INTRODUCTION

Welcome to *Media Law for Journalists*, which provides an opportunity for those studying journalism or already working in the media to understand the English and Scottish legal systems.

The book is intended to provide the reader with two things: first, a detailed introduction to the subject matter and an explanation of what to expect when studying for a journalism qualification and, second, a comprehensive revision and reference guide to the main issues in contemporary legal journalism, with plenty of case studies and references to legal and regulatory sources.

*Media Law for Journalists* is intended first and foremost as a course textbook to supplement lectures in practical journalism and assist practitioners who are working in the UK from other jurisdictions. It should save you time when revising for exams or preparing assessed coursework. The ‘Tips’ feature identifies key areas for study. Exam questions, additional reading advice and extensive case studies (such as PCC adjudications) provide guidelines on what examiners are looking for and practical hints as to what not to do when working in the journalistic field. The book should help you to organise your subject matter and extract the most important points from your lecture notes and other learning materials on your course.

**How to use this book**

This book provides you with, a comprehensive guide to the commonly taught journalism curriculum in England Wales and Scotland. It is based on the author’s own practical experience of teaching law on journalism courses in conjunction with practical guidelines and advice from a number of UK journalists, such as the former Editor-in-chief of BBC News Interactive, Mike Smartt, the former Reuters Bureau Chief Tom Thomson and a number of close journalist friends in the English and Scottish media.

The aim of *Media Law for Journalists* is to help you pass the necessary exams, but, as important, it should also keep you out of jail when court reporting or reporting on individuals or events. It should be used as a main course textbook and can assist course teachers with their lecture and seminar notes.

If you are a new undergraduate journalism or media student, you will, no doubt, have a compulsory law module as part of your course. All law core
Media Law for Journalists

curriculum topic areas are covered and up to date at the time of going to print. That said, *Media Law for Journalists* is useful at every level of journalism study (including postgraduate) and covers professional examinations, such as those run by the National Council for the Training of Journalists (NCTJ). Core curriculum topics (such as human rights) are provided in each chapter so that you can drop in on themes and make connections to practical work situations.

You can use this book to give you a quick overview before starting your journalism course or familiarise yourself with English and Scottish jurisdictions before beginning work on, say, an English or Scottish newspaper or magazine. The book can also be used for reference throughout your course and as a practical legal guide throughout your professional career. Each chapter contains within it the following features:

- any introduction to the topic – the key purposes and core areas of the law curriculum
- learning outcomes – what an examiner can expect from you
- ‘Tip’ boxes – summarising key information handling the information in exams or to serve as reminders of key legal issues in practical situations
- sample questions
- case law and case studies
- suggestions for further reading.

The chapters go into the legal core curriculum in great detail. They will help you to understand the workings of English and Scots law within a practical journalistic setting. What is most important for you as a journalist is to communicate effectively within the permitted legal setting.

Before you either start your course or embark on your career in journalism, you should ensure that you have read the syllabus thoroughly and obtained an overall impression of the necessary legal aspects. This book will then help you to place emphasis on those areas of law that you find difficult by way of the, ‘Tip’ feature. A good way to revise, is to: first attend to a topic that you do understand, which will leave you on a high note, then return to areas that cause you difficulty – this should be done on another day and the ‘Tip’ boxes will help you to avoid making unnecessary mistakes.

You can read this book in one of two ways:

- skim read (or speed reading):
  - let your eyes skim the page (also called ‘diagonal reading’)
  - make a note of the ‘Tip’ text in the form of bullet points to memorise
  - look at the tables that summarise topic areas
  - use the appendices and index to locate information
  - notice the core curriculum topics that form the chapter headings
Introduction

- Slowly and in depth:
  - read each part, slowly and carefully
  - read case law and case studies, picking up on all the details
  - read recommended textbooks in addition to this book
  - read with an enquiring mind and make critical notes as you do so
  - take regular breaks during this kind of reading
  - tackle some of the recommended questions
  - make a note of all case and book references (including page and chapter numbers and headings in textbooks).

Read this book with view to:

- gaining an in-depth understanding of English and Scots law relating to practical media and journalism studies (to be expanded on in your lectures, seminars, textbooks, further reading and any practical journalism experience)
- answering exam questions or preparing for an assignment
- helping you to concentrate and focus on practical journalism issues within a legal context
- helping you to think like a media law specialist (in the way an examiner, editor or publisher wants you to).

