COURSE GUIDE

MAC 411
MEDIA LAW AND ETHICS

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INTRODUCTION

MAC 413: Media Law and Ethics is a three-credit course for undergraduate students in Mass Communication. The material has been developed with the Nigerian context in mind. This course guide gives you an overview of the course and also provides you with information on the organisation and requirements of the course.

WHAT YOU WILL LEARN IN THIS COURSE

This course guide is designed to show you what you will be doing in this course and to prepare you adequately for the task ahead. It is essential that you read the course guide carefully and be familiar with its contents. This will enable you to get your work properly done and get the best out of the course.

Media Law and Ethics equips prospective mass communication professional with the basic legal and ethical safeguards to perform his or her job within the acceptable legal and ethical boundaries. Ignorance of the law is not an excuse for breaking the law, nor is ignorance an excuse for violating the code of ethics of any profession. It is for this reason that the professional must be conversant with what is legally and ethically expected of him.

COURSE OBJECTIVES

To achieve the aims set out above, MAC 413 also has specific objectives. The unit objectives are at the beginning of each unit. I advise that you read them before you start working through the unit. You can also refer to them during your study of the unit to check your progress.

Below are the broader objectives for the course as a whole. By meeting these objectives, you should consider yourself as having met the aims of the course. On successful completion of the course, you should be able to do the following:

- define law and ethics
- understand the purpose of law and ethics in society
- understand the important theories of ethics
- understand the purpose of media regulation in society
- know the essential media laws in Nigeria
- know the code of ethics of the Nigerian Press Organisation (NPO)
- know the defenses open to a journalist in the event of litigation
- know the cardinal journalistic principles or canons of journalism

- know the ethical mechanisms in Nigerian journalism and how they operate
- be acquainted with some ethical case studies in Nigerian journalism.

COURSE AIMS

The aims of this course are to help you understand the legal and ethical principles which should guide a journalist and any other media professional in the performance of his/her duties in Nigeria. This broad aim will be achieved by:

1. Introducing you to the essence and purpose of law and ethics in any society
2. Introducing you to the philosophical foundations of media law and ethics
3. Acquainting you with the essential legal and ethical provisions pertinent to media environment.

WORKING THROUGH THIS COURSE

To complete the course, you are required to read the study units and other related materials. You will also need to undertake practical exercises for which you need a pen, a note book, a copy of the 1999 Constitution of the Federal Republic of Nigeria, among other materials listed in this guide.

At the end of each unit, you will be required to submit assignments for assessment while at the end of the course, you will write a final examination.

COURSE MATERIALS

The major materials you will need for this course are:

1. Study units
2. Assignment file
3. A copy of the 1999 Constitution of the Federal Republic of Nigeria
4. Code of Ethics of the Nigerian Press Organisation (NPO)
5. The National Broadcasting Code
6. Code of ethics of the Nigerian Institute of Public Relations
7. Code of ethics of the Advertising Practitioners Council of Nigeria (APCON)
8. Relevant text books, including those listed under each unit

9. You also need to read newspapers and magazines, listen to radio and watch television regularly.

STUDY UNITS

There are 20 units of five modules in this course. They are listed below.

Module 1 Mass Media and the Imperative of Law and Ethics

Unit 1 Understanding Law
Unit 2 Understanding Ethics
Unit 3 Mass Media Roles within the Scope of Law and Ethics

Module 2 Nigerian Constitution and Media Regulation

Unit 1 Nigerian Legal System
Unit 2 Constitutional Provisions on the Nigerian Media
Unit 3 Press Freedom
Unit 4 State Security and the Press

Module 3 Media Laws: Reputation and Dignity of Persons

Unit 1 Defamation
Unit 2 Sedition
Unit 3 Privacy
Unit 4 Obscene, Indecent and Harmful Publications

Module 4 Media Laws: Intellectual and Institutional

Unit 1 Copyright
Unit 2 New Media
Unit 3 Protection of News Sources or Whistle Blowers
Unit 4 Contempt of Court: Parliamentary and Judicial
Unit 5 Reports of Parliamentary and Judicial Proceedings

Module 5 Media Ethics and Regulation: An Introduction

Unit 1 Understanding Ethics
Unit 2 Ethical Approaches, Theories and Moral Reasoning
Unit 3 Ethical Issues in Mass Communication

TEXTBOOKS AND REFERENCES

A number of books and other materials have been recommended for a good understanding of this course. You will see them at the end of each unit. Indeed, they were the books the course developer consulted while

the course text was being prepared. You are advised to obtain them and other relevant ones for further reading.

THE ASSIGNMENT FILE

Two kinds of assessment are involved in this course: tutor-marked assignments and a written examination. Although the answers to the Self-Assessment Exercises (SAEs) are not meant to be submitted, yet they are as important as the tutor-marked questions. The SAEs give you an opportunity to assess yourself and know to what extent you understand each topic. But the tutor-marked assignments are to be answered and submitted for marking. The work you will submit to your tutor for assessment will count for 30% of your total score.

TUTOR-MARKED ASSIGNMENT (TMA)

You will be required to submit a specified number of TMAs. Each unit in this course has a TMA. You should attempt all the questions, and you will be assessed on all of them but the best four performances will be used for your 30% TMA score.

After you have completed each assignment, send it together with a tutor-marked assignment form, to your tutor. Please ensure that each assignment reaches your tutor before the deadline for submission.

If you have a genuine reason for not completing your work on time, contact your tutor to see if he or she can give you an extension. Normally, extensions may not be granted after the deadline. Since a commitment to deadline is the soul of the journalistic enterprise, journalism students are trained to meet deadlines.

FINAL EXAMINATION AND GRADING

The final examination for MAC 413: Media Law and Ethics will be a test of three hours, which will carry a score of 70%. The examination will be set from all the topics covered, and will reflect the kind of self-assessment exercises and tutor-marked questions you encountered. You should revise the entire course and review all your self-assessment exercises and tutor-marked assignments before the examination.

COURSE MARKING SCHEME

This table shows the actual course marking scheme.

Assessment	Marks
Assignments	Four assignments, best three marks of the five counts for 30% of course marks.
Final Examination	70% of overall course marks.
Total	100% of course marks.

COURSE OVERVIEW

The units, the number of weeks it would take you to complete them and the assignments that follows them are outlined in the table below.

Module 1 Mass Media and the Imperative of Law and Ethics

Unit 1 Understanding Law
Week 1 Assignment 1
Unit 2 Understanding Ethics
Week 2 Assignment 1
Unit 3 Mass Media Roles within the Scope of Law and Ethics
Week 3 Assignment 1

Module 2 Nigerian Constitution and Media Regulation

Unit 1 Nigerian Legal System
Week 4 Assignment 1
Unit 2 Constitutional Provisions on the Nigerian Media
Week 5 Assignment 1
Unit 3 Press Freedom
Week 6 Assignment 1
Unit 4 State Security and the Press
Week 7 Assignment 1

Module 3 Media Laws: Reputation and Dignity of Persons

Unit 1 Defamation
Week 8 Assignment 1
Unit 2 Sedition
Week 9 Assignment 1
Unit 3 Privacy
Week 10 Assignment 1
Unit 4 Obscene, Indecent and Harmful Publications
Week 11 Assignment 1

Module 4 Media Laws: Intellectual and Institutional

Unit 1 Copyright
Week 12 Assignment 1
Unit 2 New Media
Week 13 Assignment 1
Unit 3 Protection of News Sources and Whistle Blowers
Week 14 Assignment 1
Unit 4 Contempt of Court: Parliamentary and Judicial
Week 15 Assignment 1
Unit 5 Reports of Parliamentary and Judicial Proceedings
Week 16 Assignment 1

Module 5 Ethical Principles of Mass Media Regulation

Unit 1 Ethical Approaches, Theories and Moral Reasoning
Unit 2 Ethical Issues in Mass Communication
Unit 3 Regulatory Institutions in the Nigerian Mass Media

Module 5 Ethical Principles of Mass Media Regulation

Unit 1 Ethical Approaches, Theories and Moral Reasoning
Week 17 Assignment 1
Unit 2 Ethical Issues in Mass Communication
Week 18 Assignment 1
Unit 3 Regulatory Institutions in the Nigerian Mass Media
Week 19 Assignment 1

Revision Week 21 and 22
Examination Week 23

HOW TO GET THE MOST OF THIS COURSE

You need material and non-material things for this course. The material things you need include but are not limited to the following:

i. A standard dictionary, such as the Oxford Advanced Learners.
ii. A copy of the 1999 Constitution of the Federal Republic of Nigeria.
iii. A copy of the United Nations Declaration of Human Rights.
iv. A copy of the African Charter on Human and People's Rights.
v. All the recommended text books on media law and ethics.

