

NCE law refresher

Workshop objectives:

- To refresh key legal areas
- look at topics likely to be in the newspaper practice paper
- explore the types of answers needed to pass the exam



NCE law refresher

Timetable:

- Legal discussions
- Law refresher
- Types of topics likely to crop up
- Test your knowledge



NCE law refresher

Newspaper Practice – two sections: now 80 mins total – including reading time

- Legal question (answer one question from two). Can use Essential Law for Journalists as an aid - 50% marks
- General question (answer two questions from three). Covers putting a story/backgrounder together using topical issues - 25% marks each



NCE law refresher



A protest group contacts you and claims that councillors who have approved plans for a factory extension have taken backhanders from the company involved. What are the dangers?

Defamation

The key elements of libel



Defamation

A statement is defamatory if it tends to do any of the following:

Lower someone in the estimation of right-thinking members of society generally



Defamation

A statement is defamatory if it tends to do any of the following:

Injure or disparage a person in their job/profession/office



Defamation

A statement is defamatory if it tends to do any of the following:

Cause someone to be shunned or avoided



Defamation

A statement is defamatory if it tends to do any of the following:

Expose that person to hatred or ridicule or contempt



Defamation

A statement is defamatory if it tends to do any of the following:

Lower someone in the estimation of right-thinking members of society generally

Injure or disparage them in their job/profession/office

Cause them to be shunned or avoided

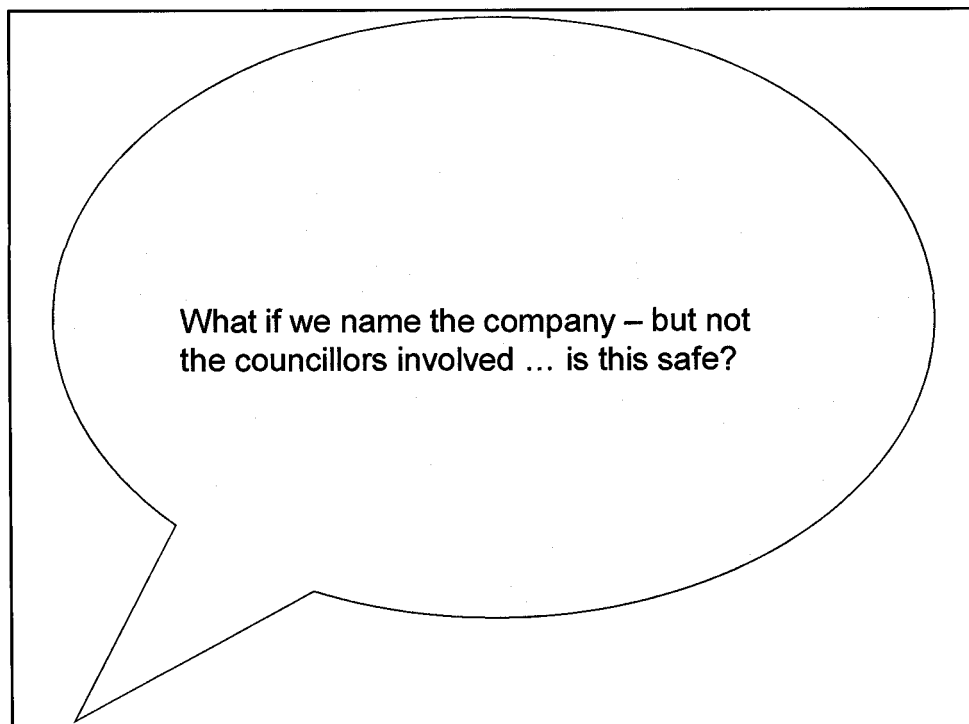
Expose them to hatred, ridicule or contempt

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?



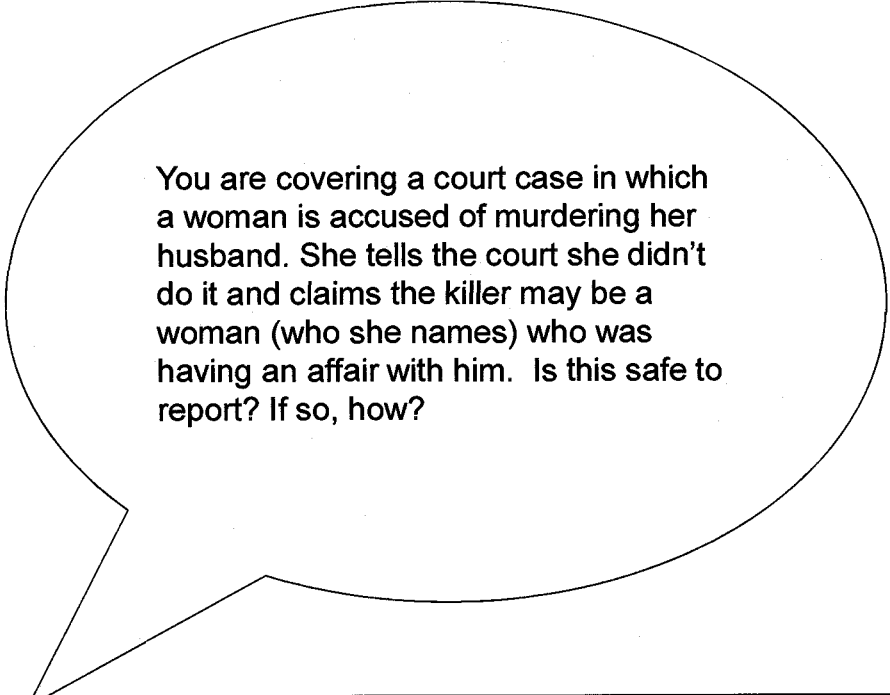
Defamation

Proving it

Defamatory of that person

Identifies the person – or
may be reasonably
understood to refer to him

Published to a third person



You are covering a court case in which a woman is accused of murdering her husband. She tells the court she didn't do it and claims the killer may be a woman (who she names) who was having an affair with him. Is this safe to report? If so, how?

Defamation – the defences

- Privilege

... 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, interruptions
from public gallery are not covered)



What about inquests? Do they get the
same protection as a court of law?

The court trial ends with the jury finding the woman not guilty by a majority verdict. A juror tells you the voting is by 10 votes to 2. Can you report this?