Common exam and revision questions

At the end of each chapter, you will be given some sample questions and these are there to help you revise and practise writing answers.

Preparing for a journalism and law exam should always include:

- using past papers (including resit papers)
- discussions about relevant issues raised by the exam questions (use the core curriculum topics featured in each chapter)
- distinguishing between facts and opinions about facts (cite case law or case studies)
- taking account of factual information by using primary reference sources (such as case law, PCC adjudications and so on).
Introducing the features

The key to success in your study of law on a journalism course is to learn how to think like a media law specialist. In short, think theoretically, analytically and like a lawyer. This book advises you on how to learn to speak and write using the correct journalists’ language when studying or applying your skills. In other words, how to stay on the right side of the law when working as a journalist.

Tip

The ‘Tip’ feature helps you to structure and plan your exam answers. It also shows you how to write pieces that are within the law and report on legal cases going through the courts in a contemporaneous fashion. Each ‘Tip’ highlights some key information and offers advice about applying the law to the context of journalism. For example:

<table>
<thead>
<tr>
<th>Which are the protected interests under Article 8 of the ECRH?</th>
</tr>
</thead>
</table>
| • private life  
| • home  
| • family  
| • correspondence. |

Learning outcomes

Your course will most likely present you with 'learning outcomes'. These are usually mentioned at the beginning of your course handbook. ‘Learning outcomes’ are elements of reflective practice that are set by your university or college in order to ensure successful student assessment and learning.

Make a careful list of all the particular learning outcomes for your course. No doubt you will be tested on these in your exam. They summarise what your examiners expect from you in your assessment and exam answers. Make sure they are relevant to each topic area (such as contempt of court).
Further reading

Each chapter concludes with a further reading section, which is designed to put the icing on the cake – that is, give you the chance to write a top-class, ‘distinction’-type essay or piece of journalistic research. This feature gives you guidance on the main textbooks that you will be using on your course. These can be augmented via the bibliography and Internet sources listed in the appendices at the end of the book. Additionally, it can help those journalists who wish to advance their legal knowledge in a particular field.

The further reading sections are intended to show you how to appraise and analyse case law and advance your legal knowledge. Together with the case and statute law, selected bibliography, glossary of legal and parliamentary jargon and useful websites in the appendices, these sections provide you with the means to advance your legal knowledge and become truly excellent professionals.

Additional resources

Appendix 1: Glossary of British parliamentary and legal jargon, provides you with a kind of dictionary to enhance your use of such terms. The PCC Code of Practice (2003) and the, given in appendices 2 and 3, Defamation Act 1996 (c.31) also provide you with useful reference. The tables of cases and statutes give you some topical legal information that might be useful to enhance your general legal knowledge and cite cases properly and correctly in the area of your journalistic legal study. The Bibliography and internet sources and useful websites sections assist you with additional reading and up-to-date sources.

By the time you have read to the staff of the appendices, you should be aware, and have a good knowledge, of the various stages of the legal process. Media Law for Journalists has concentrated on the legal areas you are most likely to encounter as a journalist.

One word of warning: the study of law and its inherent disciplines, such as legal skills, research and ethical understanding, are unlike any other study you may have encountered up to now as a student or practitioner of journalism. Therefore, you will be required to undertake disciplined self-guided study, use the legal library frequently (LRC) and familiarise yourself at the onset of the course with the legal database LEXIS/NEXIS (Butterworths). This book will assist you to do just this.
Thinking like a media law specialist

What does ‘thinking like a media law specialist’ mean? It means being able to understand what is going on in court and then communicating it effectively to the readers of your piece, who are almost certain to be non-specialists. You should be able to identify and interpret the legal language and separate it from everyday discourse and colloquialisms.

The chapters that follow provide you with the legal core curriculum required on most journalism courses. Chapter 1 introduces you to the English and European legal systems and major institutions. It is explained how access to the courts (civil and criminal) can be obtained and how court reporting is undertaken. Some examples of reporting are given from magistrates’ and Crown Courts – with a specific focus on reporting on juveniles, i.e. now to retain the anonymity of a young person the age of 18 in English (court) reporting, and how more liberal reporting on juveniles over the age of 16 is permitted in the Scottish media, particularly those youngsters involved in criminal and family proceedings in Scots Law.