The non-material things you need for the course include but are not limited to the following:

A) At least four continuous, uninterrupted hours of study weekly.
B) Self-discipline and commitment to excellence.
C) Integrity.

FACILITATORS/TUTOR AND TUTORIALS

Fifteen hours of tutorials are provided in support of this course. You will be informed of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will grade and comment on your assignment, and will monitor your progress. Don't forget to send your tutor-marked assignments well ahead of the deadline. They will be graded and returned to you as soon as possible. Do not hesitate to contact your tutor by phone or email if you need help.

You should contact your tutor if:

a) You do not understand any part of the assigned readings
b) You have difficulty with the self-assessment exercises
c) You have a question or a problem with an assignment, with your tutor's comment or with the grading of an assignment.

Try your best to attend the tutorials. This is the only way to have face to face contact with your tutor and ask questions. You can raise any problem you encountered in the course of your study. To gain maximum benefit from the course tutorials, prepare a question list before attending the tutorials. Also, it will be in your best interest to participate actively in the tutorials.

CONCLUSION

This is a particularly interesting course that opens your eyes to many things about law and ethics which you must have been seeking answers to. It also gives you a great insight into the secrets of success in life, how to be law abiding and observe all the ethical principles which you require to excel not only in your chosen profession, but also in life, generally.

From what you may have noticed from the news media and from films, you can see that lack of self-discipline and/or ignorance of the law has led to the wrecking of many promising careers. If you take to heart and apply all that you have learnt in this course, you will not only excel in journalism but also succeed in life.

SUMMARY

This course guide gives you an overview of what to expect in the course of this study. The course teaches you the fundamental principles of law and ethics relevant to media practice in Nigeria.

We wish you success with the course and hope that you will find it both interesting and useful.

MAIN COURSE

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MODULE 1 MASS MEDIA AND THE IMPERATIVE OF LAW AND ETHICS

UNIT 1 UNDERSTANDING LAW

CONTENTS

1.0 INTRODUCTION

The relationship between individuals and groups, which results in interdependency between them, always brings about overlapping functions, conflicting rights, competing interests, and neglected duties/expectations. The interrelationships and interdependence between individuals and groups define society. It was as a result that law set in not only to define individuals' rights, interests and obligations but also to set the limit to which a right is exercised in relation to other rights and obligations. Thus, as put by Elias (1969), the law remains an umpire.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the meaning of law
- state the origin of law
- explain the significant of law.

3.0 MAIN CONTENT

3.1 Definition and Explanation of Law

Law is the overall guiding principles of human conducts. A law is basically a body of principles or rules which are the basis of a society. Members of a society are meant to abide by the law established by it. It is very hard to have a society without a set of laws guiding it. Human life needs a proper rule of conduct or principle at every step. It is also important for a successful society.

Law according to Oyakhilomen (2009), controls, regulates, enforces and punishes. It is very uncommon to have a society absolutely free of law, i.e. a state of anarchy. Whether consciously or unconsciously; written or unwritten; observed or violated; elements of law exist in every society. Oyakhilomen (2006) writes:

> Society cannot exist without rules of social order. Hence every civilised society has its publicly recognised authority for declaring, administering and enforcing its laws. Can you for a moment visualise a state without law and any enforcement system (if such state ever existed). Suppose the Nigeria Police Force were to observe one day public holiday? What would you find?
>
> The state of normlessness or lawlessness is shade or two worse than the perpetual state of warfare and reign of terror and fear. This is a mirror of the state of nature where as Thomas Hobbes stated in The Leviathan: “each man was his own master; personal force alone determined each man’s position. Life in these conditions was “solitary, nasty, brutish and short”. This leads one to appreciate the fact that the society cannot exist without rules of social order – law. The picture of a State without law helps to bring to the fore, what the functions of law would be in the society.

There are various definitions of law by various law professionals and authors. 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 a rule of conduct of any organised 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.

4. A body of rules of conduct of legal force and effect, prescribed, recognised, and enforced by controlling authority.

Oyakhilomen agrees that law has no universally acceptable definition because many of the definitions put forward are conceived from individuals' perspectives of law. He thereafter highlighted and discussed some definitions from which a few are extracted for the purpose of this course. According to him, law is:

(a) "A set of rules governing human activities and relations." He stated that this definition appears extremely wide, accommodating rules of every game, of clubs, even of gangs of thieves. It is all encompassing.

(b) "A rule of action prescribed or dictated by some superior which some inferior is bound to obey" and is applied indiscriminately to all kinds of actions, whether animate or inanimate, rational or irrational (Blackstone), or

(c) A command set either directly or circuitously by a sovereign individual or body to members of some independent political society in which his authority is supreme (John Austin).
He discusses Blackstone & Austin's definitions as being silent on omission or inaction. 'Description of law as a rule of action is wide enough to cover: rules of a father to his son, or rules of a husband to his spouse which are no law' he submitted.

(d) A body of principles recognised and applied by the state in the administration of justice (Salmond).
He asks if the state does not apply moral principles, which do not answer the descriptions of law.

(e) Rules, which the courts will follow, the prophecies of what the courts will do, in fact, and nothing more pretentious (Oliver Wendell Home*).* This is a classic egg and the chick case.

(f) Rules, which the courts – the judicial organs of that body – lay down for the determination of legal rights and duties (John Chipman Gray*).* In other words, law means the rules of court.

(g) An aggregation of legislations and accepted legal principles and the body of authoritative groups of judicial and administrative actions.
He submits that this definition is more a description than a definition.

(h) A general body of such rules of conduct expressing the will of the ruling class as are established by legislation and such customs and rules of community life as are sanctioned by the government; the application of which body of rules is secured by the coercive

force of the state for the protection, consolation, and development of the social relations and the public order, beneficial and desirable for the ruling class (Vyshinsky).

(i) A general body of such rules of human conduct established or sanctioned by the government power, the execution of which rules is secured by the coercive power of the state (Gsovski*)*

SELF-ASSESSMENT EXERCISE 1

Put all various definitions above into consideration to form your own definition of law.

3.2 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.**

SELF-ASSESSMENT EXERCISE 2

Can the directives given by the kings and chiefs to their subjects be categorised as laws?

3.3 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." But what is interest and whose interest? There are various interests within a society or a state competing for protection and actualisation. According to Akinfeleye (2010), interests are of two categories:

- Individual or personal interest
- Public/State/Societal interest

(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: Though there are arguments on whether public interest is the same thing as state interest, our focus here is likened both to mean the collective interest of individual members of a state. 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, national security, public safety and social welfare

You can imagine a state of lawlessness, where the right of an individual is not defined and the limitation to the right in order to protect the right of another individual is not set, only those who have the will would have their way. Law protects the rights, duties of people, be it political, social, economic or cultural.

3. 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.

According to Sohn, law is the sum of rules, which regulates the life of the people, or creates social order and organisation that are necessary for preservation of life and ordered control of the life of the community. He explained that the private law governs the rights and duties of individuals while public law regulates the relationship between the individual and the state.

The essence of law is to reconcile conflicting interests of individuals and collective interests of the public such that peaceful coexistence would be ascertained. Von Ihering sees the function of preserving life from the angle of striking a balance between egoistic and altruistic motives. He said that the purpose is the universal principle of the world. The purpose of human violation is the satisfaction derivable from acts. The purpose of law is the protection of interests.

4. 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. According to Elias, 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. Nigerian laws forbid any Nigerian or foreigner living within the country from carrying ammunitions around without legal permission to do so or rising against the constituted authority as these may constitute threat to national security.

Sometimes, individual rights are violated to ensure that the state is secured from certain danger. For example, people's right to freedom of

movement may be deprived when a curfew or a state of emergency is declared in a state to let peace rein.

Since individuals constitute the public, public safety would therefore mean the safety of life and property of every Nigerian against all that may constitute threat.

