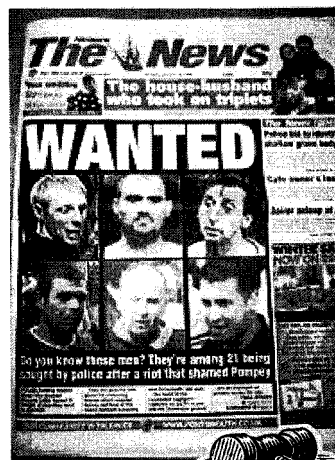
Contempt of Court

- Defence
having taken all *reasonable care*
you *did not know* and had *no*
reason to suspect proceedings were
active



Contempt of Court

- Police appeals ...
'... nothing to fear from publishing in reasoned terms anything which might assist in the apprehension of a wanted man'



Contempt of Court

- Court orders ...
 - Section 4 – postponement order delaying publication
 - Section 11 – banning order rules that name or other information should not be used (but not to keep defendant's address secret)



Contempt of Court

- While the jury is out
Never publish information revealed in the absence of the jury ... or when the trial is at a sensitive stage



Contempt of Court

- While the jury is out



Contempt of Court

❑ Discussion of public affairs

...safe to publish if it is *part of a discussion in good faith* of public affairs and is *merely incidental to the discussion*



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Reporting restrictions

- Youth courts
- Under Section 49 order

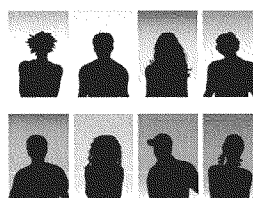
Cannot publish name, address, school or any other details giving clue to identity of any youngster involved in any way with the case (including witnesses)



Reporting restrictions

- Youths in adult courts

Can name - but same conditions apply if court makes a Section 39 order



A youngster commits a crime when aged only 17 – but has reached 18 when he appears before a youth court. Can the offender be named?



Reporting restrictions

Youths in adult courts

High Court has ruled offender can be named if aged 18 when in court following case at South Tyneside youth court.

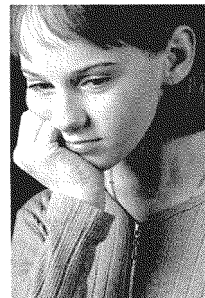


Reporting restrictions

Orders to protect children

Must relate to children and not the adult

Name adult – but not relationship
No orders on dead children



Reporting restrictions

Sex offences

Anonymity for sex attack victims including rape and indecent assault



Reporting restrictions

Sex offences

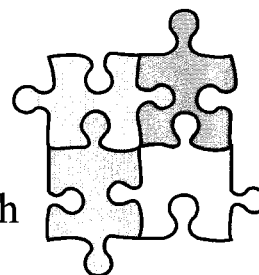
Cannot reveal victim's name, address, workplace, school or college in lifetime unless victim gives consent



Reporting restrictions

Jigsaw identification

Take great care not to reveal identity of victim – but publish name of defendant if at all possible



Reporting restrictions

Be alert

Beware giving information which might lead to the identification of a victim



Reporting restrictions

Be alert

Recent examples which ran into trouble include:

- Story said a named defendant met his victim, who he regarded as his 'girlfriend', at church. Even though the church was not named, to those who attended it and knew something about the defendant, identification of the victim became highly likely especially as her age was given.



Reporting restrictions

- Be alert
- Story mentioned a teenage victim (whose age was given) having recently suffered from a specific form of cancer. Since the article also gave broad details about where the victim lived, it was likely to contribute to identification.



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The PCC



PRESS COMPLAINTS COMMISSION

- A woman complained to the Press Complaints Commission that an article, published in the Wigan Evening Post, headlined “Electrocuted”, contained excessive detail about a death by suicide in breach of Clause 5 (Intrusion into grief or shock) of the Code.

- Decision: **Upheld ...**



The PCC



PRESS COMPLAINTS COMMISSION

- The Commission agreed with the complainant that the newspapers had included too much detail.
- By going into such detail, there was a danger that sufficient information was included to spell out to others how to carry out such a suicide.



