

**College of Social Sciences and Humanities**

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| **Media Law & Ethics** |
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**1.1 Understanding Law**

**Definition and Explanation of Law**

A law is basically a body of principles or rules which are the basis of a society and are abide by the society. No system in a society can exist without a law. Human life needs a proper rule of conduct or principle at every step. It is also important for a successful society. If it will not happen then there will b anarchy and disturbance in a society and it will not exist for long.

There are various definitions of law. Some of them are as follows

1. A rule of conduct or procedure established by custom, agreement, or authority.
2. A code of principles based on morality, conscience, or nature.
3. A law is rules of conduct of any organized society, however simple or small, that are enforced by threat of punishment if they are violated. Modern law has a wide sweep and regulates many branches of conduct. A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.
4. A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.

**Origin of Law**

Law, according to some scholars, is as old as man. In Qur’an chapter 2 verses 35 and 36, God created the first man, Adam and his wife, Eve (Hawaw) and put them in the paradise. God enacted law for them (the dos and the don’ts) to serve as their guiding principles:

And He said: “O Adam! Dwell you and wife in the paradise and eat both of you freely with pleasure and delight, of things therein as wherever you will, but come not near this tree or you both will be of the wrongdoers.”

From this Quran verse, it is established that God enacted laws for the first man and his wife, which set for them the limit in the use of the provision in the paradise. God also stipulated the measure for the violation of the laws and the punishment that goes along with it is stated in verse 36 of the same chapter. Similar quotation can be found in Bible. Another law that testify to the earlier historical record of law is Mosaic laws (10 commandments) in the Old Testament. Whether divine or man- made, law is law, once it satisfies all or any of the conditions highlighted in Oyakhilomen (2009), namely:

• controls • regulates • enforces • punishes.

Law is very wide and all encompassing and that is why every profession, like every society, has its own law or form of law. The laws that affect businesses are known as business laws or company laws or law of contracts, while those that affect property are known as property laws. It therefore implies that the laws that control, regulate, enforce and punish in the operation of mass media are Media Laws.

**Importance of Law**

The importance of law is discussed below.

**1. Protection of interests**

Von Ihering has said that, “the purpose of law is the protection of interests.” According to Akinfeleye (2010), interests are of two categories:

***(a) Individual interest***: Each member of a society has his personal interest to protect. His interest is important to him for his personal development, protection and gains. The interest of an individual is limited by the interest of other within the same society. This means that an individual should not protect his or her interest at the detriment of violating the interest of other individual members.

(***b) Public/state/societal interest***: The good of the individual is not itself an end, but only a means of securing the good of the society. In essence, the society is a higher conception than the individual so that the individual can desire the common interest in addition to his own. Andrei Vyshinsky’s view is that law and the state are one so that any criminal act is a danger to the regime and the state. He thought that emphasis on individual was a mere cloak to shroud the exploitation of workers by the bourgeoisie. In the western philosophy, function of law is to hold a balance between interests of the individual and those of the state.

**2. Protection of life**

There are a number of incidents taking place all the time which could be harmful to people. This leads to the need of making law. People need a proper code of life. They need to know their rights as well as others’ right; only then they could lead a peaceful life.

**3. National security and public safety**

National security is the protection of a state and its human and material resources against both internal and external forces. State security includes all the means at a government’s disposal for securing or protecting the nation or state from the danger of subjugation either by an external power or through internal insurrection. Sometimes, individual rights are violated to ensure that the state is secured from certain danger.

**4. Social welfare of state**

Laws ensure social welfare of state as follows:

(i) The Constitution and various statutes enhance freedom. It is by law slave trade were abolished.

(ii) Tax laws provide money for social amenities.

(iii) Traffic laws provide for orderliness on the highways.

(iv) Law of contract encourages business transactions and allows them to strive.

(v) Law of tort protects proprietary rights and freedom of property, and commands compensation, damages or other remedies in case of trespass.

(vi) Arbitration laws and rules of courts provide ways of setting disputes when they arise.

**5. Maintenance of justice and fairness in society**

Justice and fairness come from nowhere other than from the application of laws. Writers expresses law equate with justice, contending that law ought to be just.

**The essences of law to ensure justice are as follows:**

(a) To hold everybody accountable in the same proportion for equal functions given to them or obligations expected of them by the law.

(b) To give everybody equal chance to contest, compete or access public gains or opportunities. (c) To give equal right to all for fair trial.

(e) To give to all equal right to be heard and equal and proportion time to defend in a trial.

(f) To give equal and proportionate punishment

**6. Law as an agent of change and transformation**

A change in any aspect of law in a society would definitely bring a change within that society. It is not all the times that a change in any aspect of law or introduction of a new law brings about positive change.

**1.2 Understanding Ethics**

Ethics is derived from the Greek ethos, meaning “custom,” “usage,” or “character.” It is often thought of as a rational process applying established principles when two moral obligations collide (Day, 2006). Ethics is “the liberal arts discipline that appraises voluntary human conduct in so far as it can be judged right or wrong in reference to determinative principles” (Christians et al, 1998).

Neher and Sandin (2007) note that: “In a technical sense, ethics is a branch of the field of philosophy, which is concerned about judgments on right and wrong actions. Beyond the discipline of philosophy, many fields include the study of and applications of ethics to their domain. Ethics refers to a systematic method for making judgments concerning voluntary actions of people.”

Neher and Sandin highlight several aspects of the definition thus:

• First, ethics is intended to provide us with a system so that the decisions or judgments one makes can be justified to others and to oneself in a clear and objective manner.

• Second, ethics is concerned with judgments about actions that can be determined to be right or wrong according to the principles of this method.

• Third, the judgments are to be made about actions, in which the actors appear to have a choice; they could have done otherwise.

• And, fourth, the actions are seen as intentional: the persons seemed to know what they were doing and intended to do what they did.

**Differences between Law and Ethics**

Ethics is not the same as law, and ethical constraints are not the same as legal rules. Ethics articulates what we ought to do in order to be moral individuals and professionals, while law concentrates on the bottom line below which we should not fall. Ethics deals with ideal behaviours, while law deals with minimum standards.

Okoye (2008) provides the following differences between law and ethics:

a) Law is imposed by the outer society, while ethics is self-imposed and self-enforced (e.g. by a professional body for its members).

b) Law has a definite effective date while ethics has no effective date.

c) Law can expire or be repealed, but ethics is continuous.

d) Law has more formal institutions, such as the legislature, police, judiciary, (the courts, tribunals, court-martials, etc) penitentiary (prison, reformatory, etc), but ethics has less formal institutions for its formulation and enforcement. Indeed, the chief enforcer of ethic is the conscience.

e) While morality protects a way of life by tabooing immoral action even before it takes place, laws only provide recourse after the deed has been done (Caster, 1983).

There is a close relationship between law and ethics as both are attempting to restrain or constrain the media to behave responsibly, but the purpose of the law is always to set the limits of behaviour, to identify those things we must do (or, often, must not do). Ethics set out those things that we ought to do or not do. Think of a hen’s egg – the hard outer shell represents the law – an easy-to-detect boundary between the white and the yolk is a much softer boundary, and although it sits within the hard shell of the law, it can easily be pushed in one direction or another, depending upon our desire and beliefs. The law has a more powerful effect on people than a code of conduct. A person’s own moral code may supersede the law every time, but a professional code can only be for guidance this means that when there are conflicts between the law and professional practice, the law will almost always take precedence (Frost, 2007).

**Importance of Ethics to the Society**

Day (2006) explains five reasons why every society needs a system of ethics. The reasons are:

***1. The need for social stability***: First, a system of ethics is necessary for social intercourse. Ethics is the foundation of our advanced civilisation, a cornerstone that provides some stability to society’s moral expectations. If we are to enter into agreements with others, a necessity in a complex, interdependent society, we must be able to trust one another to keep those agreements, even if it is not in our self-interest to do so.

***2. The need for a social hierarchy***: Second, a system of ethics serves as a moral gatekeeper in apprising society of the relative importance of certain customs. It does this by alerting the public to (1) those norms that are important enough to be described as moral and (2) the “hierarchy of ethical norms” and their relative standing in the moral pecking order. All cultures have many customs, but most do not concern ethical mores. For example, eating with utensils is customary in Western countries but the failure to do so is not immoral. Standing for the national anthem before a sporting event is a common practice, but those who remain seated are not behaving unethically. There is a tendency to describe actions of which we disapprove as immoral, although most of our social indiscretions are merely transgressions of etiquette. A system of ethics identifies those customs and practices of which there is enough social disapproval to render them immoral.

***3. The need to promote a dynamic social ecology***: Three, an ethical framework serves as a social conscience, challenging members of a community to examine ethical dimensions of both public issues and private concerns and to aspire to elevate the quality of the moral ecology.

***4. The need to resolve conflicts***: Four, a system of ethics is an important social institution for resolving cases involving conflict claims based on individual self-interest.

***5. The need to clarify values***: Finally, a system of ethics also functions to clarify for society the competing values and principles inherent in emerging and novel moral dilemmas. Some of the issues confronting civilization today would challenge the imagination of even the most ardent philosopher.

**1.3 Ethical Approaches, Theories and Moral Reasoning**

Philosophical principles and traditions are values we can refer to in making decisions on ethical issues, especially when there are two conflicting moral matters to decide on. Bowles and Borden in their book Creative Editing provided three ethical principles and traditions. These are:

* Immanuel Kant’s absolutist view
* John Stuart Mill’s principle of utility
* Aristotle’s golden mean

***Immanuel Kant’s absolutist view*** is “based on a conviction that as human beings we have certain moral rights and duties and that we should treat all other people as free and equal to ourselves” (Bowles and Borden, 2004).

The implication of this is that we must act only in ways in which we will have other people act towards us. So it’s basically like saying do unto others as you will have them do to you. It is based on the notion that if everyone acts in this way, there will be order in the society and indeed the world.

In other words, moral agents should check the principles underlying their actions and decide whether they want them applied universally. If so, these principles become a system of public morality to which members of society are bound. Kant believed that moral behaviour was measured by living up to standards of conduct because of the consequences that might result. He argued that although individuals should be free to act, they have a responsibility to act up to moral principles. Because Kant’s theories emphasis duty, his ideas are sometimes referred to as duty-based moral philosophy. In other words, one has a duty to tell the truth, even if it might result in harm to others (Day, 2006).