You will learn about the supremacy of European Union (EU) law over all 25 member states’ (MS) laws and to distinguish EU from European human rights law. Apart from learning all about the English court structure, you will be made aware of the separate functions of the European Court of Justice and come to appreciate the complexities of the European Parliament, Commission and Council of Ministers, as well as the legislative functions. As English law is case law (common law) based, learning about at least some of the leading cases is essential.

Administration of justice in Britain is carried out in public – known as the ‘open justice’ principle. The journalist has a vital role in this. However, as Chapter 1 illustrates, a journalist needs to understand that this process is often far from straightforward. There are many rules and regulations that affect and often constrain the way court hearings can be reported. Failure to follow these can often land the representative of a media organisation in trouble and – in the most extreme cases – jail.

You will see that English and Scottish courts have their own power to regulate proceedings. There are express statutory obligations on magistrates’ courts, for instance, to sit in open unless there are express statutory provisions to the contrary, whether sitting in ‘petty sessional’ or ‘occasional court-house’ (s. 121 (4) Magistrates’ Courts Act 1980). Particular provisions govern committal proceedings, requiring – unless there are statutory provision to the contrary – that the examining justices to sit in public.
Introduction

There will be situations when names and addresses of defendants in criminal proceedings are withheld from the public and reporting restrictions may be imposed to prevent or postpone any publication of proceedings (see *R. v. Evesham Justices' ex parte McDonagh [1988]*). There is plenty of case law as well as statutory provision (*Contempt of Court Act* 1981, for example) to assist you with this. However, that said, it is important for you to realise that departure from the open justice principle is exceptional. Courts must justify their decisions to order reporting restrictions ‘for the avoidance of the frustration of the administration of justice or the rendering of it impracticable.’

Generally, courts now tend to favour Art. 10 ECHR, which refers to the ‘freedom of expression’ and promotes the freedom of the press. If courts order reporting restrictions, say in an adult criminal trial, they must give adequate reasons for doing so (such as in terrorism trials for the protection of witnesses or in the interest of public security).

Chapter 2 centres on the important issue of human rights and fundamental freedoms enshrined in the *European Convention on Human Rights and Fundamental Freedoms* (the Convention). One of the biggest changes to the law in England has taken place comparatively recently with the incorporation of the Convention by way of the *Human Rights Act 1998*. Britain is unique in that it has no written constitution (unlike other democracies such as the USA, Spain, Germany, Greece and so on). The nearest we have come to enshrining fundamental human rights in UK legislation has been the *Human Rights Act 1998*. The 1998 Act came into force on 2 October 2000.

In the course of this chapter, you will become aware of the ever-increasing journalist’s dilemma: ‘freedom of expression’ (as per Art. 10 ECHR) versus an individual’s right to privacy (Art. 8 ECHR). How a journalist’s right to freedom of expression might well conflict with a person’s right to privacy is highlighted by extensive case law (such as *Douglas v. Hello! Ltd [2001]*). Recent case law – such as Naomi Campbell’s long-standing legal action against *The Mirror* – sets the precedent regarding individuals who are undergoing (in her case, drug) treatment and their protected right to privacy under Art. 8 of the Convention (see *Campbell v. Mirror Group Newspapers [2004] UKHL 22*). Whatever you might think privately, as a journalist you will have to think carefully when reporting the private lives of public figures, especially as gossip and speculation. It is for you to study this chapter carefully in the light of this debate.

You will also become very aware of Art. 8 ECHR (‘right to privacy’) and Art. 10 ECHR (‘freedom of expression’). UK and European case law has shown that a newspaper’s freedom to report anything about famous individuals is no longer unlimited. It is therefore important to note that ignoring the prevalence of human rights can be dangerous. An individual can now bring an
action against a public authority (such as the police or local council) on grounds of the Convention alone. In the famous case of Douglas v. Hello! [2001], the famous film star couple, Michael Douglas and his wife, Catherine Zeta-Jones, relied on Art. 8 in order to seek an injunction from the High Court in November 2000 banning Hello! magazine from publishing unauthorised wedding photos because they had given exclusive rights to the rival OK! magazine.

The complexity of the situation is underlined by the fact that, under the Human Rights Act 1998, the role of the media has, on the one hand, been challenged under Art. 8 of the Convention regarding an individual's right to privacy, while, on the other hand, journalistic freedom of expression has been recognised under Art. 10 and in case law.