The PCC



PRESS COMPLAINTS COMMISSION

- Mr W G Ibberson of Brighouse, complained that a photograph was published in the Brighouse Echo in breach of Clause 3 (Privacy) of the Code of Practice, and had been taken at a private function without consent in breach of Clause 4 (Harassment).

- Decision: **Rejected ...**



The PCC



PRESS COMPLAINTS COMMISSION

- The complainant said he had been invited to the 10th anniversary of a school opening. The event had been held in the school itself and admission was by private invitation only. However, a photograph taken at the event was subsequently published in the newspaper and this constituted an invasion of privacy.



The PCC



PRESS COMPLAINTS COMMISSION

- PCC said that while the event was on private property, it was clear the nature of the occasion was not private because a senior member of the Royal Family had attended – something that would have been recorded in the Court Circular as a public engagement.
- The photographer was present at the school by invitation and there was no suggestion that he was taking photographs surreptitiously.



The PCC



PRESS COMPLAINTS COMMISSION

- Carolyn Popple complained a video clip of a police raid on her house posted on the website of the Scarborough Evening News intruded into her privacy. She also complained about still pictures published in the newspaper, which accompanied an article headlined “Drugs and cash seized in raids”.
- Decision: **Upheld ...**



The PCC



PRESS COMPLAINTS COMMISSION

- Commission said this was highly intrusive
- Fact that police invited the paper did not absolve editor of responsibility for ensuring the subsequent publication of the material complied with the Code.
- While it may have been in the public interest to illustrate the police campaign against drugs, insufficient regard had been paid to the complainant's right to privacy in this case.



The PCC



PRESS COMPLAINTS COMMISSION

- Mr Ravin Soobadoo complained an article headlined 'Porn star teacher's sadness at leaving job', published on a newspaper website incorrectly attributed a quote to his 14-year-old daughter, and referred to her as a sixth form student, in breach of Clause 1 (Accuracy) and Clause 6 (Children)
- Decision: **Upheld ...**



The PCC



PRESS COMPLAINTS COMMISSION

- The complainant said his daughter (14) had not made any comment to the newspaper and was not a 'sixth-form student'. She had not written the email and her account may have been hacked.
- He said the paper should have taken care to authenticate the quotation (about sex health issues) and obtain the necessary consent.



The PCC



PRESS COMPLAINTS COMMISSION

- Clause 6 (Children) states children under 16 should not be interviewed on issues involving their own welfare without the consent of parent.
- The Commission accepted the newspaper had not approached the complainant's daughter directly but it had sought information from school pupils about a controversial issue
- By doing so, and publishing the outcome, the newspaper had engaged in an interview of sorts.



The PCC



PRESS COMPLAINTS COMMISSION

- The attributed comments referred to the sexual health of the pupil, which was certainly a matter which related to her welfare.
- The Commission considered the newspaper should have sought to establish her age before publication. It would have also been in a better position to verify the identity of the person who sent the email.
- It also would not have been able to publish the comments without parental consent.



Privacy

- ASK:
- Does the subject have a reasonable expectation of privacy?
- If so, is there a public interest in publishing which overrides the right to privacy?
- Are you breaching PCC code?
- Are photos intrusive? PCC code
- Are children involved? PCC code



Privacy

ASK:

- Does the subject have a reasonable expectation of privacy?
- If so, is there a public interest in publishing which overrides the right to privacy?
- Are you breaching the PCC code?
- Are photos intrusive? PCC code
- Are children involved? PCC code



Privacy

Harborough Mail

Win a luxury outdoor dining hamper

I CAN'T AFFORD TO LIVE HERE ANYMORE

Cinema site is finally clinched

Take That singer spotted

Design firm gets large contract

Business

Harborough MP to move home after allowances cut

Grab a bucket and spade for seaside event

summer sale 50% OFF

MP to leave country hall to find cheaper home to rent

CONTACTING THE MAIL

New homes proposal thrown out

summer sale 50% OFF



Legal eagle ...

- Before publishing:
If in doubt - call either NS lawyers or Foot Anstey (the number is on JP intranet)
- After publication:
Call Foot Anstey as soon as you receive a libel threat in writing

FootAnstey



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