Juries

- **Verdicts**

Guilty – a newspaper can report someone was found guilty by a majority verdict

Not guilty - Generally unsafe to report because suggestion is some jury members thought he was guilty and this could be a stain on character

Note - Cannot interview jurors about deliberations etc – to do so would be Contempt



After the trial the woman speaks to you and tells you she thinks the hearing has been a sham. She is also critical of the police witnesses and says: "The police lied on oath." Is this safe to report?

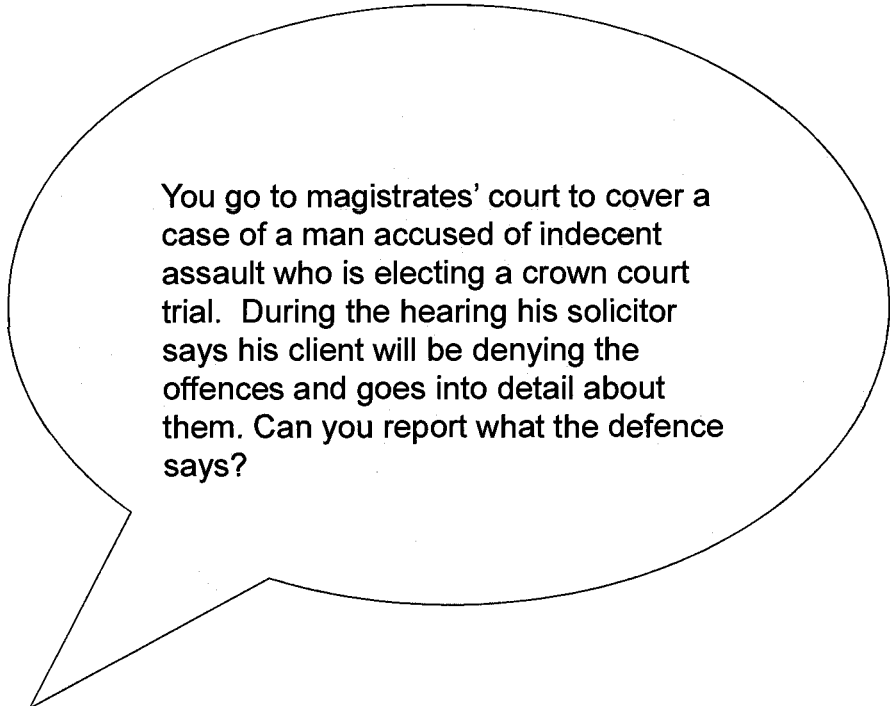
Court verdicts

- Privilege or not?

Sham – Danger is in reporting statements that would scandalise the court

Lied on oath - Generally unsafe to report because no privilege on statement and it might well defame the police officers in the case





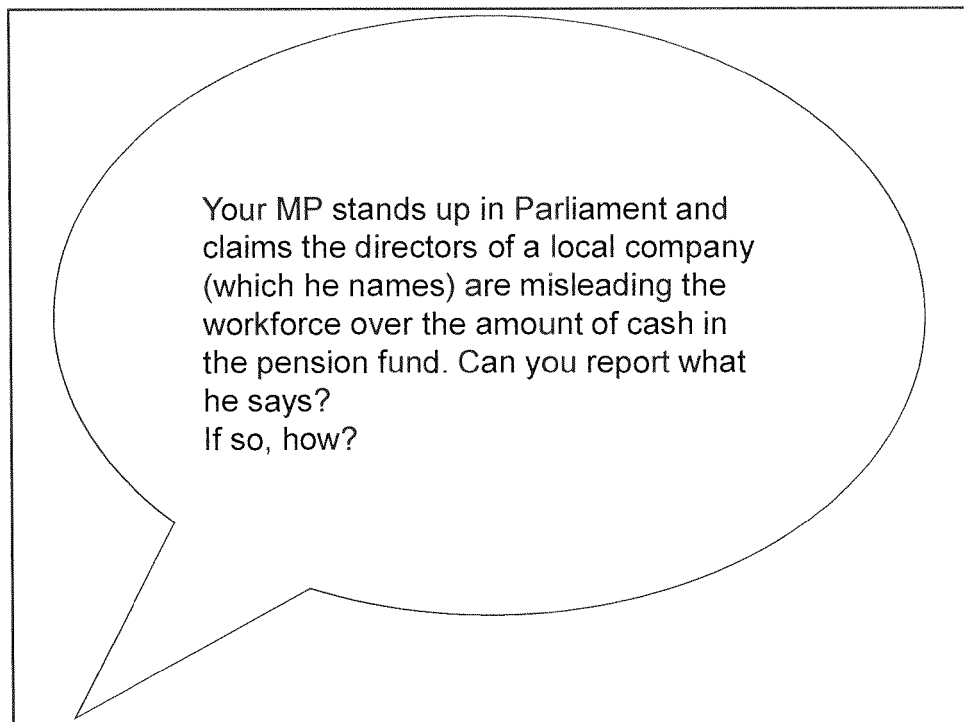
You go to magistrates' court to cover a case of a man accused of indecent assault who is electing a crown court trial. During the hearing his solicitor says his client will be denying the offences and goes into detail about them. Can you report what the defence says?

Pre hearings

- What's on the charge sheet?

It is generally safe to report what is on the court list and you should ask to see the full details of the charge ... you can usually use them (as long as they don't ID a sex victim etc)

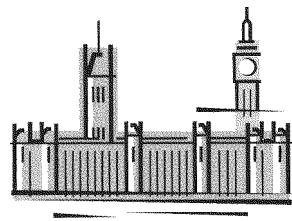
Probably safe to say that the defendant plans to deny the offences