Emergency powers to incarcerate persons who commit or are suspected of having committed an offence, and to stop and search without warrant any receptacle suspected to contain explosives, firearms and ammunition, exist for purposes of national security and public safety. Moreover, both the military and the police have powers to order the detention of "trouble maker" whose freedom is reasonably considered prejudicial to the society.

5. Social welfare of state

Oyakhilomen (2009) highlights the under listed as means through which laws ensure social welfare of state:

(i) The Constitution and various statutes enhance freedom. It is by law slave trade and slavery extraction of executive bride price or discrimination against Osu caste were abolished. Law frowns at arbitrary arrest and detention, and guarantees right of freedom of movement, speech and association. Writ of habeas corpus or fundamental rights enforcement proceedings are provided by law where ones freedom is curtailed wrongfully.
(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.
(vii) Law performs normative and social functions by pointing to direction of wrong committed by members of the public and helping or supporting state functionaries, operators and machinery of society.

6. Maintenance of justice and fairness in society

Justice and fairness come from nowhere other than from the application of laws. Oyakhilomen (2009) expresses the view of some writers, who

equate law with justice, contending that law ought to be just. Jus naturale, jus gentium and equity and its body of rules were developed out of the desire and search for justice, fairness and good conscience, for all peoples. In contrary, justice is an absolute requirement and the judges in applying the law must be fair, impartial and devoid of personal prepossession or idiosyncrasy.

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.
(d) To give equal right to all to prosecute and to appeal.
(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 and equal and proportionate damages to the condemned and the claimant respectively especially where the same or similar interpretations of status are applicable.

7. 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. For example, there was a motion moved in the Nigeria National Assembly to legalise homosexuality. If such a bill was passed to law, it might have negative effect within the state.

Besides, if laws provide for adequate remedies, such laws would transform the society. Most often people are not used to change except they consider certain benefits or see deterrents, which they are also likely to be subjected to. Notion of law changes from society to society, from one generation to another even within the same society.

Oyakhilomen adds that law:

> ……tries to maintain the established social order and at the same time, effect social change to meet modern requirements of a new society, taking cognisance of and responding to new learning, new facts, different set of prejudices, disparity in sets of questions people ask

daily, in sets of values, economics, education, social achievement and ideological orientation and very importantly quest for ideals of justice and for a transformed and better society.

4.0 CONCLUSION

Law is one of the key elements that shape society. The functions of laws are numerous. Law holds the society firm to save it from falling apart. It therefore implies that if there is any lapses in law, it make proportional impact in the growth and development of the society.

5.0 SUMMARY

From the discussion above, you should understand that law protect individuals and the state, it preserves life and property; it promotes the administration of justice, it preserves social welfare; and it brings about change and transformation. All these are tantamount to development in a society.

6.0 TUTOR-MARKED ASSIGNMENT

Law can save any society from falling apart. Do you agree?

7.0 REFERENCES/FURTHER READING

Brown, S. (2008). *Crime and Law in Media Culture.* New York: Bell and Bain Ltd.

Elias, T. O. (1969). *Nigerian Press Law.* London: Evans Brothers Ltd.

Makowsky, R. C. (2010). *The Discovery of Society.* New York: McGraw-Hill.

Oloyede, B. (2008). *Free Press and Society: Dismantling the Culture of Silence.* Ibadan: Stirling-Horden Publishers Ltd.

Oyakhilomen, G. I. (2006). *Nigerian Legal System I.* Kaduna: National Open University of Nigeria.

Oyakhilomen, G. I. (2009). *Introduction to Law.* Kaduna: National Open University of Nigeria.

UNIT 2 UNDERSTANDING ETHICS

CONTENTS

1.0 INTRODUCTION

The study of ethics is important to the mass media because journalists and other media professionals must be guided by ethical values and principles for the good of the society. The focus of this unit is therefore to introduce you to mass media ethics.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define ethics
- differentiate between law and ethics
- explain the importance of ethics to the society.

3.0 MAIN CONTENT

3.1 Definition of 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).

Ethics is a set of principles of conduct governing an individual or group (Bowles and Borden, 2004).

Ethics is the science of rightness and wrongness of conduct. Conduct is purposive action, which involves choice and will. It is the expression of character which is a settled habit of will. The will is the self in action. Thus ethics is the science of human character as expressed in right or wrong conduct. But rightness or wrongness refers to the good which is the ideal of human life. Thus ethics is the science of the highest good. It is the science of morality. Ethics is concerned with the origin and growth of conduct like psychology. It is concerned with evaluation of conduct with reference to an ideal. It seeks to determine the supreme ideal involved in human conduct. It seeks to teach us how we can pass correct judgments upon human conduct, consider it as right or wrong, with reference to the supreme ideal of human life. Ethics is the science of the ideal involved in human life (Sinha, 2009).

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.

Thus, ethics often involves the balancing of competing rights when there is no "correct" answer. A case in point is a student who promises to remain silent when a classmate confides that he has cheated. If a teacher attempts to solicit testimony from that student regarding her friend's nefarious behaviour, the student must then weigh the value of loyalty to the friend (a moral virtue) against commitment to the truth - another moral virtue (Day, 2006).

Once in a while, ethical decisions involve more than one moral rule. For example, most of us have been taught that stealing is wrong; we have

also been taught that human lives are highly valued. What if a loved one required medication to live and we had no money to buy that medication? Would we hesitate to steal the medicine from the pharmacy? Would we be morally justified in doing so? Does the value of a human life outweigh the harm done by stealing the medicine? Or is stealing always wrong, regardless of the motivation?

From the foregoing therefore, it is obvious that ethics is a set of values, principles and standards guiding an individual, a group or professionals' conduct or actions, especially when confronted with two or more compelling situations.

Ethics, in short, may be seen as being concerned with that which holds society together or provides the stability and security essential to the living of human life (Black *et al*, 1999).

SELF-ASSESSMENT EXERCISE 1

From your understanding of the presentation above, give your own definition of ethics?

3.2 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. There is a common tendency today to equate ethical standards with legal standards, and for victims of unethical behaviour to seek legal remedies for perceived ethical lapses. This is a false equation and a fundamental misconception of the relationship between law and ethics. For instance, invasion-of-privacy laws widely permit the publication of information that, for reason of ethics, taste, compassion or professionalism, some news media would not publish or broadcast (Black et al, 1999).

Not all moral issues can be, or should be, legally codified. The law permits many immoralities that transgress against friends and enemies alike, such as breaking of promises, uttering of unkind words, and certain forms of deception. In the course of our lives we often offend the feelings of others, an act for which the law provides no restitution to the offended party. A high school student, for example, might break his date at the last minute, but the lady kept in waiting cannot resort to the courts for redress of her tearful ordeal. Even in a litigious society it would be

undesirable to open the floodgates to such deep interference into individual relationships (Day, 2006).

Nevertheless, legal obligations are based on moral ones. The criminal and civil statutes codify some of our most important moral obligations, for example, proscriptions against killing, stealing, raping, or maliciously defaming another's reputation. Most of these statutes involve punishing direct harm to others, but some laws are based on moral principles that are not concerned with the well-being of others. Laws regulating sexual behaviour between consenting adults and prostitution fall into this category. The moral justification for such laws is not widely shared within society, and thus compliance is less certain. Nevertheless, a fundamental distinction between our legal code and moral obligations is that legal violations involve prescribed penalties and ethical indiscretions do not.

But if the laws themselves are based on moral respect, are there circumstances when we are warranted in breaking a law? Does our ethical system provide for such waivers of our moral obligations? Civil disobedience, in which citizens intentionally ignore laws that they feel are unjust, has received some moral respectability in recent years, particularly since the nonviolent civil rights demonstrations led by the Reverend Dr. Martin Luther King, Jr., in the 1960s. Most ethicists agree, however, that the legitimacy of civil disobedience depends on (1) the moral agent's true belief that the law is unjust, (2) nonviolence, and (3) the willingness of protesters to face the consequences of their actions. In addition, some people justify civil disobedience only if the legal avenues of redress have been explored. For example, an environmental group, having exhausted all legal avenues to prevent the disposal of nuclear wastes at a site within their community, might resort to acts of civil disobedience to bring its concerns to the public's attention. In such cases, even when legal questions have been settled, the moral issues persist.