***John Stuart Mill’s principle of utility*** is based on the notion that the best action is the one that will bring the best results for the greatest number of people. It doesn’t matter if the action will bring negative consequences or impact for a few people.

“It is based on the notion that our actions have consequences, and those consequences count. The best decisions, the best actions have good consequences, and those consequences count. The utilitarian principle prescribes “the greatest happiness for the greatest number.” In media situations, this maxim often translates into “the public’s right to know” (Bowles and Borden, 2004).

Reporters who use deception to uncover social ills often appeal to the principle of utility on the ground that, in the long run, they are accomplishing some moral good for the public they serve. In other words, the positive consequences for society justify the devious means used in gathering the information (Day, 2006).

***And Aristotle’s golden mean*** is a principle that seeks a middle point between the extreme of the absolutists who insist the right thing must be done regardless of the consequences and the other extreme of the utilitarian who insists that the best decision is the one that will bring the best good to the greatest number of people. The key value here is to find a middle ground, undertake an action that will be close to the right thing to do and at the same time bring good to all those who deserve it.

Aristotle’s golden mean holds that moral behaviour is the mean between two extremes, at one end is excess and at the other deficiency. Find a moderate position, a compromise between the two extremes, and you will be acting with virtue. In this case, the moderate and ethical position between the two extremes-stealing the medicine or allowing the loved one to die-might be to offer to work for the pharmacist in return for the medicine.

**Ethical Theories**

Day (2006) presents three categories of ethical theories that will be adopted in this unit. They are:

i. Deontological (duty-based) theories

ii. Teleological (consequence-based) theories and

iii. Virtue theories

***The Deontological (duty-based) theories***, “prohibitions against certain kinds of behaviour apply, even if beneficial consequences would result. Rather than focusing on the consequences, (after all, foul deeds might produce good results), deontologists emphasis the commitment to principles that the moral agent would like to see applied universally, as well as the motive of the agent. Thus, in this view Robin Hood would have been a villain and not a hero for his rather permissive to the redistribution of the wealth. Duty-based theorists do not approve of using foul means to achieve positive ends. The moral agent’s motives are important. According to Kant, people should always be treated with respect and as ends unto themselves, never as means to an end. Simply stated, “The ends do not justify the means!” (Day, 2006).

***Teleological (consequence-based) theories*** are predicated on the notion that the ethically correct decision is the one that produces the best consequences. Consequentialists, unlike deontologists, do not ask whether a particular practice or policy is always right or wrong but whether it will lead to positive results. There are of course, variations on the teleological theme. At one extreme are the egoists, who argue that moral agents should seek to maximise good consequences for themselves. They should, in other words, look out for number one. At the other extreme are the utilitarians, represented primarily by the writings of philosophers such as Mill. As noted previously, utilitarians believe that we should attempt to promote the greatest good (the most favorable consequences) for the greatest number of people. Utilitarianism is appealing because it provides a definite blueprint for making moral choices. When confronting an ethical dilemma, moral agents should analyze the benefits and harms to everyone (including themselves) affected by the decision and then choose the course of action that result in the most favorable outcome for the greatest number. Appeals to the public interest to justify certain unpopular decisions by media practitioners are a contemporary manifestation of utilitarianism at work. Thus, a socially beneficial consequence is sometimes used to justify an immoral means. Reporters who use illegally recorded conversations from news sources on the ground of the “public’s right to know” are attempting to justify what they believe to be good consequences, even though the means of accomplishing the ends are rather questionable.

***For Virtue theories***, many have argued they are not entitled to an independent status because they focus more on building characters (what personalities individuals ought to have) rather than what methods should be used in providing a systematic way of reasoning morally. However, one helpful theory can be extracted from virtue ethics: Aristotle’s theory of the golden mean, discussed earlier. The golden mean provides a moderate solution in those cases in which there are identifiable extreme positions, neither of which is likely to produce satisfactory results.

The mean is not only the right quantity, but it occurs at the right time, toward the right people, for the right reason, and in the right manner. The distance depends on the nature of the agent as determined by the weight of the moral case before them (Christians et al, 2008).

**1.4 Models of Moral Reasoning**

When journalists and media practitioners are faced with situations that require them to make ethical decisions, it will be helpful if there are models or frameworks that can guide that decision making process. This is because making editorial decisions to publish or not to publish stories can be very challenging and daunting.

**1.4.1 The Potter Box**

The Potter Box is a model of moral reasoning formulated by Dr. Ralph Potter of Harvard Divinity School. Christians et al, (1998) describe the model and its application.

You can therefore use the Potter Box to take a final decision in this way:

**• Step 1: Define the situation**. The Reporter sees the situation as that of an evil that the public must be informed of while the News Editor sees publishing the full details of the victim and the alleged criminal in bad taste.

**• Step 2: Identify the values in the choices.**

**Step 3: Appeal to moral principles to justify your decision:** You can use the utilitarian principle or the absolutist view of “Right is right and wrong is wrong” by sticking to the paper’s policy of protecting minors.

**Step 4: Choose loyalties.**

This is the last step and it is also the most challenging. It is the point at which you decide where your loyalty lies. “To whom is the highest moral duty owed? Is the first loyalty to yourself, to the newspaper, to the family of the victim, to the readers, to your readers, to your colleagues or to the society?” Bowles and Borden (2004).

**1.4.2 The SAD Formula**

Louis Alvin Day (2006) in his book Ethics of Communication put together a system of moral reasoning called the SAD Formula that can assist media professionals and organizations make ethical decisions and deal with ethical issues. It is obvious that this model is similar to Potter Box. He says “Moral reasoning is a systematic process that involves numerous considerations, all of which can be grouped into three categories:

(1) the situation definition;

(2) the analysis of the situation, including the application of moral theories; and

(3) the decision, or ethical judgment.

**1.5 Journalistic Codes and Ethics**

Journalism ethics and standards include principles of ethics and of good practice to address the specific challenges faced by professional journalists. Historically and currently these principles are most widely known to journalists as their professional "code of ethics" or the "canons of journalism." The basic codes and canons commonly appear in statements drafted by professional journalism associations and individual print broadcast, and online news organizations.

While various existing codes have some differences, most share common elements including the principles of — truthfulness, accuracy, objectivity impartiality, fairness and public accountability — as these apply to the acquisition of newsworthy information and its subsequent reportage to the public.

**1.5.1 Ethical Principles**

The sacred rule of journalism is the writer must not invent. Fabrication and plagiarism are violations of basic journalistic standards the world over. But not all transgressions are so clear. Journalists face ethical dilemmas every day, under pressure from owners, competitors, advertisers, and the public. They need a process to resolve these dilemmas, so that the journalism they produce is ethical. They need a way of thinking about ethical issues that will help them make good decisions, even on deadline. For journalists, the most basic responsibility in a free society is to report the news accurately and fairly. These are the basic principles:

**1. Objectivity**

* Unequivocal separation between news and opinion. In-house editorials and opinion pieces are clearly separated from news pieces. News reporters and editorial staff are distinct.
* Unequivocal separation between advertisements and news. All advertisements must be clearly identifiable as such.
* Reporter must avoid conflicts of interest — incentives to report a story with a given slant. This includes not taking bribes and not reporting on stories that affect the reporter's personal, economic or political interests. See envelope journalism.
* Competing points of view are balanced and fairly characterized.
* Persons who are the subject of adverse news stories are allowed a reasonable opportunity to respond to the adverse information before the story is published or broadcast.
* Interference with reporting by any entity, including censorship, must be disclosed.

**2. Seek the Truth and Report It**

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information. Journalists should:

* Test the accuracy of information from all sources and exercise care to avoid inadvertent error.
* Deliberate distortion is never permissible.
* Identify sources whenever feasible.
* Always question sources’ motives before promising anonymity.
* Clarify conditions attached to any promise made in exchange for information.
* Keep promises.
* Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent.
* They should not oversimplify or highlight incidents out of context.
* Never distort the content of news photos or video.
* Image enhancement for technical clarity is always permissible.
* Label montages and photo illustrations.
* Avoid misleading re-enactments or staged news events.
* If re-enactment is necessary to tell a story, label it.
* Never plagiarize
* Examine their own cultural values and avoid imposing those values on others.
* Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
* Give voice to the voiceless.
* Distinguish between advocacy and news reporting.
* Analysis and commentary should be labeled and not misrepresent fact or context.
* Distinguish news from advertising and shun hybrids that blur the lines between the two.

Code of ethics for Journalists and other Media Professionals Ethical responsibility to Sources and Subjects

**3. Minimize harm**

It is essential that all risks of being inflammatory, misleading, or inconsiderate to subjects and sources be minimized. This is especially relevant to those engaging in original reporting. To minimize possible harm, we encourage our writers to do the following:

* Ensure facts are correct by getting verification from multiple sources.
* Try to contact the subject of the article whenever possible.
* Not publish an article based solely on speculation, hunches or wild guesses.
* Before publishing, make a mental list of all parties involved in the article and think about how each will feel about the article.

**4. Avoid misrepresentation**

Do not publish any sort of interview story without ensuring that the interviewee is absolutely happy with the articles final text. Even if this means giving up the interview.

**5. Get all sides of a story**

Ensure sources and quotes from both sides of an argument are included in articles to avoid being biased towards either side. Ideally, all opinions expressed in an article should be direct quotes.

**6. Respect anonymity**

Any source that requests to remain anonymous is fully entitled to this. You are not obliged to bring up the possibility of anonymity, but you are obliged to honor requests for it. It is important not to apply undue pressure to the source if they do not wish to be named. At the same time, anonymous sources can make stories less credible, so it is important to make some effort to persuade reluctant sources to volunteer to go on the record. Explaining to a source why you would prefer them to go on the record is a gentle and often effective way of persuading them to do so. In any case, the decision rests with the source.

**7. Accuracy and standards for factual reporting**

• Reporters are expected to be as accurate as possible given the time allotted to story preparation and the space available, and to seek reliable sources.