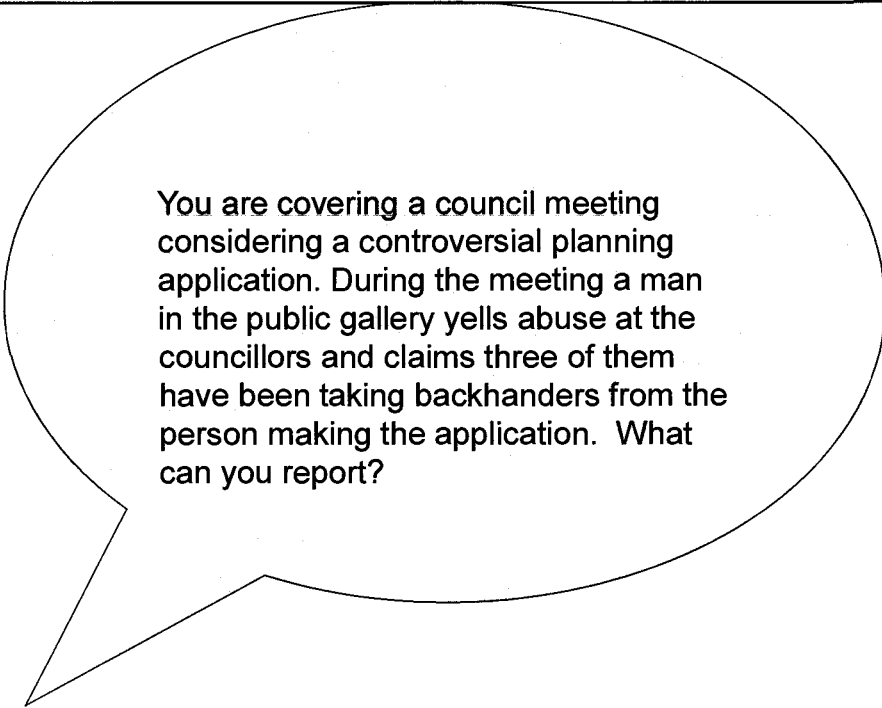


Defamation – the defences

- Absolute privilege

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





You are covering a council meeting considering a controversial planning application. During the meeting a man in the public gallery yells abuse at the councillors and claims three of them have been taking backhanders from the person making the application. What can you report?

Defamation – the defences

- Qualified privilege

Covers reports of other public events like council meetings, public inquiries, tribunals, official police statements, press conferences and some press releases

Defamation – the defences

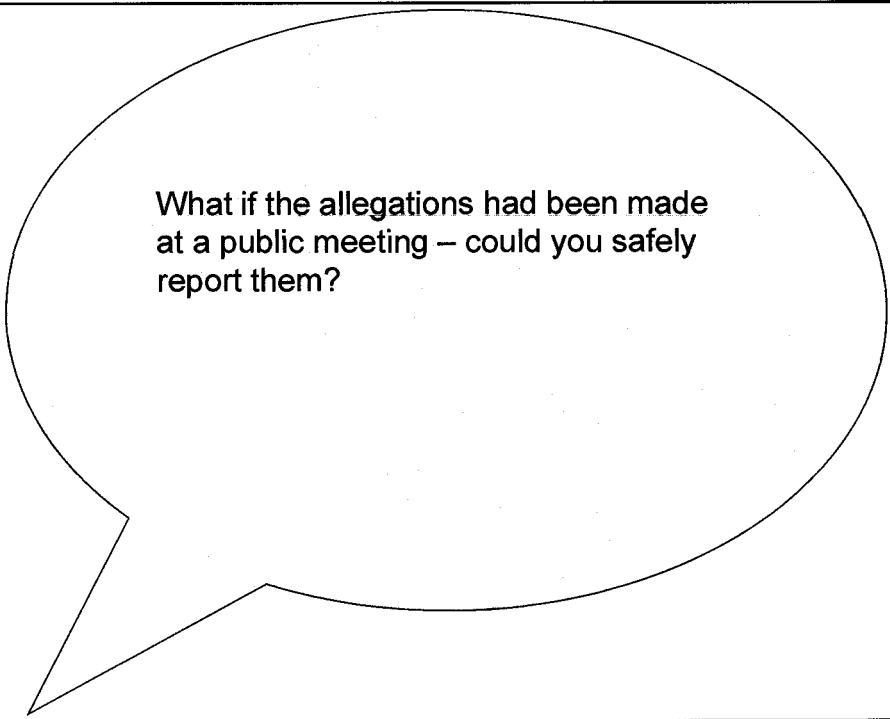
- Qualified privilege

... report has to be fair, accurate,
published without malice and the editor
must be willing to publish a
reasonably-worded reply to the story

Defamation – the defences

- Confidential documents

Take care: Councillors often offer you
confidential papers ... unlikely to have
qualified privilege so be cautious in
what you use



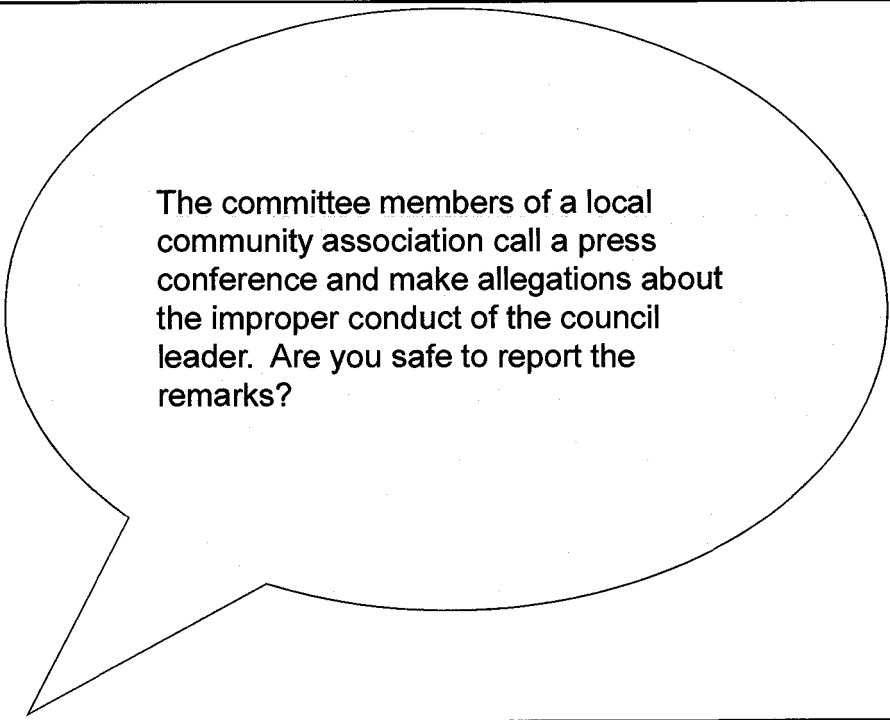
What if the allegations had been made at a public meeting – could you safely report them?