A just law might be violated in emergency situations or when higher moral principle is involved. For example, we would not think a husband immoral for running the red light to get his pregnant wife to the hospital in time for the delivery of their baby. On a more serious level, media practitioners may occasionally feel obligated to violate a just law if they believe that they must do so because of a more significant moral obligation.

Hence, ethics is the foundation for all laws but not all laws are based on ethics. Most laws are ethical but not all ethics are written in law.

Violation of all legal rules can be redressed in a law court while not all ethical violations can be compensated.

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).

SELF-ASSESSMENT EXERCISE 2

Explain the relationship between law and ethics.

3.3 Importance of Ethics to the Society

Every society needs a system of ethics or morals for peace, stability and cohesion. Without ethics, morality and law, society, according to the common saying will be brutish and short. It is a system of ethics that guide personal, interpersonal and public relationships. Without ethics,

there won't be law and without law, there will be anarchy in the society. It is a system of ethics that the society uses as a guide in judging and assessing conduct and actions.

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 (Olen, 1988).
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. However, the goal should not be the ideal society (which is impossible) but a decent society. What should be avoided are claims of infallibility. Ethics is not a science, and trial and error are inevitable. In a not-so-perfect society, some compromises and balancing are required because not every claim deserves equal attention.
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. For example, it might be in a student's own interest to copy from a classmate's term paper. It is in the classmate's best interest to keep her from doing so.

Societal rules against plagiarism are brought to bear in evaluating the moral conduct inherent in this situation.

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 civilisation today would challenge the imagination of even the most ardent philosopher. A case in point is the controversy over the cloning of humans, a scientific breakthrough with unimaginable ethical consequences. Ethicists have already begun passionately debating this issue in the hopes of clarifying competing moral values and affording some time for reasoned reflection before such scientific experimentation becomes commonplace.

SELF-ASSESSMENT EXERCISE 3

Can a society survive without an agreed system of ethics? Justify your position.

4.0 CONCLUSION

Ethics is the foundation of morality and law in every society. The culture, civilisation, customs and religion of a people determine the values they will regard as ethical and the ones they will see as abominable. It is necessary, if not mandatory for every society to have a generally accepted level of ethics or standards in order to ensure stability, peace and progress.

5.0 SUMMARY

Ethics is a system of moral or respectable conduct that guides the actions of individuals and organisations in an organised society. Ethics is different from law as not all ethical values are enforceable by the courts but most laws have their foundation in ethical standards. Society needs to have a system of ethics to ensure stability and cohesion.

6.0 TUTOR-MARKED ASSIGNMENT

A system of ethics is a cover-up for unofficial censorship. Discuss.

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UNIT 3 MASS MEDIA ROLES WITHIN THE SCOPE OF LAW AND ETHICS

CONTENTS

1.0 INTRODUCTION

The media is an institution within a society that informs, educates and orientates people as regard the rights, obligations and interest of individuals and groups and at the same time entertain them to lessen the effect of the obligations expected of them by the society. The three key elements, society, law and the media form the basis of discussion in this unit.

Why has the trust the members of the public have in the media continued to increase by the day? Why have the media being regarded has the Fourth Estate of the Realm? Why do the people wait curiously everyday to hear from the media? Why do the media releases generate reactions from the public and thereby constitute the topic of discussion by them? These questions are pointers to the functions of the media and what the public expect from the media. In this unit, much about the functions of the media within the society will be discussed.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define mass media
- state the various forms of mass media
- enumerate the roles of mass media in the society.

3.0 MAIN CONTENT

3.1 Understanding Mass Media and Its Forms

In a layman understanding of the media, it is avenue through which information or messages find way to its destination from its origin. According to Joseph Dominick (2009), a medium is the channel through which a message travels from the source to the receiver. The medium used to relay information varies to the form of communication that such medium is used for. Interpersonal media such as oral communication and body language are used for interpersonal communication while mass media such as radio, television and newspaper are used for mass communication.

Forms of mass media

There are two main categories under which various mass media could be classified. They are:

(a) Print media
(b) Electronic media

(a) Print media: Print media **c**overs all form of publications meant for the mass distribution of information to the members of the public. This can also be categorised into:
Periodic – Those that are published at a specific interval. It may be daily, weekly, fortnightly, monthly, biannually, annually etc. Examples of this are:

i. Newspapers
ii. Magazines
iii. Journals
iv. Billboards (Not electric)

Non-periodic – those that their publications are not regular. They are published for specific goals base on the requirement or at the time they are needed. They include:

i. Books
ii. Posters
iii. Handbills
iv. Billboards (Not electric)

With the evolution of print media people had a great thirst for information. They take print media as their foremost source of

information. Hence, the medium starts playing three main roles which are as follows:

- Information
- Entertainment
- Guidance

With the addition of features and columns and magazines, people's interest was enhanced and they started idealising the writers. They take their writings as their guidance. Observing the great importance of media, there should be some limitations set for it. So that writers do not go beyond the ethics. Their writings and publications should be checked and controlled. For this reason, certain laws to regulate media were formulated to keep a check on it. Hence, laws and ethical principles were formulated for print media, which are to be obeyed by the publishers as enumerated in subsequent modules. Some of the laws and ethics still regulate the print media up till today.

(b) Electronic media: Electronic media is also known as broadcast media plus other unconventional social media. It covers all form of media that transmit information on air with the aid of transmitter and other electronic devices to the mass audience. It can be categorised into:
Conventional: These are mainstream broadcast media that relay information through a particular channel or frequency. The regular broadcast media are just two:

- Television
- Radio

Unconventional: These forms of broadcast media do not operate on channel or frequency base. Unlike conventional media, messages from this form of media are neither vetted nor verifiable. These media comprise:

i. Internet
ii. Computers
iii. Facebook
iv. Youtube etc.

Then, with the gain in popularity of electronic media, there was a need to put checks on them. So, different regulatory committees were made to formulate regulating codes for them. With the passage of time many codes were formulated and applied for them. By now a proper and complete code of principles is been set for the whole media. But still

there is another debate of freedom of media because changes keep on happening in these principles.

SELF-ASSESSMENT EXERCISE

Differentiate between conventional and unconventional broadcast media.

3.2 Media Roles within the Scope of Law and Ethics

Many writers lay emphasis on the primary functions of the media when discussing the roles of the media within a society. The primary functions are as follows:

i. Information
ii. Education
iii. Entertainment
iv. Commercial
v. Cultural integration.

Oloyede (2008) goes beyond the five listed above. And this indicates that the media perform numerous roles among which people do not even notice. Here in this unit, we would rather look at the roles of the media in some aspects of human life.

Media roles in government and politics

Mass media today are the tools that the government uses to protect the image of the country home and abroad. This is achieved by using the media to project and sell government policies to the people. Oloyede sees the media as the most indispensable instrument of governance and writes:

> "The press also functions as an indispensable instrument of governance. It conducts information flow between governments and the governed and ensures that the citizenry is not kept in the dark about the thinking of government. It reports, explains and meaningfully conveys to the governed the esotericism of the policies and actions of the government."

To reinforce this media role, he quoted Osoba (1987), that:

> The press is also the feedback mechanism that provides medium for the masses to reach the rulers, to appraise

their performance, to assess their policies and proffer alternative paths and goals for the society.

Media roles in health issue

Mass media has a great impact in the health sector. Apart from staging health programmes which help people in health decision making, mass media are the avenues through which government policies on health are explained to people. Media roles in health issue are highlighted below:

i. Staging healthy related programme such as health talk
ii. Inform and explain to the populace new government policies on health
iii. Collaborate with health organisations (governmental and non-governmental) to assist people in solving health related problems
iv. Report epidemics before it spread
v. Report the findings of health researchers to help in health decision making.

Media roles in economics

The back bone of the economy nowadays is the mass media. Oloyede (2008) agrees that the mass media is a veritable instrument for fostering commerce and industry. Mass media make economy viable through the following:

i. Economic reporting/business news
ii. Advertisements
iii. Economic programmes such as business today
iv. Facility visits.

Media roles in education

Through mass media, education is made easy to access. Apart from educating the populace through programmes that add value to knowledge, institutions are now making use of the mass media to educate their students at their respective location. This helps a lot in distant learning process which diversifies the rigid students-lecturers relationship in class. Higher institutions of learning particularly universities are now licensed to own broadcast media in addition to various publications from their ends. Examples are:

NOUN FM: own by National Open University of Nigeria and UNILAG FM: own by University of Lagos.