• Events with a single eyewitness are reported with attribution. Events with two or more independent eyewitnesses may be reported as fact. Controversial facts are reported with attribution.

**8.** **Act independently**. Journalists should be free of obligation to any interest other than the public’s right to know. Independent fact-checking by another employee of the publisher is desirable

• Corrections are published when errors are discovered

• Defendants at trial are treated only as having "allegedly" committed crimes, until conviction, when their crimes are generally reported as fact (unless, that is, there is serious controversy about wrongful conviction). Opinion surveys and statistical information deserve special treatment to communicate in precise terms any conclusions, to contextualize the results, and to specify accuracy, including estimated error and methodological criticism or flaws.

**9.** **Be accountable**. Journalists are accountable to their readers, listeners, viewers, and each other.

**Ethical Decision-Making**

Some newsrooms deal with ethical quandaries from the top down. Whenever an issue or dilemma arises, a senior manager decides what to do. This approach has the advantage of being quick, but it can be arbitrary. It does nothing to help journalists make good decisions when they are out in the field or when the manager is unavailable. For that reason, many newsrooms have adopted an ethical decision-making process that is more inclusive and that helps all journalists make good decisions under a variety of circumstances.

**1.5.2 Ethics Codes**

Codes of conduct are typically internal documents, but more and more news organizations are posting them on their Web sites so the public knows what to expect and can hold the newspaper or station accountable if its standards are violated.

**Community Standards**

News organizations often face conflicts between newsworthiness and community standards, and resolving them requires the skilful practice of ethical decision-making. Suppose an elected official has used a racial slur in discussing a member of the opposition party. Some newspapers might print the exact words the official used. Others could use a few letters followed by dashes to indicate what he said without spelling it out. And some newspapers would likely report only that the official had used offensive language. Newspaper editors choose different solutions depending on what they feel the readers would be willing to tolerate. But sometimes they go ahead with a decision they are certain would offend some readers. Editors face similar difficult choices when it comes to shocking photographs or video the audience may find distasteful, but that may be the most powerful way to tell an important story.

**1.6 Ethical Problems in Ethiopian Journalism**

“Freebies, conflict of interest, misrepresentation and brown envelope syndrome” are some of the glaring ethical problems inherent in journalism in Ethiopia. Only a very few will be discussed here while journalists are expected to allow their conscience and the ethics of the profession guide their activities and operations on the field.

***1. Freebies***: Freebies are various assorted gifts given to reporters or editorial staff of media organizations to gain their goodwill in order to overtly or covertly influence their writings. These gifts can range from sample products or souvenirs like calendars, pencils, laptops to external hard drives or other equipment will, without doubt sway the reporter to the side of the individual or organizations giving the gifts.

***2. Brown envelopes*** are money that are given to reporters after covering events, press conferences or interviewing prominent news sources, especially politicians and those in government.

***3. Paying for news is another ethical challenge***. It either comes in form of ‘Let Them Pay’ in which organizations pay media companies to cover such events as annual general meetings, new product launch and similar events and make them report it as regular news or in the form of media houses or their reporters paying sources to get information or documents. Both options are wrong. Adverts should be carried as adverts and not news in order not to deceive the unassuming audience while paying sources for news can lead the sources to provide false information or document just to get money from reporters.

***4. Conflict of interest***: This occurs when a reporter or editor has an interest or a stake in a matter and allows it to affect their editorial function. That is why reporters should not review companies in which they have invested in the form of shares and stocks. Conflict of interest can also come to play if a reporter or editor is a member of a political party or on the pay roll of certain politicians and public office holders.

***5. A “New” moral problem***: The fact that Ethiopia is multi-ethnic and multi-religious is creating another problem, in that the media organizations are allowing their medium to be used as platforms for attacking specific political organizations, religious or ethnic groups or individuals. It is now uncommon to hear newsreaders classifying media organizations according to their political or ethnic leanings.

**Chapter Two: Press Freedom**, **Ethiopian Constitution and Media Regulation**

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2.2 Ethiopian Legal System

2.3 Constitutional Provisions on the Ethiopian Media

2.4 State Security and the Press

**2.1 Press Freedom**

**Absolute Vs. Responsible Freedom**

**Definition of the word freedom**

Freedom means to be really free and able to do exactly:

* Whatever you want
* Whenever you want
* However you want
* With whomever you want

Freedom is the basis for Love to develop and the basis for health and the basis of general well being and happiness in your life. Freedom is one of the most valuable gifts God gave to mankind. It is one of the most powerful as well, it let's you feel like a child of God - made to the image of God. But who of you truly feels like a child of God, who of you can truly say "I am free!”? Let's have a look at freedom, what it is, how it feels and how to restore it.

To know exactly what freedom is, we may first have a look at a few examples of the opposite of freedom. The opposite of freedom is slavery. The old fashioned slavery, where a person was property of another person still exists in certain countries -however usually in different forms than earlier. Modern slavery is different and often in disguise.

Hundreds of Millions of people on this planet feel uncomfortable without knowing why. Often it is due to lack of absolute freedom. Freedom to do whatever they want, whenever they want.

Politicians may be slaves of their political party, of their own ideas, of their own beliefs and desires, of their own career or of their wish to be in a reputable position and to be mighty.

Citizens may be slaves of their country, of the politics in their country, being restricted in their activities, restricted in the free expression of their opinion, selection of jobs, selection of the educational system of their own choice, to travel or leave their own country. Managers may be slaves of their own business, position, investment, system, ideas, and projects.

**Concept of Freedom**

When you have truly realized absolute freedom in your life, then you certainly know exactly how it feels to be free and what freedom is. To circumscribe or define the status of absolute Divine freedom may be difficult. Freedom is, if any day, any second of each day’s time you can do exactly what you want, what you decide, you can be where you want to be and then you are free. The vast majority of the world's population at present has little or no freedom at all, without being put in jail. Their mind, country, job or home is their jails. Most of the world's population has put themselves into jail without realizing it.

**Individuality, Freedom and Ethics**

The modern conception of man is characterized, more than anything else, by individualism.

Existentialism can be seen as a rigorous attempt to work out the implications of this individualism. The purpose of this lecture is to makes sense of the Existentialist conception of individuality and the answers it gives to these three questions: (1) what is human freedom? What can the absolute freedom of absolute individuals mean? (2) What is human flourishing or human happiness? What general ethic or way of life emerges when we take our individuality seriously? (3) What ought we to do? What ethics or code of action can emerge from a position that takes our individuality seriously?

Let's begin by seeing what it could mean to say we are absolute individuals. When you think of it, each of us is alone in the world. Only we feel our pains, our pleasures, our hopes, and our fears immediately, subjectively, from the inside. Other people only see us from the outside, objectively, and, hard as we may try, we can only see them from the outside. No one else can feel what we feel, and we cannot feel what is going on in any one else's mind.

Actually, when you think of it, the only thing we ever perceive immediately and directly is ourselves and the images and experiences in our mind. When we look at another person or object, we don't see it directly as it is; we see it only as it is represented in our own experience. When you look at the person next to you (contemplating how their rear-end feels), do you really see them as they are on the inside or feel what they feel? You see only the image of them that is presented to your mind through your senses.

This is easily demonstrated by considering how our senses deceive us in optical illusions, but one simple example will have to suffice here. [Split image demonstration] It seems, then, that we are minds trapped in bodies, only perceiving the images transmitted to us through our bodies and their senses.

Each of us is trapped within our own mind, unable to feel anything but our own feelings and experiences. It is as if each of us is trapped in a dark room with no windows. Our only access to the outside world being a television screen on one wall on which we (with our mind's eye) perceive the images of other people, places, and things. Thus, to be an absolute individual is to be trapped within ourselves, unable to perceive or contact anything but the images on our mental TV screen and to be imperceptible ourselves to anyone outside of us. In a world where science has opened up and laid bare the nature of subatomic particles, far-away planets, and the workings of our very own bodies and brains, it is to remain, ourselves, hidden from the objective view. It is to be an island of subjectivity in an otherwise objective world.

**The Ethics of Absolute Freedom**

This conception of happiness, however, raises our third question: How ought we to act towards other people? If the source of our value and nature is wholly internal, what obligations can I have to other humans? Can I freely and authentically choose to kill my mother, as Orestes does? Can I choose to be a murderer, a thief, or an exploiter of humanity? Is it true, as some Existentialist were fond of pointing out, that if God is dead then all things are allowable?

The ethics of absolute freedom, it would seem, are not absolutely free. To be free we must take on the responsibility of choosing for all men, we must desire and work for the freedom of all men, and we must create ourselves within the context of the relationships and obligations we have to other people.

Is the ethic of absolute freedom a portrait of human greatness? Human excellence often defines itself in the struggle against the forces that oppose human flourishing. Existentialism attempts to find happiness, value, and meaning in a modern world characterized by isolation, in authenticity, and absurdity. It attempts to see what human excellence can consist of if we find ourselves to be islands of subjectivity in an otherwise objective world. You will certainly want to ask if this is in fact what we find ourselves to be, but can it be doubted that the Existentialist attempt to find meaning in the face of absurdity exemplifies the basic drive that all portraits of human excellence must embody.

**Responsibilities of Freedom**

Whenever one begins to write down "rules" and develop structures and social theories invariably a cry comes out about limiting freedom. This cry is often ignored, we do not wish to ignore it, it deserves an answer, though not a particularly polite one.

**Individualism Is Oppression**

Freedom, along with many other words we use in political debate, has been twisted by rhetoric and spin to the point that it is almost simply propaganda. The "freedoms" we talk about almost invariably require that others provide for our actions. We rarely speak of the freedom to walk down the street, or the freedom to grow our own food, we often speak of the right to housing (which must be built) or food (which must be harvested), or this that or the next thing. Insofar as our "freedoms" require the work of others they are not libratory, they are oppressive, they are privileges, not rights, and in the interest of justice they require our equitable participation and labor.

To attempt to disclaim responsibility for this work, for the labor which must be expended to have "freedom" by necessity denies freedom to others, it is no less oppressive then slavery or war and it is in fact the tacit demand for both.