Defamation – the defences

- Public meetings

Public meeting - bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern whether admission is general or restricted

Protection – Schedule to Defamation Act Part II gives report Qualified Privilege subject to publishing statement by way of explanation or contradiction



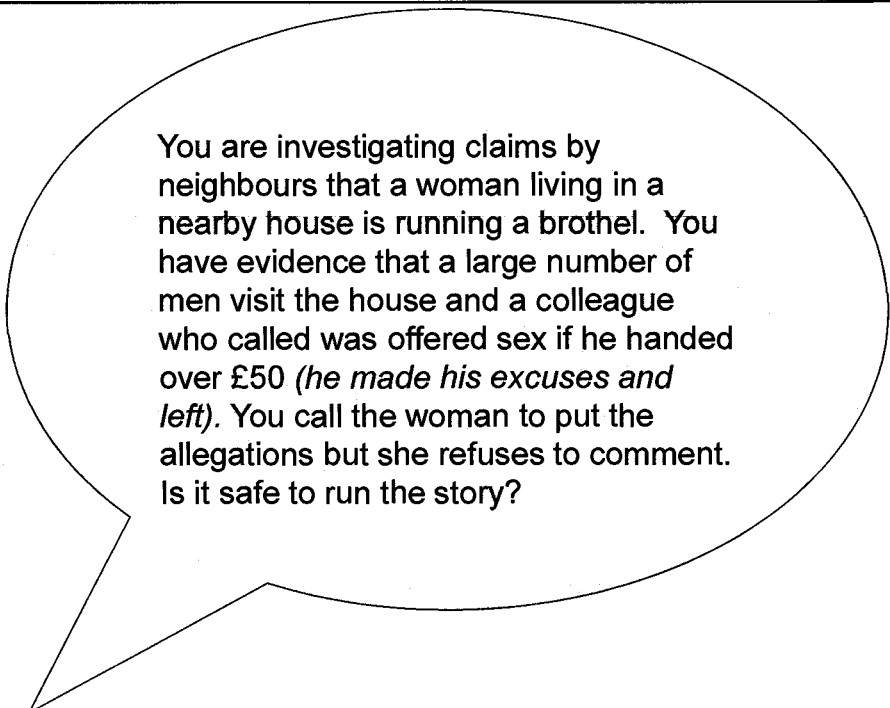
The committee members of a local community association call a press conference and make allegations about the improper conduct of the council leader. Are you safe to report the remarks?

Defamation – the defences

- QP – Clegg/press conferences

Law Lords ruled ‘an important vehicle for promoting the discussion and furtherance of matters of public concern’

Must be lawful and in public interest



You are investigating claims by neighbours that a woman living in a nearby house is running a brothel. You have evidence that a large number of men visit the house and a colleague who called was offered sex if he handed over £50 (*he made his excuses and left*). You call the woman to put the allegations but she refuses to comment. Is it safe to run the story?

Defamation – the defences

- QP ... Reynolds/Public interest

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

Defamation – the defences

- QP ... public interest

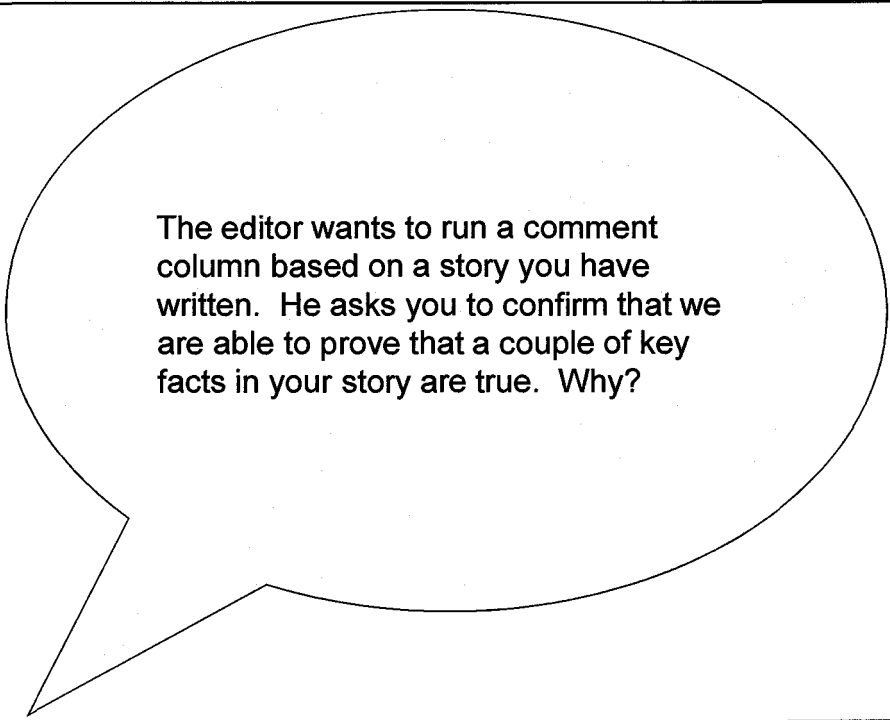
Key is story may include a defamatory statement – but this will be OK if the story was in the public interest and as long as the journalist who wrote it can show they acted responsibly and professionally in trying to get all sides of the story

Defamation – the defences

- Public interest – key elements

A judge will want to know:

- What steps were taken to verify the information
- Whether comment was sought from the complainant and whether the gist of it was in the article



The editor wants to run a comment column based on a story you have written. He asks you to confirm that we are able to prove that a couple of key facts in your story are true. Why?

Defamation – the defences

- Fair Comment

... an honest opinion on a matter of public interest.