Oloyede writes:

> *"*The press also serves as a teacher and educates society. It constantly throws its searchlight on various subjects affecting humanity with a view to generally educating mankind. Apart from promoting general knowledge and know-how through its various educative programmes and features, the press also constantly offers humanity a very wide range of possibilities for making formal and informal education possible."

Media roles in social, religious and cultural matters

Reviving our dying cultures and traditions is another credit to the mass media. Through programmes and features, the media have turn around the cultural heritage of Nigerians within and outside the country. It is believed now that mass media are using entertainment formula to ensure that the media messages achieve the desired goals. The media achieve this through programmes like:

i. Sports and games
ii. Arts and decoration
iii. Music
iv. Comedy and comics
v. Social event programmes
vi. Fashion and style
vii. Cartoons, jokes and fun-oriented features.

Media role in legal matters social justice

Mass media monitor the activities of the national assembly, state assembly as well as courts of law and thereby give progressive reports on the legal matter in Nigeria. Legal issues pose some problems to the media because there are a lot of cautions which make the media conscious of what to cover, what and how to report and what programme to stage whenever the subject matter is a legal issue. Oloyede believes that mass media crusade for social justice. When people are unduly harassed, oppressed or their fundamental rights are trampled upon, the media take it up through their incessant reporting and advocacy.

Media roles in state security and reformation

Mass media foresee and warn against impending dangers. Unlike the notion that accuses the mass media of having much interest in bad news

"bad news make good news", mass media work towards preventing bad news from happening. The media ensure that its messages towards societal reformation are reinforced.

4.0 CONCLUSION

Roles played by the media within the society affect every aspect of human life. And such roles harmonise the various organ of the state as well as the ruled. The roles at the same time encourage all to stand on their toes because the mass media make people accountable. Mass media check excesses; correct abnormalities; advise the leaders and the led; educate the youth and the aged; entertain men and women; harmonise the interests of the weak and the strong; reinforce the voice of the voiceless; and support development and transformation.

5.0 SUMMARY

In this unit, you have been taken through the roles of the media in each segment of human life. It should be noted that there is no aspect of human life where media is not relevant. Media roles are felt in all facet of human life.

6.0 TUTOR-MARKED ASSIGNMENT

As a student of this course, where do you think mass media roles are relevant to you?

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MODULE 2 NIGERIAN CONSTITUTION AND MEDIA REGULATION

UNIT 1 ORIGIN AND STATUS OF LEGAL SYSTEM IN NIGERIA

CONTENTS

1.0 INTRODUCTION

The multifaceted historical record of how Nigeria came to be and the nature of its formation are the major factors responsible for the nature of Nigerian legal system, which is of numerous sources. Diversity in cultures and ethnic groups, the influence of colonialism, the long years of military rule, the foreign influences, and many other factors contribute to the historical record of legal system in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- Analyse the nature of Nigerian legal system
- state the factors that shape the nature of Nigerian legal system

- describe the legal profession
- explain the institutions of law.

3.0 MAIN CONTENT

3.1 Nature of Legal System in Nigeria

3.1.1 History

Before Lugard's amalgamation of Northern and Southern protectorate in 1914, there existed autonomous villages, towns and districts governed by chiefs, village heads and kings. Some of the villages or towns that related through origin and historical ancestor, trades, marriages, religions and festivals, or even as a result of wars had similar laws for the administrations of their domains.

With the coming of the whites' colonisation and their efforts to establish a central administration for the numerous ethnic groups, villages and towns; the colonial leaders made laws that reflected the customs and the administrative systems of all the major groups in various regions. Though, most of the laws were made in England and were fashioned after the English native laws, they reflected African traditions of the groups. That is why today, Nigerian legal system still accommodates our old traditions and custom.

Looking at this historical records and the influence of colonial master, Asein (2005) believes that Nigerian legal system is of dual structures. He writes that:

> "Nigerian legal system has acquired a dual structure comprising customary and English laws. Islamic law, which has a wider application in the northern states of the federation, though not indigenous to that part of the country, is for all practical purposes treated as customary law."

There is no doubt that Islamic law and culture is alien to the country particularly to the northern part of the country, where it is adopted as indigenous culture. The Fulani jihadist used similar strategy or system of administration that France used in their former African colonies known as **acculturation,** a system in which French culture and traditions were foisted on the colonies so much that it almost abrogated the original culture and traditions of the colonies. The Fulani jihadists imposed Islamic culture and traditions on the northerners after they had conquered the Hausas, who are the aborigine of the area. For its

dominant, Islamic culture is assumed the culture of the people of northern Nigeria and thereby, reflected in the Nigerian legal system.

SELF-ASSESSMENT EXERCISE 1

Do you agree that the colonial masters have hands in the Nigerian legal system? Give reasons for your answer.

3.1.2 Understanding the Scope of Legal System in Nigeria

Legal system is the process of the administration of law through legal institutions and machineries in an autonomous state. Legal system is beyond law of a particular state; it encompasses the institutions that see to the administration of law, legal professionals including everyone who is involved or affected by the law, as well as the state. Oyakhilomen (2006) gives the analysis of legal system and it could be summed up as follows:

> "A legal system has been described as the aggregate of legislations and accepted legal principles and the body of authoritative grounds of judicial and administrative actions; the institutions, which are involved in the administration of justice; the process or machinery for administration of justice; and the persons in the law – judges, magistrates, legal practitioners, Attorneys-General or Solicitors-General, The Nigeria Police Force, Registrars of Court, Sheriff and Bailiff, The Nigeria Prisons etc."

With respect to Nigeria, Asein, (2005) defines legal system as the totality of the laws or legal rules and the legal machinery which operate within Nigeria as a sovereign and independent African country.

From the definitions above, it could be deduced that legal system is beyond the law alone; it has many component some of which are discussed below.

SELF-ASSESSMENT EXERCISE 2

With reference to the definitions above, define Nigerian legal system in your own words.

3.1.3 Component of Nigerian Legal System

From the definition of Oyakhilomen above, we can understand that the components of Nigerian legal system are:

a. Law: the acceptable legal rules or principles such as:
   i. Acts of parliament
   ii. Decree
   iii. By-law
   iv. Constitution
b. Institutions of law:
   i. Law courts
   ii. Tribunals
   iii. Prisons
   iv. Police
   v. The state
c. Process/machinery for administration of justice
   i. Application of law
   ii. Structure and setting of the courts
   iii. Law procedure
d. Persons in the law
   i. The appellant
   ii. The defender
   iii. Lawyers
   iv. Judges
   v. Court officials
   vi. Attorneys-General etc.

SELF-ASSESSMENT EXERCISE 3

How does each of the components listed above affect Nigerian legal system?

3.2 External and Military Influence on Nigerian Legal System

The external influences on Nigerian legal system could be understood under the following headings:

a. Political influence
b. Economic influence
c. Social influence
d. Religious influence

Political influence

This includes the colonisation of the country by Britain. As a result of colonisation, Asein (2005) writes that:

> "Like many other African countries that were under British rule, Nigeria is classified under the common law system."

Besides, the administration of the North with Sharia law as a result of holy war waged by Fulani jihadists from countries like Sudan, Mali and Niger left much in the legal system of Nigeria.

Economic influence

There has never been a country that is economically independent of other country. As a result, Nigeria, through economic relationship with some other country, adapts from the legal system of such country to suit the economic development of Nigeria. For example, Islamic banking system was adapted from Malaysia as a solution to the economic system of Nigeria that is falling apart.

Social influence

Through socialisation, development and relationship with other countries, the legislative arm of Nigerian government has made and amended various laws to suit global civilisation and technological development. As a result of the social influences from other countries, a bill was moved by a member of the parliament to legalise homosexuals.

Religious influence

It cannot be denied that the activities of the church still dominate the Nigerian judicial system till today. The gowns and the wigs worn by the legal professionals including the principal officers of the Nigerian parliament are all adapted from the old principle of the church. Also, laws pertaining to marriage are fashioned after the old traditions of the church.

Military influence

Military Influence on Nigerian legal system has to do with long years of military rules. During this period, the military rendered the constitution and the statues useless and substituted them with **decrees** and **edicts.** Asein writes:

> "The impact of the incessant intervention of the military in Nigeria's political development has left an indelible mark on its legal system. Successive military regimes assume executive and legislative, but very limited judicial functions."