Chapter 3 explains the functions and complexities of the Press Complaints Commission (PCC) as well as policy implications of a self-regulatory body. Furthermore, the role of the broadcasting regulator, Ofcom, is explained in this chapter. The PCC Code of Practice and the PCC case studies and adjudications will assist you with practical guidelines in your journalistic writing and future career.

Chapter 4 guides you through the legal obstacle course of 'contempt of court'. It raises important issues of what can and cannot be reported on in court, particularly in criminal proceedings – you will learn when court proceedings are 'active' and what you can and cannot report about a defendant. At the end of this chapter you will be able to recognise the common pitfalls for every court-reporting journalist under the 'strict liability' ruling.

Chapter 5 familiarises you with the strict reporting rules regarding juveniles, children and young persons under the age of 18 in English law, such as what can and cannot be reported during 'active' (youth) criminal court proceedings. Equally, you will discover what you may or may not write about a young person appearing in civil court proceedings, such as those held in a family court. English law in this respect is very protective (more so than Scots law – see Chapter 8). There are even rare times when a young person, even when he or she has reached the age of 18, will be covered for life with an anonymity ruling by the High Court. Such life-long reporting bans were ordered in the case of Thomson and Venables, the two ten-year-old boys who were convicted of murder for the brutal killing of the toddler Jamie Bulger in 1993.

Chapter 6 focuses in some detail on the law of defamation. It is intended that this chapter informs you about the dangers of a slander or libel action that you might face concerning something you have written. It provides extensive case law in this area of legal study and it is intended that this chapter will helpfully result in lively debate during your tutorials or encourage good exam technique.
There are now statutory defences in ‘libel’ (that is, defamatory actions) and ‘contempt’, if a journalist can reasonably argue that he or she gave a fair and accurate report of court proceedings (such as under the *Contempt of Court Act 1981* or the *Defamation Act 1996*). Furthermore, journalists, editors and publishers have statutory rights to make representations against the imposition of restrictions on reporting or public access to proceedings.

Chapter 7 is a brief introduction to intellectual property (IP) legislation, with ‘copyright’ being an important topic in this area. Some knowledge of IP law will help you to protect your own original pieces of work. As this book is not intended for law students per se, this chapter does not go into great legal detail as IP is a difficult subject that is often left to postgraduate law study. By the end of the chapter, however, you should, be aware that copyright is vital to the protection of a journalists’ or authors’ work. You should certainly know by the end of it what ‘passing off’ means.

Chapter 8 is an introduction to the Scottish legal and courts’ system, which is very different from that of the English system. The main areas where Scots law differs from English law is in the reporting on children and young persons, and defamation.

This chapter also gives you detailed information on Scottish courts and the independence of the Scottish Parliament post the *Scotland Act 1998*. The Act brought about a fundamental constitutional change in that Scotland received its own and very distinctive Parliament (based in Edinburgh) and also incorporated the *Human Rights Act 1998* into Scots law (since 20 May 1999). How, particularly, Art. 10 of the Convention has impacted the Scottish press is highlighted with some interesting case law examples. One such case, involving the *Human Rights Act 1998*, was that of Cox & Griffiths (1995), with the main protagonist being the then *Daily Record* Editor Peter Cox. This case is covered in detail.

As professional media lawyers (from the BBC, Reuters and Universal) have acted as consultants for this book, you will gain a realistic insight into the fast-moving world of newscasters, journalists, pop and concert specialists and stars. Finally, it is my aim to enthuse you about law in general and broaden your horizons in terms of policy decisions and the reality of media and broadcasting issues. If there is one thing that I would like to achieve with this book it is that you become fully rounded journalist who engages in and benefits from all the learning opportunities available to you on your course and during your career in journalism. I hope that this book will help you to do just that.

It is hoped that *Media Law for Journalists* motivates you and builds your confidence in studying this subject and ensures that, when writing about the law, you
keep within it. Hopefully, this book will serve you well in your academic study and help you to become an excellent journalist. I have made every effort to keep this book up to date, despite legislation – and particularly case law – changing all the time. You should additionally keep yourself up to date on new legal developments by using the recommended websites given at the end of the book.

Ursula Smartt
London, 2006