

# LAW FOR JOURNALISTS

FRANCES QUINN

FIFTH EDITION



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Ken Brown, Lecturer, University of Bournemouth

# LAW FOR JOURNALISTS

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Frances Quinn

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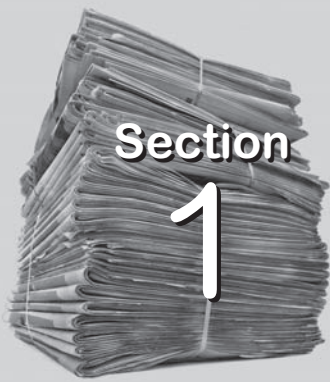
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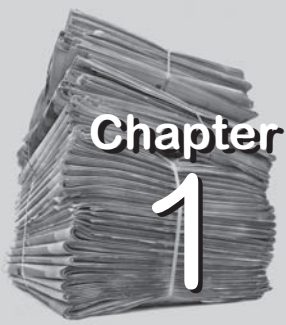


# LAW AND THE LEGAL SYSTEM

As a journalist, there are two main reasons why you need to learn about the law. The first is that there are legal rules which affect what you can and cannot publish, and, clearly, you need to know what these are. The second is that the law and legal proceedings will often form part of the subject matter of the stories you write. This is most obviously the case on local papers, where reporting the local courts is an important part of the news coverage, but legal issues and court cases are also covered by national papers, TV and radio, women's magazines and the trade press, even if not always to the same extent. For that reason, you need to have a basic knowledge of the legal system, and how it works. That forms the subject of this section, while later sections look at how the law will affect you in your daily work.







# How law is made

If you asked the average person where to find out ‘the law’ on a particular subject, most would probably assume that, somewhere, it must all be written down: the answer to every question from ‘Can my neighbour build a shed that blocks my view?’ to ‘Is it legal to sneak into a celebrity’s wedding and take pictures?’ In fact, there is no single set of written rules that make up ‘the law’; instead, there are seven different sources of law which interact with each other. For that reason, in many court cases, the courts are asked to decide not just whether someone has broken a law, but what the law actually is on a particular issue. In this chapter, we look at where law comes from and how it is made.

Note that in this book, English law refers to the courts of England and Wales, as the Scottish system is different. In addition, there are some differences in Northern Ireland, which are pointed out where relevant in the text.

## SOURCES OF LAW

The seven sources of law are:

- statute;
- delegated legislation;
- case law;
- European Union (EU) law;
- international treaties;
- custom;
- equity.

In this context it is also important to know about the effect of the European Convention on Human Rights, which has now been incorporated into English law in the Human Rights Act 1998. Although not a separate source of law, it has an important effect on the way in which law is interpreted. It is important to realise that human rights law, developed under the European Convention, is not the same thing as European Union (EU) law (for more information on this, see Chapter 5).

### ■ Statute

Statutes are laws passed by Parliament, and are also known as Acts of Parliament. They take precedence over any other type of law, except EU law. Parliament can make or cancel any law

it chooses, and the courts must apply that law. This is not the case in many other countries, such as the USA, where the courts can refuse to apply legislation that they consider goes against the country's constitution.

### How Acts of Parliament are passed

**The Bill stage:** All statutes start out as a Bill, which is essentially a proposal for a new law or a change in the law. There are three types:

- **Public Bills:** These are put forward by the Government, and form the basis for most legislation. In many cases, a consultation document called a Green Paper is published beforehand (the name comes simply from the colour of the paper it is printed on). A Green Paper explains why the Government is looking at the law in a particular subject area, and gives general details of the options they are considering. The Government then invites anyone who might be affected by the plans to give their views on the proposals. Pressure groups in the relevant area will usually give a response, for example, but the paper may also ask for views from ordinary members of the public who are likely to be particularly affected by a change in the law; for example, if considering changes to particular areas of the welfare services, responses might be invited from users of those services and charities who work with people using the services. The Government can then choose which – if any – of the views expressed should influence the final content of the Bill. Usually, it will produce a White Paper which details the conclusions it has come to after the consultation process.
- **Private Members' Bills:** These are put forward by an individual Member of Parliament (MP) who is not a Cabinet member. Pressure on parliamentary time means there are only limited opportunities to do this, and around half of Private Members' Bills come from a ballot, held once each Parliamentary session, for the chance to put forward a Bill. Members who get this chance then have to persuade the Government to allow sufficient Parliamentary time to get the Bill passed; this rarely happens, and, as a result, Private Members' Bills are more useful as a way to draw attention to an issue, which may later be taken up in a Public Bill, than they are as a way to change the law straight away. Some important legislation has been made this way, however – the Abortion Act 1967, for example, started as a Private Members' Bill.
- **Private Bills:** These are put forward by individuals, local authorities or companies, and essentially concern specific local issues: for example, Railtrack, which runs the tracks for Britain's railways system, might use a Private Bill if it wanted to build a new railway line. Anyone who might be affected by the decision has to be consulted. If the Bill is passed, it only applies to the specific area cited in the Bill, and does not give any general powers applicable to the whole country. Only a handful of Private Bills come before Parliament every year, usually relating to large construction projects.