SELF-ASSESSMENT EXERCISE 4

To what extent do you think military administration has affected legal system in Nigeria?

3.3 Nigerian Legal Profession

There is a standard training institution for legal profession in Nigeria. After the first degree in a university, prospective legal practitioners must proceed to the Nigerian Law School to complete their legal programme. It is after the completion of their programme in the school that the trainees are call to bar and they are given the go-ahead to practice as both solicitor and advocator in Nigeria.

Asein explains further that the Nigerian Law School admits trainees after the completion of their programme to the bar as solicitors and advocates of the Supreme Court of Nigeria, combining the duties of both callings. According to him, this varies from what is in operation in England where the two professions are separated and control by separate body. Despite that Nigeria fashioned its legal system after England, there is deviation in this aspect.

SELF-ASSESSMENT EXERCISE 5

Do you support that the two professions (solicitor and advocates) be separated and controlled by different bodies? Give reasons.

3.4 Institutions of Law

Various institutions are responsible for the administration and maintenance of legal profession in Nigeria. Some of them are directly concerned and are given certain obligations as established by the constitution. Some others perform the functions of regulating the professional bodies or legal councils. Some of the institutions are briefly now discussed:

1. Law courts

Law courts are established by the Nigerian constitution to adjudicate in cases brought before them. There are about four categories of law court in Nigeria.

a. Court of higher jurisdictions: in this category falls the apex court in Nigeria. The apex court is the Supreme Court. The decisions of the Supreme Court are final and are binding on other courts in Nigeria.

b. **Court of appellate jurisdictions:** in this category are Courts of Appeal. They are law courts that do not hear fresh cases other than those coming from lower courts.

c. **Courts of co-ordinate jurisdictions:** these are courts of equal power. The decision of one court is not binding on another of equal jurisdictions but may be used to plead. Courts in this categories are:
   i. Federal High Court
   ii. State High Court

d. **Courts of lower jurisdiction:** these are courts at the bottom in the hierarchical ladder of the court system in Nigeria. They are referred to as inferior court because they have limited jurisdictions. Example of the courts are:
   i. Customary courts
   ii. Magistrate courts
   iii. Area courts
   iv. Sharia courts
   v. District courts

2. Special courts

Special courts are established to cater for certain areas in which there may not be adequate provisions for by the regular courts. Examples of special courts are:

i. Juvenile Court
ii. National Industrial Court
iii. Court Martial
iv. Public Compliant Commission

3. Tribunal

Tribunals are set up to see to certain areas or cases that require urgent attention. Asein (2005) adds that tribunals are an integral part of the entire adjudicatory system created by status to complement the traditional court system. The commonest tribunals in Nigeria are election tribunals.

4. Panels and commissions

Panels and commissions are set up not to adjudicate but to investigate issues and report the findings to the appropriate quarters for necessary sanctions where necessary. Panels and commissions do advice or suggest way to resolve the issues they investigate e.g. Uwais's Panel.

Cases that relate to journalism such as contempt of court, contempt of parliament, plagiarism, copyright, seditions, defamation, are not within the jurisdiction of either lower courts or special courts.

SELF-ASSESSMENT EXERCISE 6

To what extent do you think that military intervention has affected Nigerian legal system?

4.0 CONCLUSION

Nigerian Legal System though fashioned after British legal system, it is unique because it is structure to accommodate African custom and traditions and at the same time it accommodates changes, development and restructure.

5.0 SUMMARY

In this unit, the nature of Nigerian legal system forms the central idea. The nature of Nigerian legal system was discussed base on the historical records and the development of the legal system in Nigeria. The military involvement and the implication of this on Nigerian legal system was part of the discussion. Also, the structure of legal profession in Nigeria was also analysed and the legal institutions added much to the understanding of Nigeria legal system in this unit.

6.0 TUTOR-MARKED ASSIGNMENT

Criticise any of the definitions of Nigerian legal system in this unit and give your own definition of the term.

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UNIT 2 CONSTITUTIONAL PROVISIONS ON THE NIGERIAN MEDIA

CONTENTS

1.0 INTRODUCTION

Every profession has do's and don'ts which guide the operation and activities of such profession, so also the media practice. The organisation, structure and mode of operations of media practice are partly spelt out in the constitution of the country. There are other laws and regulation that guide the ownership and operations of the media. These laws and or regulations are made either by commission set up by the government such as Nigerian Broadcasting Commission (NBC) or professional bodies such as Newspaper Proprietors Association of Nigeria (NPAN).

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify the sections of Nigerian constitution that make provision for media practice in Nigeria
- list various acts and decree that were promulgated to affect the operations of mass media in Nigeria
- evaluate the relationship between the media and the law.

3.0 MAIN CONTENT

3.1 The Media Provision in the Constitution

Various sections of the Nigeria constitution (1999) make provision for and protect the operation of the mass media in Nigeria. These include:

a. Section 39 sub-section one

It states that:

Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impact ideas and information without interference.

This section is one of the outcomes of **article 19** of the Universal Declaration of Fundamental Human Right which states:

> "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

b. Section 36 sub-section two

It states that:

> "Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:
> Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever."

c. Section 36 sub-section three

It states that:

> "Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -
> (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or
> (b) Imposing restrictions upon persons holding office under the Government of the Federation or of a

> State, members of the armed forces of the federation or members of the Nigeria Police Force or other government security services or agencies established by law."

There is a clear indication that these provisions in the Nigerian 1999 Constitution prepare ground for the establishment and operation of the mass media in Nigeria. With this, there is no gainsaying that the constitution makes provision for the mass media operation in Nigeria. But in a research conducted by Stanley and Mojaye, it is established that these provisions in the constitution are not explicit enough and thereby places restriction on the activities of the press.

SELF-ASSESSMENT EXERCISE 1

Do you think the provisions in the Nigerian constitution for mass media operation in Nigeria is adequate? Discuss.

3.2 Other Laws that Address Mass Media Operations in Nigeria

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

a. ***Public Officers (*Protection Against False Accusation) Decree No. 4 of 1984**

This decree was promulgated during Buhari's administration. It was meant specifically to curtail the obligations of the media to inform the masses of the excesses of the military government. As a result of this decree, many Nigerian journalists were arrested, brutalised and jailed.

b. ***Newswatch* Proscription and Prohibition from Circulation, Decree No. 6 of 1987**

Babangida's administration promulgated this decree to punish a magazine, *Newswatch* for publishing stories against his administration. The then editor of the magazine was assassinated through a letter bomb.

c. **Nigerian Press Council Decree No. 59 of 1988**

The Decree states that the Council would research into contemporary development and documentation. Section 17 of the Decree provides for registration of journalists and a person may be registered as a journalist if he has attended a course of training approved by the council.

d. National Broadcasting Commission Decree No. 28 of 1992
The Decree establishes National Broadcasting Commission with power to license and to regulate radio and television broadcasting in Nigeria.

e. Newspaper Registration Decree No. 43 of 1993
This Decree provides for the establishment of a Newspaper Registration Board (NRB) with the ministry of information. It posed a great threat to press freedom in Nigeria.

f. Treason and Treasonable Offences Decree No. 29 of 1993
The Decree provides for a death sentence to be imposed upon any person who utters any word, displays anything or publishes any material, which is capable of breaking up the country.

g. *The News* Magazine (Proscription and Prohibition from Circulation) Decree No. 48 of 1993
It forbade *Concord, The Punch, Daily Sketch* and *Observer* group of newspapers from publication and circulation.

h. The Reporter (Proscription and Prohibition from Circulation) Decree No. 33 of 1993
The decree banned some journalism from practicing the profession.

i. Offensive Publication (Proscription) Decree No. 35 of 1993
It is another decree that threatens media freedom. The decree was promulgated to proscribe, seize, and confiscate any publication which is likely to disrupt the process of democracy and peaceful transition to civil rule having regard to its content hinder or prevent the progress of grassroots democracy as established by the transition to civil rule programme or disturb the peace and public order of Nigeria.

j. The Concord Newspaper and African Concord Weekly Magazine (Proscription and Prohibition from Circulation) Decree No. 6 of 1994

k. The Punch Newspaper (Proscription and Prohibition from Circulation) Decree No. 7 of 1994

l. The Guardian Newspaper and African Guardian Weekly Magazine (Proscription and Prohibition from Circulation) Decree No. 8 of 1994

m. State Security (Detention of Person) (Amendment) Decree No. 14 of 1994
This decree empowers the military ruler to detain without trial.