Defamation – the defences

- Proving it is fair comment

Comment – based on true facts

Honestly held opinion

In good faith – no malice

No imputation of corrupt motive

On a matter of public interest

Defamation – the defences

- Key to fair comment defence

Present accurate facts along with your honestly held comment to allow the reader to make up their own mind ... based on the facts and not merely the comment

Defamation – the defences

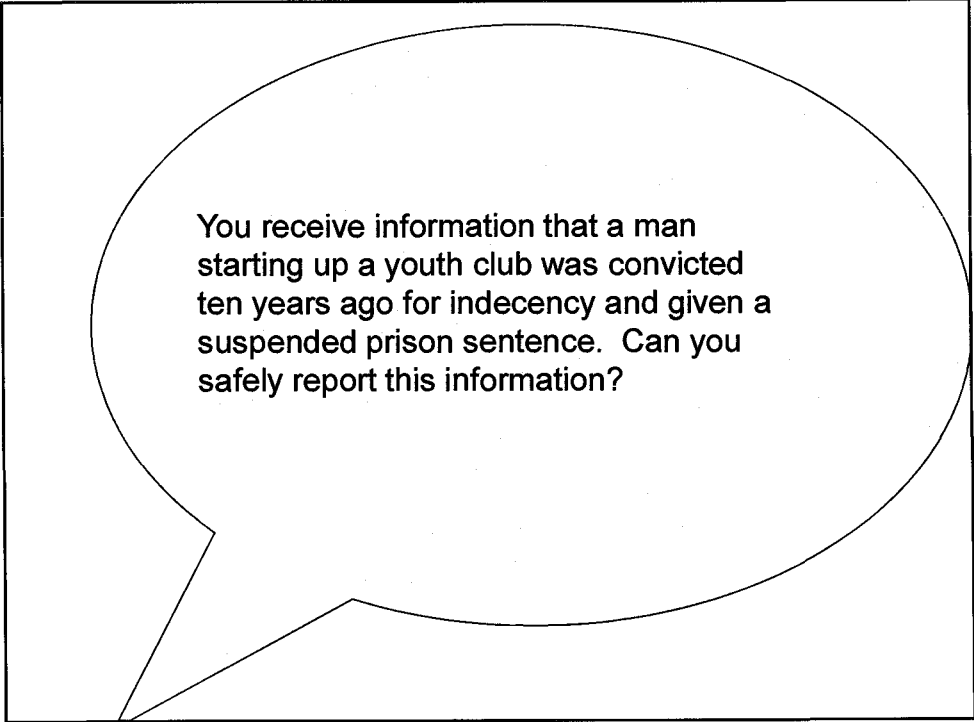
- Watch for improper motive

Sometimes comments might be fair – but could be politically motivated eg:
‘The project was lost because of a load of councillors are nothing more than left wing wreckers’

Defamation – the defences

- Justification – the truth

Remember ... the statement may be true – but difficulty is YOU have to prove it was true



You receive information that a man starting up a youth club was convicted ten years ago for indecency and given a suspended prison sentence. Can you safely report this information?

Rehabilitation of Offenders Act

- 1974 Act means convictions 'spent'

Intended to allow people with comparatively minor convictions to live down their past. Convictions become 'spent' after period, according to severity of sentence

Rehabilitation of Offenders Act

- 1974 Act means convictions 'spent'

When revealing matters of public interest the journalist can plead qualified privilege and justification – as long as we didn't act with malice e.g. an improper motive

You are covering a demonstration by a group protesting about asylum seekers. One of the protest leaders makes a speech in which he makes racist remarks. What are the dangers here?

Race relations

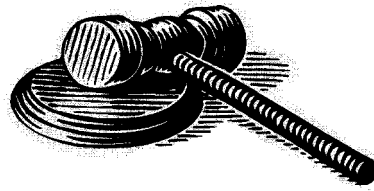
- Public Order Act 1986
 - ... an offence to display, publish or distribute written material that is threatening, abusive or insulting
 - ... newspaper is as likely to be prosecuted for stirring up racial hatred as the person who made the remarks
- Paraphrasing gets around the problem



At the demonstration violence erupts and police move in to arrest several of the protestors. The arrests are captured by a photographer who is covering the demo with you. What can the paper safely run?

Contempt of Court

- Material must be published that creates a substantial risk of serious prejudice when proceedings are active



Contempt of Court

- Active ... official meaning
Warrant for arrest issued
Arrest made
Summons issued
Orally charged



Contempt of Court

- Active ... in reality
When the case is about to be heard



Contempt of Court

- 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

- 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

- 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

- 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

- 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
- ❑ Never use previous convictions or background info that could infer



Contempt of Court

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



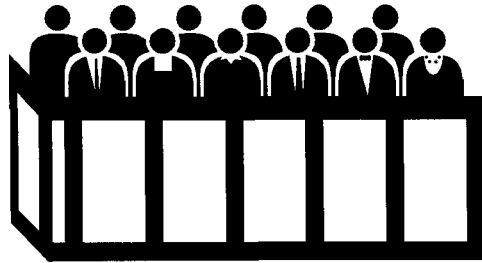
Contempt of Court

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



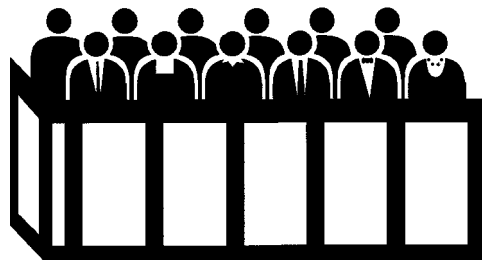
Contempt of Court

- While the jury is out ...
Never publish information revealed
in the absence of the jury



Contempt of Court

- Appeals against conviction etc ...
Only 'active' once appeal is lodged
so OK to publish backgrounders if
nothing formal underway



Contempt of Court

- Court orders to follow...
 - Section 4 (postponement order)
 - substantial risk of prejudice to another trial