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**Responsible Freedom**:

We could claim the right to the freedom to do whatever we are capable of, and some people do this. It would be difficult to argue that claiming the right to all that is possible is in any way conducive to justice.

If it were so injustice would be impossible, and it would not be an issue. This is clearly not the case.

What then do we have the just freedom to do? What actions does justice grant us the right to perform?

Can we construct a just freedom which is not, in fact, a responsibility as well? We have the just right to the freedom and means to perform at least as much labor as we require providing for ourselves as well as the freedom to demand and hold responsible all others to the same criteria. We further have the just right to not be oppressed, not oppress, and not permit oppression.

It is commonly claimed that choice is necessary for freedom, and this is to some extent true, but only within limits. Are we free to choose not to be free? Are we free to choose not to respect the freedoms, rights, and responsibilities of others? Clearly we cannot justly claim boundless freedom of choice, we must constrain our right to choice to the point that they do not infringe upon the freedoms or rights of others, either though action or inaction, and that this responsibility extends beyond the obvious to the consequences of all which we actively or tacitly support.

It is a common tenant of law that malice is more damnable then neglect. Justice leaves us no such sanction; inaction is only possible to the dead. Only the ridiculous oversimplifications of law allow for the assertion that one did nothing. If one simply breaths and eats one requires that food is grown. By consuming that which has been made available through human labor, one becomes fully culpable for the consequence of the act of non-contribution.

Since we are justly responsible for what we do, and to equitably contribute to what is done for us, and as we must eat, breathe and have shelter in order to live, justice then require that the living must act and contribute. We must therefore accept that there is no just freedom without this responsibility, that "freedom" without this responsibility is not freedom at all, but the act of enslavement of others.

**2.2 Ethiopian Constitution and Media Regulation**

The Federal Democratic Republic of Ethiopia Constitution on Article 29 declared Right of Thought, Opinion and Expression.

It states that:

1. Everyone has the right to hold opinions without interference.

2. Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.

3. Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:

1. a. Prohibition of any form of censorship.
2. b. Access to information of public interest.

4. In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.

5. Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.

6. These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honour and reputation of individuals. Any propaganda for war as well as the public expression of opinion intended to injure human dignity shall be prohibited by law.

7. Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.

**2.3 Press Freedom**

**Freedom of speech**

Freedom of speech is the concept of being able to speak freely without censorship. It is often regarded as an integral concept in modern liberal democracies. The right to freedom of speech is guaranteed under international law through numerous human rights instruments, notably under Article 19 of the Universal Declaration of Human Rights and Article 10 of the European Convention on Human Rights, although implementation remains lacking in many countries. The synonym of **freedom of expression** is sometimes preferred, since the right is not confined to verbal speech but is understood to protect any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country, although the degree of freedom varies greatly. Industrialised countries also have varying approaches to balance freedom with order. For instance, the United States first amendment theoretically grants absolute freedom, placing the burden upon the state to demonstrate when a limitation of this freedom is necessary. In almost all liberal democracies, it is generally recognized that restrictions should be the exception and free expression the rule; nevertheless, compliance with this principle is often lacking.

**Press Freedom in Ethiopia: How Far, How Well?**

Having accepted that the freedom of press is of vital importance for the mass media and media practitioners to play their roles in safeguarding public interest, it is pertinent to ask if the press enjoy the freedom in Ethiopia.

**Who Threatens Press Freedom?**

Threatening press freedom is to set limit, guidelines, or law, which the press must follow in the practice of the profession. It has been frequently alleged, especially in Ethiopia, that the freedom of the press is not achievable because of the ownership structure of newspaper industry and broadcasting industry. It is also suggested that the editors and journalists cannot have adequate freedom of collecting and disseminating facts and offering comments as they are under the pressure of the capitalist owners. From this, it could be deduced that the under listed threaten press freedom:

1. The government through laws and control
2. The publics: press freedom is limited by the interest of the publics
3. The advertisers
4. Media owners
5. National security

It is further pointed out that free collection and dissemination of facts is not possible in the case of newspapers, which depend to a large extent on revenue from advertisements as the advertising interests cannot but influence the presentation of news and comments. Unless this whole structure of ownership and control in the newspaper industry, and also the manner of the economic management of the press is changed, it is therefore suggested, the press cannot be really free.

**2.4 Other Laws that Address Mass Media Operations in Ethiopia**

Other than the constitution, there are other enactments that control or direct the affair of the mass media operations in Ethiopia. They are:

**Freedom of the Mass Media and Access to Information Proclamation**, Proclamation No. 590/2008 this decree declared that the Constitution of the Federal Democratic Republic of Ethiopia, guarantee freedom of expression and of the mass media and notingthat, by prohibiting censorship, the Constitution promotes a free mass media.

**Hate Speech and Disinformation Prevention and Suppression Proclamation No. 1185 /2020**, its intention is to prevent and suppress by law the deliberate dissemination of hate speech and disinformation.

**“Broadcasting Service Proclamation No. 533/2007”** with objective of broadcasting service plays a significant role in the political, economic and social development of the country by providing information, education and entertainment programs to the public;, broadcasting service plays a major role in exercising the basic constitutional rights such as freedom of expression, access to information and the right to elect and be elected; and, it is essential to ensure proper and fair utilization of the limited radio wave wealth of the country.

**“Advertisement Proclamation No.759/2012”** it stated that the proclamation is regulated, advertising industry before is may harm the rights and interest of the people and the image of the country.

**Computer Crime Proclamation, Proclamation No. 98/2016**, the Decree states that unless appropriate protection and security measures are taken, the utilization of information communication technology is vulnerable to various computer crimes and other security threats that can impede the overall development of the country and endanger individual rights. According to the proclamation it has become necessary to incorporate new legal mechanisms and procedures in order to prevent, control, investigate and prosecute computer crimes and facilitate the collection of electronic evidences;

**Chapter Three: Media Laws: Reputation and Dignity of Persons**

**Chapter Content**

3.1 Defamation

3.2 Sedition

3.3 Privacy

3.4 Obscene, Indecent and Harmful Publications

**3.1 Defamation**

**Definition and Explanation of Defamation**

The media, while discharging its functions of informing, entertaining and educating the public has, as an obligation to ensure that it does not infringe on the rights of individuals by publishing words that are capable of causing them harm, injury, hatred or rejection by right-thinking members of the society.

A defamatory statement is a false statement that tends to injure the plaintiff's reputation, or causes him to be shunned by ordinary members of society. There are two forms of defamation, namely libel and slander.

**3.1.1 Forms of Defamation: Libel and Slander**

Actionable defamation may take the form of ***libel*** or ***slander***. Any publication of defamatory matter in a permanent form is libel at common law. It is libel to publish printed or written words, a picture or image which carries a defamatory meaning. Slander, on the other hand, is a publication of defamatory matter by spoken words or in any transitory form, whether audible or visible, and it may take the form of significant sounds, looks, signs or gestures.

**Distinctions between Libel and Slander**

1. A defamatory statement is libel if it is in permanent form, or if it is for general reception. For example writing, pictures, films, radio, television, the theatre, records, or waxworks. If the statement lacks permanence, it will be slander. For example spoken words or gestures.
2. Libel is a crime as well as a tort, whereas slander is only a tort.
3. Libel is actionable per se, slander is not unless;
4. It imputes unchastity, adultery, or lesbianism in a woman.
5. It is calculated to damage the plaintiff in any office, trade, or profession held or earned on by him.

**3.1.2 Essential Elements of Defamation**

The following elements are common both to libel and slander and must be proved by a plaintiff in order to succeed in an action of defamation:

1. The statement must be defamatory
2. It must refer to the plaintiff
3. It must be published maliciously.

For a statement to be regarded as defamatory, the words must clearly depict the plaintiff in a way that will generate or arouse hatred, scorn, ridicule, contempt and cause him harm in his profession and relationships and lower him in the estimation of right-thinking members of the society.

If the words do not clearly and overtly depict defamation, then the plaintiff will have to prove that beyond the overt meaning, the words or the way it has been used has injured his prestige and image in the opinions of the public and it is thus defamatory. To do this, the plaintiff has to allege innuendo.

On reference to the plaintiff, it has to be clearly proved beyond doubt that it is the plaintiff that is identified in the story or statement with the defamatory words. If the name of the plaintiff is used, then it would be easy. But if more than one person bears the name, the plaintiff will have to plead innuendo to establish the fact that the words were actually referring to him.

On the other hand, if no name were used, the plaintiff may establish that the personality painted, the symbols and signs, position, character and other elements in the statement are enough to lead reasonable people to conclude that they refer to him.

Publication is one of the most important, if not the most important element of defamation that is required to be established. Before an individual can win a case of defamation, he has to establish that the words were published to a third party. It can be through a print medium, a broadcast medium or in the case of slander, word of mouth.

To prove that a statement is defamatory, in the case of libel, Bowles and Borden (2004) say “A person who sues for libel must prove the following:

* the statement was published
* the plaintiff was identified in the statement
* the statement was defamatory
* the statement caused injury
* the publisher was at fault in publishing the statement.”

**1. Publication**

Publication is usually obvious in cases involving the mass media. Strictly speaking, publication has occurred when at least one person other than the defamed person has received the material. In media cases, courts have usually, but not always, held that publication has not occurred until the material reaches its intended audience.

**2. Identification**

Identification may be established even though the plaintiff is not named in the story, if people reasonably understand that the statement refers to the plaintiff. An address or title might be sufficient for people to identify the plaintiff. Individuals cannot sue successfully just because they are members of a large group that has been defamed. For example, the statement “all lawyers are crooks” would not be sufficient identification for an individual lawyer to bring a lawsuit. Although published statements may identify and damage the memory of a deceased person, the dead cannot sue, and relatives may not sue on their behalf.

**3. Defamation**

Defamation is another part of the plaintiff’s burden of proof. The plaintiff must persuade the court that the offending statement carried a “sting”, meaning that it harmed the plaintiff’s reputation. Evidence about a plaintiff’s reputation before and after publication is admissible. In a few instances, courts have decided that plaintiffs were “libel proof” because their reputations were already tarnished beyond the possibility of further damage.