Other decrees that took their source from the Obnoxious Newspaper Ordinance of 1903 are:

i. Nigerian Newspapers Ordinance of 1903
ii. The Sedition Offensive Ordinance of 1909
iii. The Newspapers Ordinance Act of 1917
iv. The Obscene Publication Act of 1961
v. Official Secrets Act of 1962
vi. The Newspaper (Amendment) Act of 1964
vii. Newspapers Prohibition of Circulation Decree 1967
viii. The Circulation of Newspaper Decree No. 2 of 1970
ix. The Newspapers Public Official Reporting Act, 1976
x. Public Officers (Protection against False Accusation) Decree 1977
xi. Newspaper Prohibition Decree No. 12 of 1979
xii. The Daily Times Decree No. 101 of 1979
xiii. Public Officer's Protection Against False Publication Decree No. 4, 1985 (Now repealed)
xiv. Newspapers (Repeal) Decree No. 43 of 1993
xv. Nigerian Media Council (Repeal) Decree No. 59 of 1988 transferred assets of Nigerian Media Council to Nigerian Press Council
xvi. Nigerian Press Council (Amendment) Decree No. 85 of 1992
xvii. Detention of Persons, Decree No 2 (as amended)
xviii. National Broadcasting Commission (Amendment) Decree No. 38 of 1992
xix. The Treasonable Offences Decree No 35 of 1993

SELF-ASSESSMENT EXERCISE 2

Of what good are the acts and decrees enumerated above to the operation of mass media in Nigeria?

3.3 Media and the Law: What Relationship?

Since the beginning of the practice of journalism in Nigeria, it has been wars between the journalists/publishers and the government. The question that comes to minds anytime the media and Nigerian government are at the logger head is whether the Nigerian media

practitioners are performing roles other than the professional roles that their counterpart in other countries perform.

From the colonial era, media practice in Nigeria has not been hitch-free. The obnoxious laws of the colonial leaders, which hindered journalists from performing their professional roles freely extended to the military regimes and even its effects are felt during the civil rules.

During the colonial era and in the military regimes, the decrees or acts were enacted as instruments to suspend, ban, fine, confiscate or close a publication or to harass, molest, brutalise, jail or even put to death journalists and the publishers or anybody that is involved in the production of such publication.

Akinfeleye in Bojuwade (1991) observes the extensive control of the colonial masters to include the press. He argues that the pervasive control of Nigerian's social, political and economic affairs by the British colonial government which extended to the press affected adversely its performance.

SELF-ASSESSMENT EXERCISE 3

Why do you think government-media relationship is not cordial?

4.0 CONCLUSION

Journalism is so important a profession that it compels the world over to deem it fit to make provision in the constitutions to defend its freedom. It is not only the Nigerian constitution that makes provision for the practice of journalism; it is established in the constitution of the developed countries such as that of America from which Nigeria and many other countries adapted theirs.

5.0 SUMMARY

This unit presents the constitutional provision for the practice of journalism in Nigeria. It also examines other laws that affect the practice of the profession. More was discussed on the effects of the decrees and acts on the practitioners on one part and the profession on the other part.

6.0 TUTOR-MARKED ASSIGNMENT

Make justification for or against the promulgation of decrees and acts that affect the media practice in Nigeria.

7.0 REFERENCES/FURTHER READING

Asein, J. O. (2005). *Introduction to Nigerian Legal System* (2nd ed.). Lagos: Ababa Press Ltd.

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UNIT 3 PRESS FREEDOM

CONTENTS

1.0 INTRODUCTION

One common song that gained public interest today is press freedom. In Nigeria, there were series of debate on the passing and assent of the Freedom of Information Bill (FIB). It has generated much noise that one would be forced to ask if the freedom is different from what is provided in the Section 39 (1) of Nigerian 1999 Constitution which states that:

> "Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impact ideas and information without interference."

How does the freedom affect the practice of the profession? Or, of what effects is the freedom on the media profession? Answers to these questions formed the bases of discussion in this unit.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define freedom
- trace the origin of press freedom in Nigeria
- explain the current situation of press freedom.

3.0 MAIN CONTENT

3.1 Understanding Freedom

To have a better understanding of press freedom, the concept of freedom needs to be defined. We can agree that freedom means to be really free and able to do exactly whatever you want, at the time you want, with whomever you want and however 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 one's life.

Freedom is one of the most valuable free gifts from God. God gave everyone freedom to do whatever he wants. To say that someone has freedom, it means that the person is free from control of any kind.

The opposite of freedom is bondage. The old fashioned slavery, where a person was property of another person is fading out. However, modern slavery is setting in. 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.

SELF-ASSESSMENT EXERCISE 1

What is your perception of freedom?

3.1.1 Concept of Freedom

When you have truly realised absolute freedom in your life, then you certainly know exactly how it feels to be free and what freedom is. To 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, and you can be where you want to be. No one can claim of absolute freedom today. The nature of human coexistence has robbed mankind of 99% of the freedom giving to them by God. 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 realising it.

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 recognised that restrictions should be the exception and free expression the rule; nevertheless, compliance with this principle is often lacking.

SELF-ASSESSMENT EXERCISE 2

Is freedom of speech the same thing as press freedom? Discuss.

3.2 Evolution and Definitions of Press Freedom

Freedom of press is the guarantee by a government of free public press for its citizens and their associations, extended to members of news gathering organisations, and their published reporting. It also extends to news gathering, and processes involved in obtaining information for public distribution. Not all countries are protected by a bill of rights or the constitutional provision pertaining to freedom of the press.

With respect to governmental information, a government distinguishes which materials are public or protected from disclosure to the public based on classification of information as sensitive, classified or secret and being otherwise protected from disclosure due to relevance of the information to protecting the national interest.

In developed countries, freedom of the press implies that all people should have the right to express themselves in writing or in any other way of expression of personal opinion or creativity.

Elizabeth's notion of the press as the fourth branch of government is sometimes used to compare the press (or media) with three arms of government, namely legislative, the executive and the judiciary. Edmund Burke is quoted to have said: "Three estates in parliament; but in the Reporters' Gallery yonder, there sat a fourth estate more important far than they all."

On the ideological level, the first pioneers of freedom of the press were the liberal thinkers of the 18th and 19th centuries. They developed their ideas in opposition to the monarchist tradition in general and the divine right of kings in particular. These liberal theorists argued that freedom of press was a right claimed by the individual and grounded in natural law. Thus, freedom of the press was an integral part of the individual rights promoted by liberal ideology.

Freedom of the press was (and still is) assumed by many to be a necessity to any democratic society. Other lines of thought later argued in favor of freedom of the press without relying on the controversial issue of natural law; for instance, freedom of expression began to be regarded as an essential component of the social contract (the agreement between a state and its people regarding the rights and duties that each should have to the other).

Freedom of expression has always been emphasised as an essential basis for the democratic functioning of a society. The reasons for this are: the right of an individual to self-fulfillment, which right requires the communication of thought; the importance of constantly attempting to attain the truth, an attempt which is frustrated if information is suppressed or comment blocked; the inherent democratic right to participate in decision-making, which obviously implies the freedom to obtain, communicate and discuss information; and the practical importance of maintaining the precarious balance between healthy cleavage and the necessary consensus. A further dimension to the freedom of expression is added by the existence of mass society in which communication among citizens can take place only through the use of media like the press and broadcasting and not directly, except in a limited way.

It is believed that a free and vigilant press is vital to restrain corruption and injustice at least to the extent that public opinion can be roused as a result of press investigations and comments. Recently a number of injustices and wrongdoings have been uncovered as a result of the initiative taken by newspapers. Whether it is the question of various types of bonded labour in different parts of the country, the misuse of powers or the existence of smuggling rackets for example on the West Coast, newspapers have served a very useful purpose by exposing them.

The fear that the press will expose such wrongdoing is a major restraint on potential wrongdoers.

SELF-ASSESSMENT EXERCISE 3

Do you have an idea of what brings about the agitation for press freedom in Nigeria?