Contempt of Court

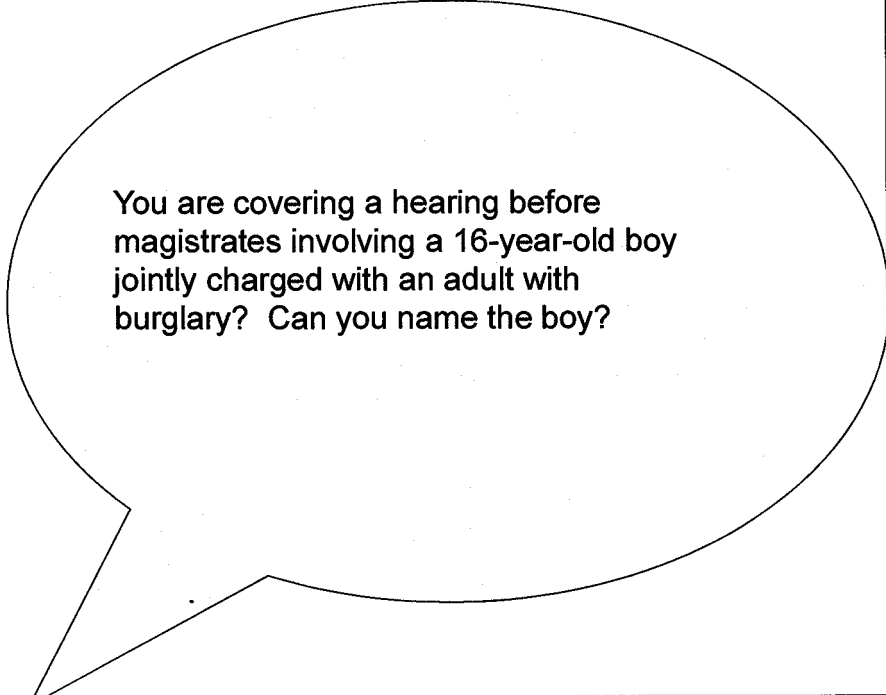
- Court orders to follow...
 - Section 11 (banning order)
 - protecting victims (not for trying to keep defendant's address secret as sometimes happens)



Contempt of Court

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





You are covering a hearing before magistrates involving a 16-year-old boy jointly charged with an adult with burglary? Can you name the boy?

Reporting restrictions

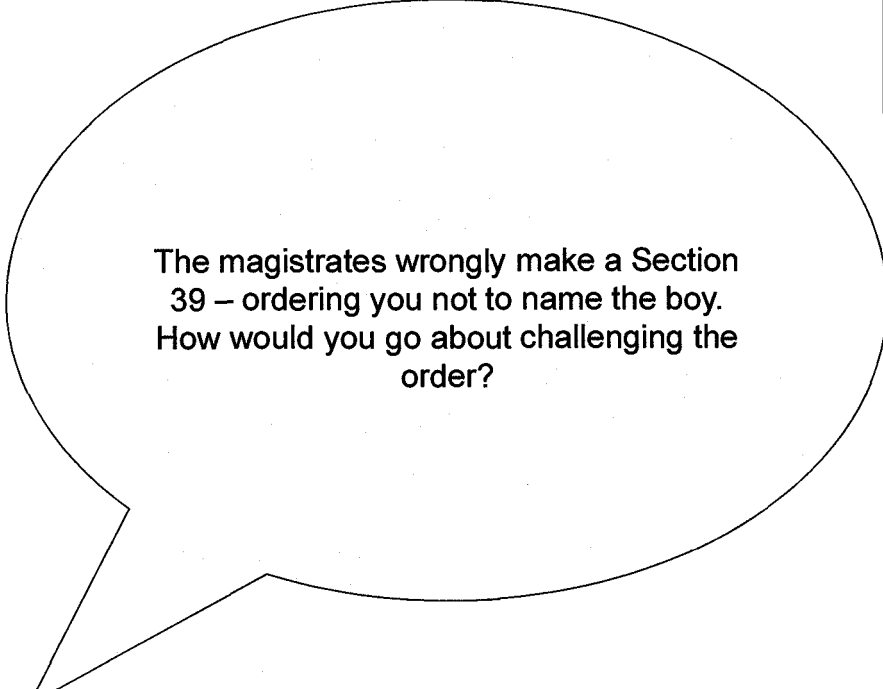
- Youth courts ... can't publish:
Name, address, school or any other details giving clue to identity of any juvenile involved in any way with the case (including witnesses)
(Section 49, Children and Young Persons Act 1933)

Reporting restrictions

- Youths in adult courts ...
Same conditions apply if court makes an order (Section 39)

Reporting restrictions

- Orders to protect children ...
 - Must relate to children and not the adult
Name adult – but not relationship
No orders on dead children
 - Take care not to carry any details that could lead to identity being known – eg boy with a rare disease etc

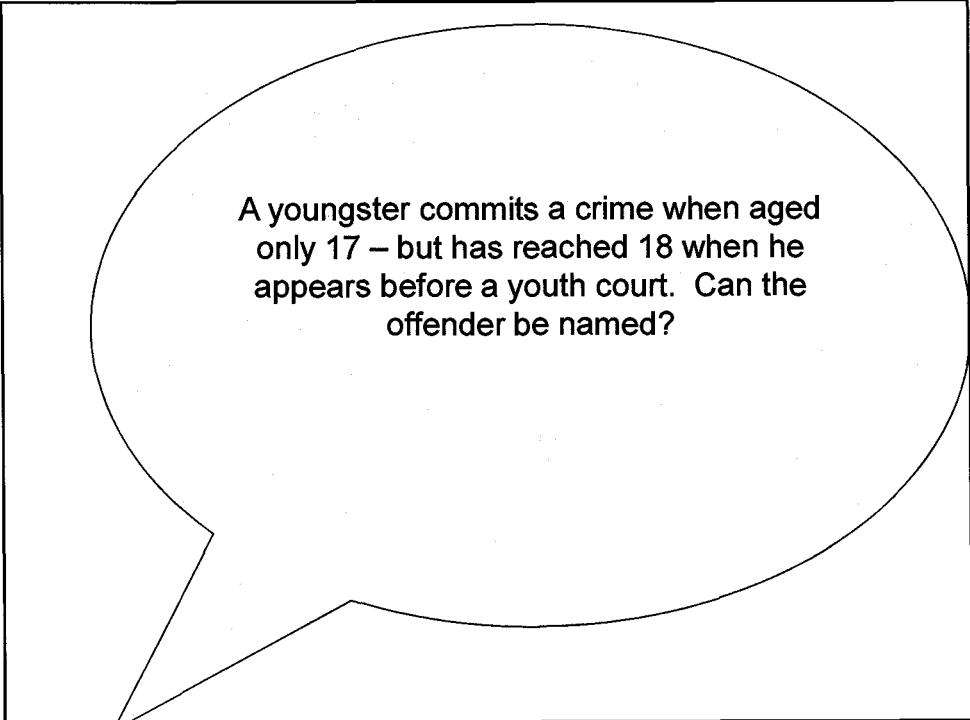


The magistrates wrongly make a Section 39 – ordering you not to name the boy. How would you go about challenging the order?