In most cases involving the mass media, the plaintiff must also prove that the offending statement was false. True statements that harm people’s reputation are not actionable as libel, although they may be actionable as an invasion of privacy. Thus, the accurate claim that someone has been arrested and charged with murder is not actionable, even though the person may subsequently be acquitted of the charge. Minor inaccuracies will not defeat the defense of truth so long as the part of the statement that carries the sting is true. For example, a libel case would not be decided on inaccurately reporting the place of arrest of the murder suspect so long as the suspect was accurately identified and the charge accurately reported.

**3.1.3 Defenses against Defamation**

There are numerous defense options to the mass media and individuals against defamation. Such as,

1. **Justification**

Crone (2002) writes that “Justification protects the freedom to tell the truth. In order to raise the defense of justification successfully, the defendant must prove that the defamatory statement is true in both substance and fact, or is substantially true. In cases where writers or broadcasters are sued over factual pieces, justification will often be the only plausible defense. In principle, this should not be something that causes concern, as truth and accuracy are supposed to be bywords for the professions of journalism and broadcasting. In practice, success in raising the defense of justification is measured not by whether the piece is true but whether the defendant can prove that the piece is true. Because the law presumes that the defamatory statement is false, the defendant has the onerous task of overcoming this presumption by proving that the statement is true.”

That is why, according to Bowles and Borden (2004), “True statements that harm someone’s reputation are not actionable as libel, although they may be actionable as invasion of privacy.”

1. **Aggravation**

One of the major concerns a defendant frequently has to face when pleading justification is that the plea itself exacerbates the damages. A claimant is perfectly entitled to argue that the defendant not only published defamatory material and refused to apologise, but also persisted in the damaging and libelous allegations right up to the moment the jury delivered its verdict. In the event that the jury does not accept the plea of justification, the very fact that the defendant chose to enter such a defense can operate as an aggravation of the original libel and become a reason to award a greater amount in damages than would otherwise be called for Crone (2002).

An unsuccessful attempt to justify a defamatory statement will aggravate damages. There seems to be no authority, however, that an award may be increased merely because a defendant, acting without malice and fully believing in his plea, has failed to justify the statement Nylander (1969).

1. **Fair comment**

This defense will apply where the statement is a fair comment made in good faith on a matter of public interest.

Note that;

* 1. The subject matter must be of public interest, for example the conduct of politicians or crime reporting.
  2. The statement must be opinion not fact.
  3. The comment must be based on facts which, if stated with the comment, must be true.
  4. The comment must be fair, i.e. an honest expression of the defendant's opinion. It cannot therefore be motivated by malice.
  5. An example of fair comment would be 'Mr. X raped Miss C; he is a disgrace to the community'. The second part of the quotation is a comment on. The first, it is also opinion. Since crime is a public interest, if Mr. X did rape Miss C the defense would be available to the maker of the statement.

According to Bowles and Borden (2004), “Fair comment protects opinion about public interest or things that have been put on public display. The doctrine of fair comment allows reviewers, for example, to publish scathing reviews of plays, movies, books, restaurants and the like. Copy editors should ensure either that opinion in a story is based on generally known facts or that the factual basis for such opinion is stated in the story…Copy Editors must eliminate opinion that relies for its support on the existence of undisclosed information unless the editor knows that such information is accurate.”

Fair comment allows a person to publish a statement of opinion or comment on a matter of public interest provided it is done without malice. It protects the freedom to voice an honest opinion Crone (2002).

1. **Privilege**

There are certain occasions when the law recognizes that there ought not to be liability for defamation in the interest of public policy or of the community. Such occasions are deemed by the law to be privileged Nylander (1969). Privilege can be either absolute or qualified.

**Absolute privilege**

Absolute privilege “is the strongest defense available to the libel defendants. Where it is applicable it will succeed, no matter how false and defamatory the statement and no matter how malicious the writer or broadcaster Crone (2002). The occasions of absolute privilege are classified as follows:

1. Judicial privilege, e.g. statements made in proceedings before superior and inferior courts are absolutely privileged, provided it has some reference to the inquiry in hand. The privilege extends to other tribunals recognized by law, provided that they are exercising judicial functions.
2. Legal professional privilege protects absolutely any communication a client and his legal advisers.
3. Official privilege will include communications made by one officer of state to another in the course of his official duty, and military reports.
4. Parliamentary privilege will protect statements made in the House of Representatives, House of Assembly and reports, papers, votes and proceedings ordered to be published by them.
5. Statutory privilege. The Defamation Act, 1961 and similar state enactments provide that a fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority within Nigeria is, if published contemporaneously with such proceedings, privileged; but this does not authorize the publication of any blasphemous or indecent matter.

**Qualified privilege**

Qualified privilege, on the other hand, may only be pleaded if the publication was made honestly with respect to what is stated and the means by which it is stated. Here lies the distinction between absolute and qualified privilege. Malice defeats a defense of qualified privilege, but it is irrelevant in cases of absolute privilege. Actual malice does not necessarily mean personal spite or ill-will and it may exist even though there is no spite or desire for vengeance in the ordinary sense. Any indirect motive other than a sense of duty is what the law calls malice. Malice means making use of the occasion for some indirect purpose. Instances of qualified privilege include:

1. Statements made in the performance of a duty, legal, moral or social.
2. Statements made in the protection or furtherance of an interest, private or public. A person whose character has been attacked by the press is entitled to reply in his own defense in the press; and if, on answering such attack, he makes relevant defamatory statement about the person who attacked him, it will be privileged provided it is made bona fide.
3. Statements made in the protection of a common interest, e.g. in family matters, a bishop’s charge to his congregation.
4. Reports in a newspaper or broadcast.
5. **Unintentional defamation**

This defense is only applicable if the words were published innocently and there has been an offer of amends as stipulated in the section. Words are deemed to have been published innocently if the publisher proves:

1. That he did not intend to publish them of and concerning the complainant, and did not know of circumstances by virtue of which they might be understood to refer to him; or that the words were not defamatory on the face of them, and he did not know of circumstances by virtue of which they might be understood to be defamatory of the complainant.
2. In either event, that he exercised all reasonable care in relation to the publication.”

A defendant who is pleading unintentional defamation is by law expected to publish a correction or retraction of the defamatory content and an apology to the aggrieved party. The law equally expects him to notify recipients of the defamatory matter through all reasonable and practicable means to inform them that the words are alleged to be defamatory of the aggrieved party.

1. **Statutes of limitation**

The law sets aside a period (from the date of publication of a defamatory matter) after the expiration of which a plaintiff cannot sue for damages. An action for defamation must be brought within one year after the publication of the words complained of.

1. **Volenti non fit injuria**

It is also known as leave and license and consent to publication, Volenti non fit injuria means that a plaintiff will not be entitled to sue for defamation if he had previously expressly consented or implied consent to the publication of the matter he regards as defamatory. Crone (2002) is of the opinion that “As one would logically expect, if a person consents to the publication of certain statements he is not then entitled to sue for libel because of the publication. The evidence of consent must be clear and unequivocal. Whatever authorization the claimant is said to have given should be seen to refer to the publication of the defamatory matter.”

**Remedies for Defamation**

If a case of defamation has been established and accepted by the court, then the plaintiff is entitled to one or a combination of the following remedies:

1. Damages: In law, damage is an award or a grant that a judge or the court orders to be paid (usually in money) to a plaintiff after a loss or injury to him after the defendant(s)’ action has been established.
2. Injunction, which may be interim, interlocutory or perpetual
3. Publication of retraction or correction
4. Publication of apology and offer of amends.”

**3.2 Sedition**

Whenever an individual or the press publishes (in whatever form) words, or undertake actions that bring into hatred, ridicule or contempt the government in power, or incite, excite or provoke the citizens to rise against or seek to remove the government in power, it can be sued for or alleged to have committed an act of sedition.

The law of sedition “is intended for the protection of the government in power and to keep down opposition to its policies within reasonable safe limits. According to this view, the truth of the matters alleged to constitute the libel would not be allowed as a defense. This is because, since a breach of the peace is of the essence of the offence and provocation, not falsity, is the thing to be punished criminally, the greater the truth, the greater the provocation resulting from the libel”.

“Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term and it embraces all practices, whether by word, deed or writing, which are calculated to disturb the tranquility of the state, and lead against persons to endeavour to subvert the government and the laws of the empire. The objects of sedition generally are to induce discontent and insurrection and stir up opposition to the government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as seditious all the practices which have for their object to excite discontent or disaffection, to create public disturbances, or to lead to civil war; to bring into hatred or contempt the sovereign or the government, the laws or constitution of the realm, and generally all endeavours to promote public disorder.”

The law of sedition is perhaps the most important abridgement of freedom of expression under the constitution. It defines and delimits the scope of criticism of government, its agencies and officials. The role of the courts through the years has been to hold the balance between fair criticism, no matter how vicious, and criticism designed to cause public disorder or disaffection against the government of the day. The court’s role in this regard is particularly important when it is realized that the law of sedition constitutes a lethal weapon in the hands of government officials and agencies who, out of fear of having their weaknesses, corruption or ineptitude uncovered, interpret every criticism as directed at bringing down the government by public protest. Happily, the courts have been remarkably bold in stressing that with public office comes accountability and that those who demand accountability from public officers, are not required by law to do so politely.”

**Defenses against Sedition**

There is considerable doubt whether there is in fact any defense to a charge of seditious publication. It is well settled that, once it is proved that the publication is seditious and that it was published with a seditious intention, it is immaterial that there are other motives which are laudable. It has been shown that once a seditious intention has been shown, truth of the allegations made will not constitute a defense and is in fact inadmissible.

There are two defenses for sedition. They are: lawful excuse and showing that words used were not seditious.

***Lawful excuse***: This comes into play as regards the possession of a seditious material. An individual can use this defense to show that he is in possession of the alleged seditious material or publication for a purpose that is legal and authorized under the law. For instance, he can claim that he is using the publication to impart knowledge. If however the accused is not able to prove that he is in possession of the material for a lawful purpose, he can also prove as a defense that he is not in possession of the material for an unlawful motive.

