

# Foreword

## Sir Edward Garnier QC

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This book, which makes an important contribution to the understanding of a complex and fast-moving area of law, is the fruit of a collaboration of researchers led by Dr Lorna Gillies and Dr David Mangan, at Leicester University's School of Law in December 2013. During the course of a day they and the other eminent academics whose chapters make up this book discussed an area of law that touches on politics, the media in all its forms, academic and philosophical study of the law, and the policy behind the formation, reform and practice of modern media law, as well as the lives of the rich and famous and the general public throughout the world who use, consume, enjoy and despise social media to varying degrees.

As the Member of Parliament for Harborough, a Leicestershire constituency which is the home for many of Leicester University's students and academics, if not the campus itself, and as a media law practitioner at the Bar since the mid-1970s, I was delighted to be asked to take part in the collaboration but my contribution was slight compared to the chapters that form this book. It is said in this book, and it has been said before, that the principles that govern the law relating to defamation or social media now are pretty much the same as they have always been; what changes is the application of those principles to developing technologies and publication platforms. For example, who is liable for a posting on Facebook or a Tweet and where are the limits of journalism in the age of so-called democratic media? What are the private international law questions that have to be asked of a defamatory Tweet written in England but presented to the world stage from a server in California? When is a joke not a joke and when is its telling a crime or simply a foolish or ill-mannered utterance? Where in the policing of social media or the arbitration of disputes involving social media is the role of King Canut?

Shortly after its publication I said in a Commons debate on the Leveson Report in December 2012 that it exposed and tackled some difficult, if not entirely novel, questions. In 1960 Leslie Hale, the Member for Oldham West, moved to repeal the Justices of the Peace Act

1361, among whose provisions was one to outlaw eavesdropping. A predecessor of mine as Solicitor-General, Peter Rawlinson, said:

Translated into ordinary terms, the Bill which the hon. Member seeks to introduce, dressed up like a radical bird of paradise, is nothing less than a modest charter for peeping Toms and eavesdroppers ... It is also a charter for other strange people who pester law-abiding citizens and persons of that kind.

He went on to say:

The modern use of the Bill is mainly to prevent the ordinary citizen from being pestered by those unbalanced eccentrics who, with an imagined grudge, patrol the outskirts of houses, terrifying families by constant use of the telephone, or by those people who are unbalanced and usually malevolent but who do not break the law by means of assault or trespass. Therefore, there is no weapon which the law-abiding citizen has against them except the use of these powers which may be the only effective one which rests in the hands of such citizens.<sup>1</sup>

Hale and Rawlinson (who in the late 1970s led me in the successful defence of *Orme v Associated Newspapers*, a six-month libel action in front of a jury brought by the leader of the Unification Church or Moonies against our clients, the *Daily Mail*), debating in 1960, did not have the internet or social media, let alone mobile telephones in mind. That was an age of the wireless and the landline, the broadsheet newspaper, the Home Service, The Third Programme and the Light Service, and two television stations. People read books made of paper; tablets were for headaches. But, all that aside, over a period of about 600 years the issue of intrusion into the private lives of others by use of illegal listening devices, be it the human ear or electric surveillance machinery, has been current.

This is one of the reasons why the inquiry by Lord Justice Leveson was initiated. At heart, perhaps all we are discussing is the age-old problem now described as the tension between Articles 8 and 10 of the European Convention on Human Rights, albeit that very often, people seem to remember the rights, but not the exceptions to those rights.

What Drs Gillies and Mangan and their colleagues have done is to provide a thoroughly researched and learned guide to the complexities of this area of the law which will enlighten teachers and their students, as well as help judges and practitioners, on the one hand, to protect the rights of the ordinary citizen who has been or continues to be pestered by

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<sup>1</sup> Official Report, 26 January 1960; Vol. 616, c 54.

the unbalanced eccentric, blogging or posting away to his heart's content or fury on his laptop, someone who is perhaps wholly ignorant of and indifferent to the legal consequences of his actions or the remedies available against him; and, on the other hand, to protect the rights of the eccentric or unbalanced and even malevolent to express themselves freely within the law.

Media law, now so-called, has grown beyond the confines of libel and slander, beyond the realms of the rich plaintiff of the 20th and earlier centuries, beyond the defendant newspaper with deep pockets and a crusade to run or a widely read story to defend. The phenomenon that is social media, whose growth has been more than exponential in the last 20 years, has domesticated this area of publication in the sense that it has made every citizen capable of being a Caxton, a Lord Rothermere, a Kelvin Mackenzie or News Group Newspapers in terms of reach if not quality of output, and yet it is immature and untamed in its ability to cause irreparable harm like a tiger cub that does not know its strength.

I have no doubt that all who read this book, no matter what the origin of their interest in its contents may be, will benefit from it and improve their understanding of the law relating to social media and the challenges it presents.

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