Challenging orders

Know how to challenge an order


- You don't have to wait for an order to be made to make a challenge.
- The court has to hear the press when it is considering an 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

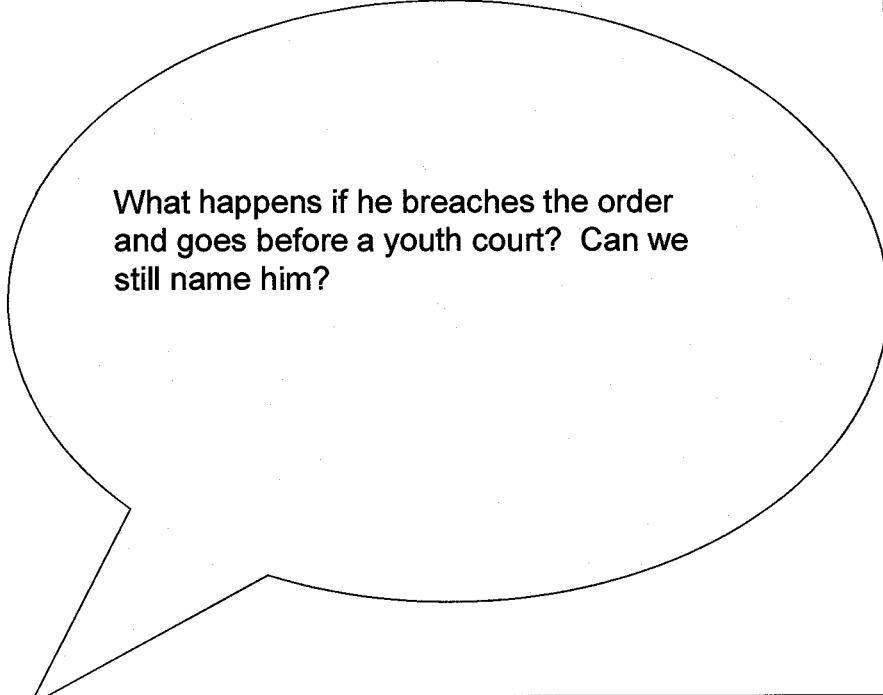
- Aged 18 at court appearance ...
Youngster who turns 18 while awaiting trial at youth court can be named



A boy, aged 12, appears before a youth court accused of terrorising the neighbourhood in which he lives. Your local council and the police seek an anti social behaviour order. Can you name him?

Anti-Social Behaviour Orders

Youth courts making an ASBO sit as a civil court and we have right to name youngster unless s39 order is made

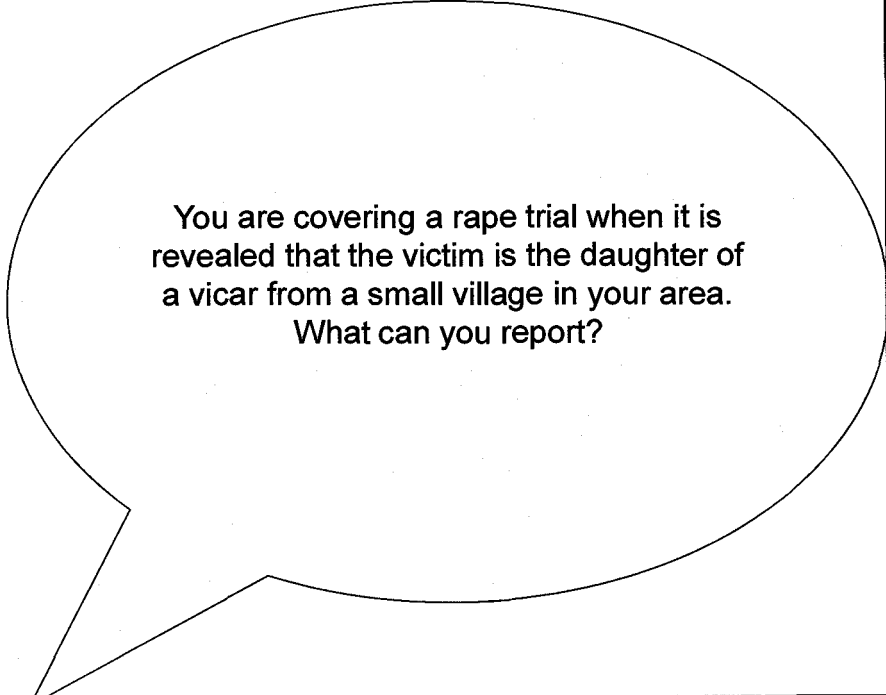


What happens if he breaches the order and goes before a youth court? Can we still name him?

Anti-Social Behaviour Orders

Youngsters accused of breaching order appear before youth court 'proper' and until recently a no name order (s49) was automatic unless lifted

But Serious Organised Crime and Police Act changed this ... NOW any youngster accused of breaching an ASBO can be named – unless a S39 order is made by the court



You are covering a rape trial when it is revealed that the victim is the daughter of a vicar from a small village in your area. What can you report?

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

- Sexual Offences Act 2003

You are interviewing a woman for a story about a new help group set up to help the victims of sexual abuse. She tells you that she suffered systematic abuse at the hands of an uncle. What issues do you face?