***Showing that words used were not seditious***: This is also a defense against a case of sedition. If a defendant is able to prove to the court that the literal and/or implied meanings of the word(s) alleged are not seditious, then he can be discharged. Also, if he can prove from the overall meaning of the entire publication that the intention is not seditious, this can also be a defense.

Another noteworthy form of defense for sedition is ignorance. If an individual is in possession of a material he is not aware contains a seditious content, then he can be absolved. Or if a person imports materials that are seditious, he can be acquitted if he is able to show that he had no knowledge to believe that the publications would contain such.

**3.3 Privacy**

Article 26 of constitution of the federal democratic republic of Ethiopia provides that “The privacy of citizens,

1. Everyone has the right to privacy. This right shall include the right not to be subjected to searches of his home, person or property, or the seizure of any property under his personal possession.
2. Everyone has the right to the inviolability of his notes and correspondence including postal letters, and communications made by means of telephone, telecommunications and electronic devices.
3. Public officials shall respect and protect these rights. No restrictions may be placed on the enjoyment of such rights except in compelling circumstances and in accordance with specific laws whose purposes shall be the safeguarding of national security or public peace, the prevention of crimes or the protection of health, public morality or the rights and freedoms of others.

Privacy has been defined as “The right to be left alone.”(Cooley, 1888) It is also known as “The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information” (Calcutt Committee; 1990).

Privacy suits occur when an individual feels that he has been wrongly portrayed in the media, especially in a way that causes him emotional distress, humiliation, shame, suffering or anguish. The individual may be a public figure or he may be a private person who has generated public interest through his actions or his involvement in a tragedy or any other event or incident that is of human interest.

However, the law of privacy is only limited to individuals. Corporate bodies or companies cannot sue for invasion of privacy based on the assumptions that such corporate entities have impersonal entities without personal sensitivities that can be wounded.

**3.3.1 Aspects of Privacy Law**

Invasion of privacy is a multifaceted tort that is designed to redress a variety of grievances. These include the commercial exploitation of an individual’s name or likeness, the intrusion on what might be called our private domains, the revelation of intimate information about someone, and the libel-like publication of embarrassing false information about a person.

* 1. **Appropriation**

Appropriation is defined as taking a person’s name, picture, photograph or likeness and using it for commercial gain without permission.

Illegal appropriation occurs when consent is not obtained before using someone’s name, picture, or likeness to advertise a product, to accompany an article sold, or to add “luster” to a company name. Courts have held, however, that the incidental use of a person’s name or picture in a book, film, magazine, or other medium is not an invasion of privacy. If a name or likeness is not published for commercial gain, it cannot be appropriation (Creech, 2003).

It should be noted, however, that stage names, pen names, pseudonyms and so forth count as real names in the eyes of the law.

Pember (2003/2004) outlines examples of actions that can be regarded under appropriation as commercial use. They are:

1. Use of a person’s name or photograph in an advertisement on television, on radio, in newspapers, in magazines, on posters, on billboards and so forth.
2. Display of a person’s photograph in the window of photographer’s shop to show potential customers the quality of work done by the studio.
3. A testimonial falsely suggesting that an individual eats the cereal or drives the automobile in question.
4. Use of an individual’s name or likeness in a banner ad or some other commercial message on a web site.
5. The use of someone’s likeness or identity in a commercial entertainment vehicle like a feature film, a television situation comedy or a novel.

The appropriation tort encompasses two legal causes of action. One is the right to privacy, and the other is the right of publicity. The differences between the two are small but important. The right to privacy protects an individual from the embarrassment and humiliation that can accrue when a name or picture is used without consent for advertising or trade purposes…The right to publicity on the other hand, protects individuals from the exploitation of their names or likeness for commercial purposes. In other words, someone is making money by using another individual’s name and photo. The right to privacy protects a personal right; the right to be free from such humiliation or embarrassment. The right to publicity protects a property right; the economic value in a name or likeness.

* 1. **Intrusion**

Intrusion involves the encroachment, invasion, or trespass by an individual on the solitude, seclusion or personal affairs of another. Intrusion can occur either physically or with the use of technological equipment or gadget.

“Examples of intrusion consist of unreasonable searches; eavesdropping on conversations; surveillance by cameras, telescopes, or other devices; telephone harassment; peering into windows; and wiretapping…To be considered intrusion, the act clearly must encompass prying into matters that are of no public concern, and such prying must be judged offensive by a reasonable person” (Creech, 2003).

Intrusion is different from the other three privacy tort categories in an important way: Intrusion involves the collection of data about someone; the other three involves the publication of information about an individual. In an intrusion case, if the information has been gathered illegally, an intrusion has taken place. It doesn’t really matter what the defendant does-if anything-with the data. The legal wrong takes place when the material is gathered. Under appropriation, publication of private facts, and false light privacy, it is the publication of the data that creates the legal wrong. How the information has been gathered is generally immaterial to those causes of action (Pember, 2003/2004).

One key concept to the tort of intrusion is the phrase “reasonable expectation of privacy”. If an act of intrusion occurs when the plaintiff is deemed to expect that he has a reasonable expectation of privacy, then, an intrusion can be deemed to have occurred. However, if a person is in a public place or in a situation where the court does not regard him as having any reasonable expectation of privacy then, information gathered in those situations will be deemed legal and no intrusion would have occurred.

* 1. **False light**

The false-light tort involves the publication of false information that is highly offensive to an ordinary person. False-light invasions of privacy are similar to libel, but the important distinction is that the false light is non-defamatory. Libel actions are instigated to protect persons’ reputations (i.e., the way they are viewed by society). False-light privacy actions stem from a person’s right to be left alone and is based on the way people view themselves. Emotional distress is often the basis for false-light privacy suits. Unlike libel, false-light invasions of privacy actually may embellish one’s reputation.

**3.3 Defense against Invasion of Privacy**

The basic defenses against invasion of privacy suits are consent and newsworthiness. Others can be legitimate public interest and the use of public record. If an individual had given ***consent*** for an interview or the use of his name or picture, he can no longer sue for invasion of privacy. Consent can be clearly stated (by word of mouth or the signing of a document) or it can be implied.

**Newsworthiness** is another strong defense in an invasion of privacy suit. If a story or event is newsworthy, this argument is likely to supersede embarrassing facts cases of invasion of privacy.

**Public interest** can also be a defense against a privacy suit. A good example is the case of *Little v. Washington Post*, cited earlier where the U.S. District Court for the District of Columbia ruled against Little, stating that the public interest supports dissemination of accurate information about the risk of drugs and drug addiction, and that she waived her privacy rights when she agreed to the interview.

The use of **public record** can also be a defense in a privacy suit. Information already in the public domain or in public records can be published by the media. When newsworthy private facts are part of the public record, suit cannot be brought (Creech 2003). Despite the available defenses against privacy suits, media houses still get into the path of the law. What are the options that can save a mass medium from needless privacy suits?

**3.4 Obscene, Indecent and Harmful Publications**

**3.4.1 Understanding Obscenity and Indecency**

Defining or explaining obscenity is a daunting task. It is as controversial as the concept itself. This is due to the fact that it involves concepts that are in themselves divisive. Osinbajo and Fogam (1991) say that, “Any definition offered always seems to require some further clarifications.” So great was the confusion experienced by the “Geneva Conference on the Suppression of the Circulation or Traffic in Obscene Publications” that it simply abandoned the search for a definition completely. Along the same lines, Justice Stewarts in Jacobellis v. State of Ohio must have been close to despair when he admitted that he could not define obscenity, but “I know it when I see it”.

An indecent publication may be defined as a communication to another person (be it by distribution or projection, printing, making or manufacturing for distribution or projection) of any article which, having regard to all relevant circumstances, has a tendency to corrupt persons who are likely, to read, see or hear it. This definition also applies to an ‘obscene publication’, except that the corrupting tendency here is much stronger than that required for an ‘indecent publication’ (Adeyemi, 1969).

Therefore, it can be said that any object, show or performance which is obscene or indecent is one which tends ‘to corrupt morals’. It appears that there are at least three distinct forms of obscene writing namely: ***pornography, erotic realism, and the ambiguous classification of “other erotica.”***

**Pornography**  would seem to be the most objectionable of these groups and its distinguishing feature is the explicit discussion of sex for purposes of sexually stimulating the reader. It has no other literary function. Such literature was described in Roth v. U.S. as being “utterly without redeeming social importance.”

**Erotic realism** on the other hand is described as sex in the context of reality. The predominant characteristic of erotic realism is that it prevents a truthful description of man’s sexual behavior.

***Other erotica*** may come by way of non-literary obscenity e.g. obscene nudes. However, sex is only a category of obscenity. The celebration of horror, violence or drugs or other vices may also be described as obscenity.

**3.4.2 Harmful Publications**

It is an act applies to any book or magazine which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures (with or without the addition of written matter), being stories portraying:

1. the commission of crimes
2. acts of violence or cruelty
3. incidents of a repulsive or horrible nature in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it may fall.’

A magistrate can order the search of any premises suspected to contain publications, articles or materials contravening or order the seizure of such. There is a little contention on whether a harmful publication is closer to obscene or indecent publications.

Adeyemi (1969) asserts that “…the provisions of the Children and Young Persons (Harmful Publications) Act, 1961 can properly be described as ‘the law on indecent publications’. For this purpose then, a harmful publication is an indecent publication, though the latter is wider in meaning.”

**Chapter Four: Media Laws: Intellectual and Institutional**

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**4.1 Copyright**

Copyright is an area of the law that deals with intangible property- property that a person cannot touch or hold or lock away for safekeeping (Pember, 2003/04). Copyright is the right of an author to prevent others from publishing or reproducing his work without his consent (Adesanya, 1969).

The law of copyright is important to those working in the media. It determines the extent to which a quotation or the work of a third party can be used in an article or broadcast. It also establishes the right of a writer, newspaper or television company to exploit his own work or the work of the company and prevent others from taking benefit from it. There is no copyright in an idea, nor is there any copyright in news. However, the law of copyright protects ideas or information expressed in a particular way. Anyone can report the happening of a particular event. Besides, a newspaper or programme cannot use verbatim another newspaper’s report or broadcast another programme’s footage of an event (Cranwel, 2002).