**First reading:** The title of the Bill is read to the House of Commons, to notify the House of the proposal.

**Second reading:** The proposals are debated by the House of Commons, and amendments may be suggested and voted on. MPs then vote on whether the Bill should go on to the next stage.

**Committee stage:** The Bill is referred to a House of Commons Committee, which will scrutinise it in detail, and may make further amendments.

**Report stage:** The Committee reports back to the House of Commons, and any amendments are discussed and voted on.

**Third reading:** The Bill goes back to the House of Commons for a vote on whether to accept or reject its proposals.

**House of Lords:** The Bill then passes to the House of Lords, where it goes through a similar three-reading process. If the House of Lords suggests any changes, these are passed back for the House of Commons to consider, and the Commons either accepts the suggestions, rejects them and says why, or suggests alternative amendments. If no agreement can be reached, the Commons can use special procedures to pass legislation without the Lords' approval (this is often referred to as using the Parliament Acts). In practice, the House of Lords usually gives up on changes that the Commons clearly does not want, but the Parliament Acts were used, for example, in passing the Hunting Act 2004.

**Royal Assent:** The final stage is for the Queen to give her consent to the new law (in practice this is never refused).

The Bill then becomes an Act of Parliament, though this does not necessarily mean that all or even any of its provisions take effect immediately: the Act may specify future dates when particular provisions take effect or allow the Government or a particular minister to decide when this should happen. In some cases, elements of an Act may never actually come into force.

Where a piece of legislation is unlikely to be objected to by any of the major political parties, a simpler process can be used, with the first three readings in the Lords followed by three in the Commons, and a final reference to the Lords only if there is disagreement.

You can find out what stage a Bill before Parliament has reached at the UK Parliament website: <http://services.parliament.uk/bills>.

## ■ Delegated legislation

Some types of legislation require very detailed rules, often of a technical nature; examples would be the law on health and safety at work, or the enormous number of road traffic provisions. Rather than using up Parliamentary time making these detailed rules, Acts of Parliament often create a framework for the law on a particular issue, putting general rules into place without necessarily specifying exactly how they should work in particular situations.

Acts drawn up in this way will include provisions for who should make the detailed rules – usually a government department or Secretary of State, local authorities, or public or nationalised bodies. These rules are known as delegated legislation (or sometimes secondary legislation), and there are three types:

- **Statutory Instruments** are drawn up by government departments.
- **By-laws** are made by local authorities, public bodies and nationalised bodies. For example, rules on what can and cannot be done in a specific park will usually be made in the form of by-laws drawn up by the local authority.
- **Orders in council** are regulations which are made by the Government at a time of national emergency (such as in wartime).

Delegated legislation is also used where rules may need to be changed quickly in response to circumstances, and the Parliamentary procedure is considered too slow-moving and cumbersome to cope with these demands, or where local knowledge is required to make the detailed rules (local by-laws are examples of this). Whatever the reason, delegated legislation carries as much legal force as statutes themselves.

### ■ Case law

Case law (sometimes called common law) comes from the decisions made by judges in certain legal cases. The courts are arranged in a hierarchy (see Figure 1.1 The hierarchy of the courts), and it is decisions made in the higher courts (from the High Court up) which can make law, through a system called judicial precedent (see next paragraph). Cases reach these courts through a system of appeals, which provides a route for parties who believe their case has been decided wrongly in the lower courts to take them to higher courts. In most cases permission is required for such appeals, which ensures that the higher courts mostly hear cases which raise important issues of law (the Supreme Court, for example, hears fewer than 100 cases a year).

Deciding a case involves two stages: first, establishing what actually happened (often referred to as the facts of the case); and second, deciding how the law applies to the facts. In many cases the latter will be obvious, but there are situations where the law is unclear. For example, if a statute states that ‘vehicles shall not be allowed in parks’, it is obvious that you cannot drive a car or van round the park – but can you ride a pushbike or use a skateboard? Where these dilemmas arise, it is up to the court deciding the case to determine what the words of the statute actually mean. When a higher court does this, the decision forms what is called a precedent. Once a higher court has set a precedent by interpreting a legal provision in a particular way, that approach should be followed in all the courts that are lower in the hierarchy, and only a higher court can authorise a different approach.

The idea behind case law is that justice requires that like cases be treated alike; once a court has decided what a statutory provision means and/or how it applies to a particular set of facts, later cases with similar facts should be treated in the same way, rather than each judge interpreting the law according to their own sense of justice. For example, if the imaginary case referred to above went to the Supreme Court, and it decided that for the purposes of the legislation, a skateboard was a vehicle, other courts faced with cases involving skateboards used in parks would be expected to take the same view. Case law accounts for a huge proportion of English law – for example, the law of negligence, which essentially creates the right to sue for loss or injury caused by someone else’s carelessness, is almost exclusively a creation of case law.

### ■ EU law

Laws made by the EU are rapidly becoming one of the most important sources of law for the UK, because the terms of membership of the EU mean that they take precedence over any other source of law. However, although it is widely believed that the EU can dictate the law on anything, in fact there are only specific areas which can be affected by EU law. The EU can, for example, make legislation on transport, agriculture and many of the rules regulating how industry behaves, but it does not legislate in the areas of family or criminal law; these are still made solely by the UK Parliament and courts.