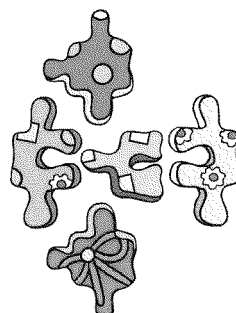
A victim's consent

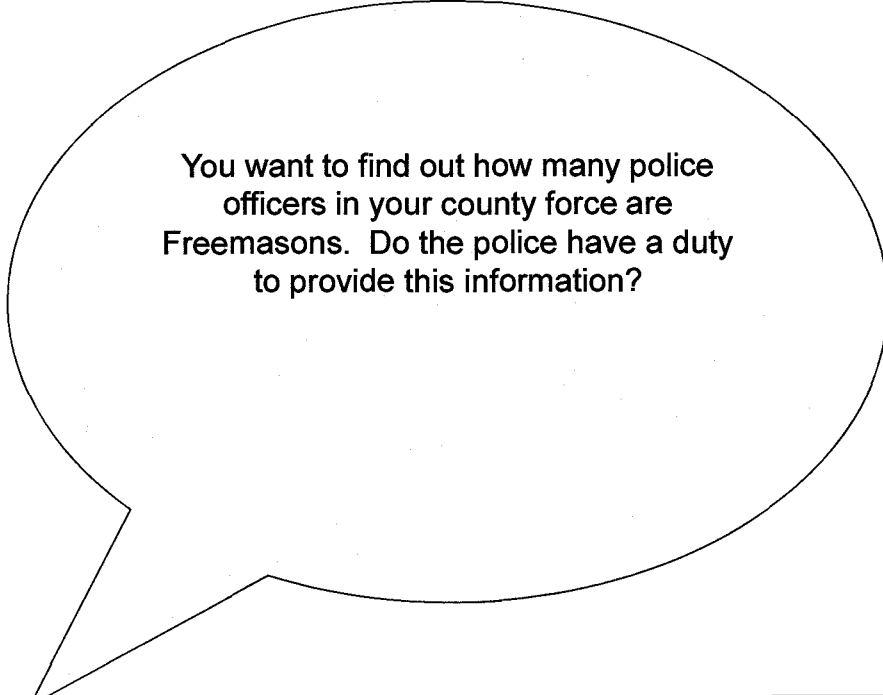
- Victim must be over 16 and give WRITTEN consent that no one 'interfered unreasonably with their peace and comfort'



Reporting restrictions

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





You want to find out how many police officers in your county force are Freemasons. Do the police have a duty to provide this information?

Freedom of Information Act

- Became law January 1 2005
- Gives public right to information – including past events
- 100,000 public authorities covered including parliament, govt depts, agencies, councils, NHS bodies, police, armed forces, schools and universities, publicly owned companies, BBC

Freedom of Information Act

- Public interest test:

Is public interest in disclosure greater than or equal to, the public interest in confidentiality?

Freedom of Information Act

- If information is withheld, authority should tell you:
 - Which exemption it has relied on
 - Why it thinks public interest favours confidentiality
 - How to challenge the decision

Freedom of Information Act

- Appeals eventually go to Information Commissioner
- If he disagrees with authority's refusal decision he can serve an order requiring disclosure
- Decisions are legally binding – and authority ignoring them could be in contempt of court

Freedom of Information Act

Information about environment easier to obtain – so use opportunity to include it in requests

- Environmental Information Regulations includes: Pollution, energy, noise, radiation, air and water borne disease agents, food contamination, planning, road building

Freedom of Information Act

- FoI website has more info:
www.cfoi.org.uk/pdf.foi_guide.pdf



The Code of Conduct

- The dilemma



Your local MP makes a speech arguing for a return to traditional family values. His former mistress sells her story of their affair to a Sunday tabloid. The MP and his wife simply make a one-line statement saying he regrets the affair. You are among 30 journalists camped outside. How long can you stay there?

The Code of Conduct

- The verdict



Under the code you could stay outside the house for a reasonable time using the public interest defence that you were exposing a misleading statement. If the MP was to make a further comment and reiterate he would not be adding anything else you would be expected to disperse

The Code of Conduct

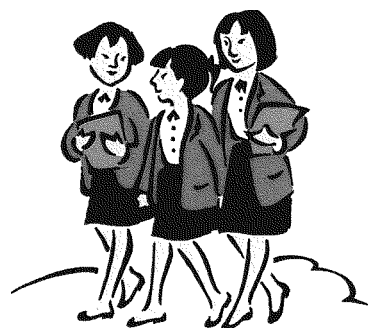
- The dilemma



You are given a tip-off that children at a major secondary school in your town are involved in playground drugs deals. How would you go about getting the story while staying within the PCC code guidelines? Could you interview youngsters in the playground?

The Code of Conduct

- The verdict



The code says pupils must not be approached or photographed at school without the permission of the school. But the code says it would be possible if editors could demonstrate an exceptional public interest reason to over-ride the normally paramount interests of the child

The Code of Conduct

- The dilemma



You are in court covering a case in which a father has sexually abused his child. The magistrates make an order that nothing should be reported to stop the child being identified. A freelance reporter tells you this will mean you cannot name anyone in the case. What guidelines should you follow in connection with this?

The Code of Conduct

- The verdict



The code says that in sex cases involving a child the youngster must not be identified. It says the adult may be named and details taken out of the report which would reveal the relationship.

Complaints

If someone complains ...

- Deal with them courteously
- Don't admit liability
- Tell the editor ASAP
- 'Without prejudice'

Copyright

Does copyright cover news?

Copyright

Copyright, Designs and Patent Act 1988 covers

- Original literary, dramatic, musical or artistic work – including photographs and graphics
- Sound recordings, films etc
- Typographic arrangements – the way a page is set out in a newspaper or book

Copyright

Who owns copyright

- The employer – if work is carried out in the course of employment, unless an agreement to the contrary

Copyright

Who owns copyright?

- Submitted material – the contributor
- Pictures – the photographer ... or if pix taken before 1988, the person who commissioned the work

Copyright

Defences

- Fair dealing – need to prove the work is being used for reporting current events and there is no commercial gain
- Public interest – the material used was done so to justify the public interest
- Innocent infringement – did not know and had no reason to believe work was copyright

Copyright

Remedies

- Civil court – owner can get injunction to stop infringement and seek damages
- Criminal – Under 1988 Act a person guilty of an infringement can be prosecuted



Right to privacy



V

Right to know



The exam

- The three BIG questions
- Libel – absolute and qualified privilege
- Contempt
- Courts – civil and criminal hearings

The exam

- Some possible questions
- PCC code – children, jigsaw ID, going into hospitals etc
- Reporting sex cases, children (S39 etc)
- Challenging orders

Human Rights Act

- Article 10 – Right to Freedom of Expression
- Article 8 - Right to respect for private and family life
- Article 6 – Right to a fair trial - particularly for juveniles

Malicious falsehoods

- Action available when someone has been damaged (probably financially) – but not necessarily defamed
- Words are untrue
- Malice must be proved

Breach of confidence

- An action which can be taken to stop you unfairly using information which you have obtained in confidence
 - information from government document you shouldn't have
 - something you are told by someone who is not allowed to repeat it