* + 1. **Subjects and Conditions for Copyright**

The following shall be eligible for copyright: Literary works, Musical works, Artistic works, Cinematograph films, Sound recordings and Broadcasts.

Pember (2003/04) also explains other work that cannot be copyrighted. They are:

1. Trivial matters cannot be copyrighted. Such things as titles, slogans and minor variations in works in the public domain are not protected by the law of literary property. (But these items may be protected by other law such as unfair competition, for example).
2. Ideas are not copyrightable. The law protects the literary or dramatic expression of any idea, such as a script, but does not protect the idea itself. “This long established principle is easier to state than apply,” notes law professor David E. Shipley. It is often difficult to separate expression from the ideas being expressed.
3. Utilitarian goods- things that exist to produce other things-are not protected by copyright law, according to William Strong in The Copyright Book. A lamp is a utilitarian object that exists to produce light. One cannot copyright the basic design of a lamp. But the design of any element that can be identified separately from the useful article can be copyrighted, according to Strong. The design of a Tiffany lamp can be copyrighted. The unique aspects of a Tiffany lamp have nothing to do with the utilitarian purpose of producing light; these aspects are purely decorative.
4. Methods, systems, and mathematical principles, formulas, and equations cannot be copyrighted. But a description, an explanation or an illustration of an idea or system can be copyrighted.

To be eligible for copyright, the work that fall under this section must satisfy certain conditions.

The conditions are:

**Originality**: Implies that before copyright can subsist in a particular work, the work must owe its origin to the author.

**Reduction into concrete form**: the decree also requires that the work must have been fixed in any definite medium of expression from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device. An author must therefore reduce his ideas into a material form i.e. writing it down or recording the material. It is not until it is reduced into writing or some tangible form that there is any right to copyright.”

**Qualified person**: every work eligible for copyright of which the author or, in the case of a joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say.

**Work originating in Ethiopia**: According to Osinbajo and Fogam (1991), “By section 2 of the Decree, copyright can also be conferred on every work other than broadcast which is eligible for copyright provided the work is first published in Nigeria; or in the case of a sound recording, is made in Nigeria and which has not been the subject of copyright conferred by Section 2 of the Decree.”

**News Events and Copyright**

The issue of news events and copyright is being clearly and distinctively addressed because of its peculiarity and its importance to the operations of the media as it relates to the law on copyright.

Is there copyright in a news story? Yes, there is but there is no copyright in the information and/or facts contained in the story. The copyright only covers the literary manner and form in which the information is presented, not the information itself. There are many principles that support and explain this position.

“Copyright law protects the expression of the story- the way it is told, the style and manner in which the facts are presented-but not the facts in the story. For many writers, this concept is a difficult one to understand and to accept. After all, if one reporter works hard to uncover a story, shouldn’t he or she have the exclusive right to tell that story? Even some courts have had a hard time acknowledging this notion. The so-called sweat-of-the-brow doctrine rejected by the Supreme Court in the Feist ruling is evidence that some judges believe hard work should be rewarded. But whether it is fair or not, the law is clear. Hard work must be its own reward. Copyright only protects the way the story is told, not the story itself” (Pember, 2012).

**Defenses to Infringement of Copyright**

If litigation on copyright is successfully pursued against a defendant, the defendant may be found guilty unless he/she is able to bring up any of the following defenses:

* 1. The work is not original.
  2. The work is not eligible for copyright (due to its immoral, indecent or irreligious content).
  3. The copyright has elapsed.
  4. Fair dealing (the infringement was a fair use).
  5. The infringement is an exception from copyright control (as specified in the statute).

**Remedies to Infringement of Copyright**

When an individual or body corporate that has violated a copyright control is unable to put forth any of the defenses provided above in copyright infringement litigation, the infringement is proved and the individual or body corporate is found guilty by the court.

It can therefore comfortably be said that the remedies for infringement of copyright are:

1. Damages

2. Injunction

3. Account of profit: Is another form of remedy for copyright infringement. It requires the court to enquire into the profit the infringer has made, and hand them all over to the owner of the copyright as a compensation for the impact of the infringement on his work. This presupposes therefore that it is only the owner of an existing copyright that can be due for an account of profit.

4. Conversion or recovery of infringing copies of work.

**4.2 New Media in Ethiopia: The Challenges of Regulation**

The media are the channels of communication that allow information to be passed to a large, heterogeneous and widely dispersed audience. Until the 19th century, the known media of communication, which are now referred to as the traditional mass media are; newspapers and magazines, radio, television, and film.

With the advent of the computer came new channels of communication that involve the transmission of information, also to a large heterogeneous audience, but through the use of digital technology, usually the Internet. These media are popularly referred to as the ‘new media’ and there are different forms of new media channels but almost all are accessible only using new and recent technologies like the desktop computers, laptops, smart phones, and tablets all linked to the Internet.

Information is available on the Internet through websites, news groups, chat forums, bulletin boards, e-mails, blogs and social networking sites. A plethora of laws are available to protect private individuals and corporate bodies from the activities of the media and check the commission of civil and criminal offences using the traditional media. However, there are a lot of challenges when it comes to the protection of the rights of individuals from publications on the Internet or remedying violations of rights committed on or via the Internet.

This is because there is a dearth of laws on Internet regulation in Ethiopia, and indeed the world over. Besides, the global nature of the Internet makes it very cumbersome and almost impossible to regulate its use and this probably explains why a lot of individuals publish whatever they deem fit with reckless abandon on the Internet as it is regarded as a regulation-free zone.

There are no specific laws on the new media in Ethiopia but there are laws that regulate the media that can be extended to proceedings on their violations if and when they occur on the Internet. The statutes that seek to regulate violations committed using the Internet or the new media are more concerned with cyber crimes or financial crimes, not intellectual property or other civil rights.

In all, it is obvious that Ethiopia is far behind in legislating on crimes and offences that can be committed using the Internet and until this is done, proceedings on violations of rights committed via the Internet may not be instituted. This is a big loop-hole that will encourage the violation of civil and intellectual property rights and an impairment of creativity. Surprisingly, the new media is in wide use in Ethiopia. Almost all traditional media organization have a website on which they publish and/or broadcast the messages and audio and/or video messages that have been earlier published or that are simultaneously published in the new media.

It is therefore advisable for these media organizations, individual journalists or authors and private persons and organizations who use the new media to apply existing media law and ethics to their publications on the Internet in order not to be culpable as a judge or court may derive a law or principle to try criminal and/or civil violations on/via the Internet pending the time that Ethiopia will derive contemporary laws to address this area. In dealing with the Internet and media laws, we will have to depend on cases from the West as there is a scarcity, if not an absence of such litigations in Ethiopia.

**Internet and Defamation**

We have learnt that “defamation is a communication which exposes a person to hatred, ridicule, or contempt, lowers him in the esteem of his fellows, causes him to be shunned, or injures him in his business or calling”. (Phelps and Hamilton, 1996)

In a proceeding for defamation, an element that must be proved is publication, and publication occurs when a third party, (other than the defamer and the one who is defamed) is exposed to the defamatory message.

According to Overs (2002) “Those working in the media should apply the existing legal principles of defamation to any material published in new media format in order to avoid being sued for defamation.’’

**International Nature of Internet Defamation**

The nature of the Internet is delicate, so delicate is it that whatever is published automatically is available to be read, heard, viewed and downloaded worldwide. This increases the impact of defamatory messages published online.

**Internet and Copyright**

Copyright is a law that protects intangible property. It seeks to prevent people from publishing and reproducing the works of others without their consent and permission. Copyright subsists in every original literary, dramatic, musical or artistic work and it belongs to the author of the work or the individual who commissions and/or pays for it. Copyright is infringed with the unauthorised publication, production, reproduction or copying of an author’s original work without his consent or permission.

There are domestic laws in every country of the world to protect the copyright in works published in their jurisdictions. However, the Internet makes works (print, multimedia) available to everyone worldwide and the copyright law that protects these works in the countries where they are posted does not protect them in other countries (jurisdictions) the world over where they will be assessed.

The global nature of the Internet means that the international protection of copyright is of considerable importance. Two international treaties on copyright, the Berne Convention and the Universal Copyright Convention, provide for possible world-wide protection of copyright for authors of original material. Many countries, including the United Kingdom and the United States, are signatories to both conventions. In addition, the WIPO (World Intellectual Property Organisation) co- ordinates and administers international treaties relating to intellectual property protection (ibid).

Different continental organisations are also working hard to collaborate on the protection of copyright of authors in their domain. “There is a little harmonisation of copyright laws throughout the member states of the European Union. In an effort to provide a more uniform system of regulation, the European Union has recently approved two directives that promote and facilitate the exchange of information in new media formats. The Copyright Directive (2002/29/EC) was approved in 2001 and is aimed at ensuring that all works protected by copyright are adequately protected throughout the European Union. The E-commerce Directive (2000/31/EC) was approved in 2000 and is aimed at harmonising certain legal aspects of ‘information society services’ in Europe, in particular electronic commerce” (ibid).

Another important aspect of copyright and the Internet which the media must note involve the aspect of contract. When full time employees write or produce (broadcast) for a media organisation, the organisation can publish it in print or broadcast version and still publish it on the Internet because the copyright belongs to the employer. However, when a media organisation commissions a freelance journalist to write or produce a multimedia product for it, it must ensure it is clearly spelt out that the work will be used in the traditional media as well as the Internet so as not to be culpable as the freelance journalist may sue for infringement if the agreement is not clear.

Sometimes, a media organisation which is recently hosted on the Internet may post pre-existing works and contributions on its pages. As stated earlier, if the contributions are from full time employees, there will be no problem. But if the pre-existing contributions are from third parties, it is important to secure their consent/permission before posting such works on the Internet in order to avoid an infringement proceeding.

**4.3 Protection of News Sources or Whistle Blowers**

**Importance of Information to the Media**

The responsibility of the media is to publish information that will entertain, educate and enlighten the masses. More importantly, the media has a responsibility to ensure the revelation of crime and the identities of individuals who commit crime and disturb the welfare of the society. Ultimately, they are to serve as watchdogs to the government and ill-minded individuals in the society and check their excesses.

All these responsibilities and enormous tasks cannot be performed without information, the kind that is not readily available in the public domain. The media therefore require news sources or whistle-blowers who are interested in ‘providing’ the media with important information intended to help them in their watchdog role.

**News Sources and Confidentiality**

If news and information are the lifeblood of the press, then news sources are one of the important wells from which that lifeblood springs. Many journalists, especially those who consider themselves investigative journalists, are often no better than the sources they can cultivate. News sources come in all shapes and sizes. Occasionally, their willingness to cooperate with a reporter is dependent on assurances from the journalist that their identity will not be revealed (Pember, 2003/04).

A news source, also popularly referred to as a whistle-blower is someone who reveals alleged fraudulent or illegal activities to the media. The illegal or fraudulent activity may be a violation of law or actions that pose a threat to public interest such as fraud, health/safety violations, corruption, misappropriation or other inequities.

This explains why these individuals crave or out rightly demand for confidentiality. This is because the revelation of their identity will expose them to threats to their lives, jobs, livelihood or social acceptance in the society. Remaining anonymous thus protects them from the consequences of being identified as the source of the information.

In order to get access to information that will lead to the revelation of crime or uncovering of fraudulent activities, journalists have had to promise news sources confidentiality. Such promises, when made must be fulfilled as it is a core media ethics to keep promises made to news sources at the time of procuring information.

“It is not uncommon today for people outside the news-gathering business to want access to the information gathered by journalists. Sometimes, they merely seek copies of what has already appeared in print or been carried over the airwaves. Sometimes, they want more: information that has not been published; photos or videos that have not been broadcast; the names of persons who provided the information to the journalist. Judges, grand juries and even legislative committees all have the power to issue subpoenas to try to force journalists to reveal this information” (Pember, ibid).

The promise of confidentiality places a great burden on reporters as they are to keep their words even in the face of the law. This explains why journalists have had to go to jail for refusing to reveal their sources to the legislature or judiciary.

Pember (ibid) shares David Utevsky’s tips for reporters on promising confidentiality:

1. Do not routinely promise confidentiality as a standard interview technique.
2. Avoid giving an absolute promise of confidentiality. Try to persuade the source to agree that you may reveal his or her name if you are subpoenaed.
3. Do not rely exclusively on information from a confidential source. Get corroboration from a non-confidential source or documents.
4. Consider whether others (police, attorneys, etc) will want to know the identity of the source before publishing or broadcasting the material. Will you be the only source of this information or can they get it elsewhere?
5. Consider whether you can use the information without disclosing that it is obtained from a confidential source.

Pember (2003/04) has suggested seven tips for reporters when confronted with a source who demands confidentiality. They are:

1. Assume the interview is on the record unless the subject seeks anonymity.
2. There is no obligation to grant anonymity for information that has already been provided.
3. Before making any promise to a source, try to find something out about the information and where it comes from.
4. Try to talk to an editor or news director before making any promises to a source.
5. Keep any promise made to a source simple and easy to fulfill, and be certain both you and the source completely understand the conditions to which you have agreed.
6. Record any promise you make to a source.
7. Avoid adding material to a story that a source has already approved, or try to avoid promising the source that he or she has story approval.

**4.4 Contempt of Court: Parliamentary and Judicial**

**Understanding Contempt of Court**

Hundreds of years ago in England, the monarch dispensed justice to the people. The king or queen was above the law, someone whose power was divinely inspired, and resistance to royal orders was a sin, punishable by damnation. When judges eventually began to administer the courts on behalf of the monarch, they retained much of this power since it was believed, though absent from the courtroom, the king or queen nevertheless was spiritually guiding the hand of justice. As representative democracy developed in England and royal influence of the government diminished, judges retained the contempt power, and it became institutionalized in common-law courts in both Great Britain and the United States. Courts today rarely justify the exercise of the contempt power on the grounds that it protects the integrity of the judge. Instead, protection of the authority, order and decorum of the court is the usual reason given for the use of the contempt power. Alternatively, the court will use contempt to protect the rights of the litigants using the court to settle a dispute [Pember, 2003/04].

Therefore, “any act or publication that delays or interferes with the administration of justice in the courts, or that causes justice to miscarry, or that tends to have either of these effects may, under the law, be held to be in contempt of court and be punished by fine or imprisonment or both” (Arthur and Crossman, 1940).

Munro (1979) quotes J. F. Oswald as explaining contempt to mean “…any conduct that tends to bring the authority and administration of the law into disrespect or disregard or to interfere with or prejudice the parties or their witnesses during litigation.”

From all the foregoing, contempt of court can be defined as: any act, which is calculated to embarrass, hinder or obstruct court administration, of justice, or which is calculated to lessen its authority or its dignity, committed by a person who does an act in willful contravention of its authority or dignity, or tending to impede or frustrate the administration of justice or by one who, being under the court’s authority as a party to a proceeding willfully disobeys its lawful orders or fails to comply with an understanding which he has given (Okoye, 1998).

The law of contempt is consequently a regulation aimed at ensuring that the court, judges and litigants are protected from any acts or publication that may undermine the court or thwart the efforts of citizens from getting justice or defending their innocence.

This is important because the moment there is no respect for the court system and citizens are uncertain about the opportunity to have redress for wrongs done to them, there will be chaos in the state as citizens will take laws into their hands. Thus, the law of contempt exists to ensure respect and authority in the court system and also to guarantee a system where individuals can gain justice and/or prove their innocence in conflicts through the judiciary without fear of interference from outside factors.

**Contempt of Court**

The laws of contempt of court in most countries are in Acts of Parliament, Criminal Code, Penal Code and the Constitution. On his part, Pember (2003/04) lists five common ways that members of the press might become involved in a contempt problem, although the list is by no means exhaustive:

* 1. Failure to pay a judgment in a libel or invasion-of-privacy case.
  2. Failure to obey a court order. The judge rules that no photos may be taken in the courtroom or orders reporters not to publish stories about certain aspects of a case. If these orders are disobeyed, a contempt citation may result.
  3. Refusal of a journalist to disclose the identity of a source or to testify in court or before a grand jury.
  4. Critical commentary about the court. This might be an editorial critical of the court or a cartoon mocking the judge. Contempt citations have been issued to punish the press in such cases.
  5. Tampering with a jury. A reporter tries to talk with jurors during a trial, asking questions about their views on the defendant’s innocence or guilt.

**Forms of Contempt of Court**

There are different classifications of contempt civil and criminal contempt.

**Civil contempt**

Civil contempt (also known as “contempt in procedure” or “constructive contempt”) is a wrong done to a person who is entitled to the benefit of an order or judgment. Thus, the failure of a party to a civil suit to carry out the terms of a verdict or decision, or the willful disobedience of court orders or disobedience of court orders or disobedience of a subpoena, constitute examples of civil contempt. The primary purpose of this class of contempt is therefore to coerce compliance with the court order or ruling. Although the act constituting civil contempt always occurs outside the court; and it is essentially an infringement against private rights, the effect is usually a delay, interference or an obstruction of the fair administration of justice. Accordingly civil contempt is often punished in the same manner as criminal contempt – with a jail sentence which is terminated when the contemnor obeys the court order. Thus, a publisher for example, who fails to pay damages awarded to a victim of a defamatory article may be booked for civil contempt and put in jail until he pays or is willing to pay (Osinbajo and Fogam, 1991).

**Criminal contempt**

Criminal contempt on the other hand, “consists of any acts or words which obstruct or tend to obstruct or interfere with the administration of justice”. Criminal contempt is charged to protect the court itself. Thus any obstruction of court proceedings or court officers, attack on court personnel, and deliberate acts of bad faith or fraud are examples of criminal contempt. There are two principal forms namely, direct and indirect criminal contempt (Osinbajo and Fogam, ibid).

**Defenses against Charge of Contempt of Court**

The British Contempt of Court Act 1981 provides three defenses to strict liability contempt. Strict liability contempt in English law applies to any publication that creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced. The three defenses are:

1. Innocent publication 2. Fair and accurate contemporary reports 3. Discussion of public affairs

**4.5 Reports of Parliamentary and Judicial Proceedings**

**Report on Parliamentary Proceedings**

“Members of Parliament and the proceedings of parliament are cloaked with certain traditional rights and privileges that are aimed at safeguarding the freedom and independence of the individuals involved and the dignity of the institution. Foremost among these privileges are:

1. Complete freedom of speech or ‘absolute privilege’, which protects debates and official proceedings in the House of Commons and the House of Lords.
2. The power of each House to regulate its own procedures, including the power to punish members and outsiders for breach of privilege known as ‘contempt of parliament’ (Cassels and Handler, 2002).

“The various statutes regulating the powers and privileges of all these legislative houses attach a cardinal value to freedom of speech, debates and proceedings without which members would find it difficult to discharge their functions effectively. Thus, no civil or criminal suits may be instituted against a member for any words spoken by him either on the floor of the house or in any of its committees. The same protection extends to words contained in any documents placed before the house such as reports, petitions, bills, resolutions, motions or questions” (Adegbite, 1969).

That explains why Article 9 of British Bill of Rights as far back as 1688 says that ‘freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament’.

There is absolute privilege for comments made on the floor of the House but there exists only qualified privilege for a report of it. Hence, the media must exercise caution when reporting potentially defamatory comments made on the floor of the House or in reports.

“Parliamentary privilege may be invoked to prevent the publication of evidence, including the publication of draft reports, taken by a select committee before it has been reported to the house in cases where publication has not been authorised by the select committee or, if it is no longer in existence, by the Speaker” (Cassels and Handler, op.cit).

**Report on Judicial Proceedings**

There are laws, rules and regulations that guide the media reporting of proceedings in the court. These regulations are provided to ensure that citizens have access to fair report of judicial proceedings, litigants have access to a fair trial and the bench does and is seen to do justice. Some of the guidelines will be presented shortly.

**Postponing Media Reports**

The court may order (for reasons aimed at avoiding substantial risk to the administration of justice) that the publication of any report of entire proceedings or part of the proceedings be postponed.

The specifics of the proceedings must be made clear and the period for which it must be postponed must also be specified clearly to avoid ambiguity. There should also be provisions for the media to seek clarifications where required.

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