3.3 Press Freedom in Nigeria: 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 Nigeria.

3.3.1 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 Nigeria, 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:

i. The government through laws and control
ii. The publics: press freedom is limited by the interest of the publics
iii. The advertisers
iv. Media owners
v. 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.

3.3.2 The Press and the Freedom

It is true that the Freedom of Information Bill has been passed by the Nigeria parliament and the journalists are rejoicing. But it has not made any significant change in the usual ways the media perform their roles or in the media outputs.

Press freedom is very crucial because it safeguards public interest. Free press is an avenue through which the media monitor the policies and activities of the government and thereby sensitise the public on the implication of such policies to the masses. Through press freedom, the media are able to hold government accountable to people.

Sambe (2004) writes:

> "Freedom of the press is to be guarded as an inalienable right of people in a free society. It carries with it the freedom and the responsibility to discuss, question, and challenge actions and utterances of our government and of our public and private institutions. Journalists uphold the right to speak unpopular opinions and the privilege to agree with the majority."

4.0 CONCLUSION

Every society appreciates the essence of the mass media. But press freedom allows the media to be up and doing and to perform close to the expectation of the public. No doubt that absolute press freedom does not exist anywhere as this may result to anarchy but the media should be free to a certain degree so as to uphold the public trust.

5.0 SUMMARY

In this unit, the focus was press freedom. The understanding of the concept of "freedom" was discussed as the foundation to understand press freedom. Press freedom was defined with explanation. Much was also discussed about the evolution of press freedom. Lastly, the state of press freedom in Nigeria was analysed.

6.0 TUTOR-MARKED ASSIGNMENT

Of what benefit is press freedom to Nigerians?

7.0 REFERENCES/FURTHER READING

Asein, J. O. (2005). *Introduction to Nigerian Legal System. (2nd ed.).* Lagos: Ababa Press Ltd.

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UNIT 4 STATE SECURITY AND THE MASS MEDIA

CONTENTS

1.0 INTRODUCTION

It is sadden that the pages of Nigerian dailies recently are bloody with news about killings, bombings, armed robbery, inter-tribal wars, religious chaos, curfew, suicides, accidents, lootings, bribery, boarder dispute, and many others. All these are pointers to the state of security in the country.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define state security
- identify the organ(s) that provide state security
- state the relationship between state security and national security
- explain the roles of the media in safeguarding state security.

3.0 MAIN CONTENT

3.1 Understanding State Security

Nigeria presently is in a state of insecurity because of the happenings you have read above. It therefore implies that security secured state is the one that is void of the menace of threat to life. Every Nigerian especially in the northern part of the country is a working ghost because of the fear of bomb or gun attack.

Security simply means freedom from danger, fear, anxiety or uncertainty. Security is not limited to freedom from danger but it also deals with economic well-being i.e. job security because 'a hungry man is an angry man'. Freedom to socialise is also part of state security i.e. protection against social disorder, health hazards and other social threats.

According to Imobigbe (2003), security is a condition of being protected from, or not being exposed to danger. A secured state therefore is one that is reasonably free from, or not expose to external aggression and internal sabotage.

Security of a state can be categorised into two: internal and external. Whether internal or external, what is important for a state is to ensure that it embarks on policies that guarantee both.

3.1.1 Internal Security

Internal security is concerned with the protection of lives and property of every citizen and even the foreigners living within the state against internal crises and threats.

Imobigbe states further that the security of a state is affected at the domestic level by the nature of its internal socio-political and economic circumstances, the manner its affair are run by its political elites and by the degree of commitment of its citizenry to national development and welfare.

3.1.2 External Security

The nature of a state external security is concerned with its relationship with the external environment. A state external affairs determine the benefit, support, aids, or otherwise it gets from outside. It implies that a state that has good relationship with others is likely to be secured than the one that does not have good record with neighbours.

Imogbe added that:

> At the external level, a state's security is affected by the nature of the geo-political circumstances surrounding it, as well as by the nature of its foreign policy and the manner it conducts its relations with other countries.

SELF-ASSESSMENT EXERCISE 1

How can Nigeria becomes more secured as a nation?

3.2 Between State and National Security

The two terms are used interchangeably. National security does not mean security of the people in power alone. Unlike what is the case in the country, in which national security is defined by the number of security officers guiding a politician or a political office holder. National security is concerned with ensuring public safety, protecting public interests and public and private property.

SELF-ASSESSMENT EXERCISE 2

Can you make any difference between state security and national security?

3.3 Who Provides State Security?

a. **The state:** The security of a state is vested in the hand of the government of the state. The state must protect the people within the state and the entire territory from any hazard whether internally or externally. It must formulate policies that would be of public interest and at the same time ensure justice and even development as this would avail it the opportunity of carrying every segment along. It must use the security agencies in its custody such as The Nigerian Police, Nigerian Army, The Nigerian Navy, The Nigerian Custom and others to ensure peaceful coexistence within the state and to protect the state against external aggression.

b. **The citizenry:** Every Nigerian also has roles to play in upholding the security of the state. This could be ensured by love for the state, respect for laws, and being loyal and having belief in the state. Besides, the citizen must not expose his or her state to hatred or harbour hatred of which would have negative implication on the development of the country.

SELF-ASSESSMENT EXERCISE 3

In what ways do you think Nigerians can support government to ensure security of the country?

3.4 The Media in Safeguarding State Security

The roles of the media in protecting national security of a state cannot be overemphasised. Through the slogan of the media profession that "The pen is mightier than the sword**,"** it is understandable that the media has the power to make peace and at the same time make wars or fuel crises.

That is why the media professionals are guided by the journalistic principle to ensure that the state is secure through the following:

i. That the media would not publish or broadcast any information that undermines public safety and public interest.
ii. That the media would not publish or broadcast any information that would degrade or ridicule the culture and the traditions of the people of the state.
iii. That the media would not publish or broadcast classified information which may expose the state of security of the country to the outsiders.
iv. That the media would not publish or broadcast untrue information for financial gain or any other reason.
v. That the media would expose individuals, groups or organisations that break law and order through their reports.
vi. That the media would support development within the state by reporting developmental programmes.

SELF-ASSESSMENT EXERCISE 4

Highlight the media roles towards upholding state security?

4.0 CONCLUSION

The security of a state is the first priority of the government, the citizens and every stakeholder in the country. A secure state is already half-way to development because such a state would have cordial relationship with the neighboring countries and thereby enjoy mutual benefit with them.

5.0 SUMMARY

In this unit, the focus was on the media roles in ensuring the security of the state. Mass media play key roles in this respect and some of the roles form the major discussion in this unit.

6.0 TUTOR-MARKED ASSIGNMENT

If you have just been given license to establish and operate a radio station in Nigeria, in what ways can you support the struggle for the protection of the state security?

7.0 REFERENCES/FURTHER READING

Imobigbe, T. A. (2003). *Nigeria's Defence and National Security Linkages: A Framework of Analysis.* Ibadan: Heinemann Education Books Nigeria Plc.

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MODULE 3 MEDIA LAWS: REPUTATION AND DIGNITY OF PERSONS

UNIT 1 DEFAMATION

CONTENTS

1.0 INTRODUCTION

The essence of this unit is to provide an understanding on the meaning, forms, proof and defenses against defamation and its remedies. It is also intended that you will understand, after going through the unit, the reasons why defamation should be avoided and how it can be evaded.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define and explain in detail the law of defamation
- explain the two major forms of defamation
- identify the essential elements of defamation (requirements for proof of defamation)
- highlight the defenses against defamation
- enumerate the remedies for defamation.

3.0 MAIN CONTENT

3.1 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.

The issue is therefore in two folds. According to Article 19, Global Campaign for Free Expression (2000) "The society has to allow freedom of expression and the free flow of information - including free and open debate regarding matters of public interest, even when this involves criticism of individuals- are of crucial importance in a democratic society, for the personal development, dignity and fulfillment of every individual, as well as for the progress and welfare of society, and the enjoyment of other human rights and fundamental freedom." The media, on the other hand has to ensure that it is "Mindful of the importance to individuals of their reputations and the need to provide appropriate protection for reputation" (ibid,).

The freedom to publish news, which is enjoyed by the press derives from Article 25 of the Nigerian constitution which accords the same right to other individuals. The freedom is a qualified one and is subject to any law which is reasonably justifiable for the purpose of protecting the rights, reputation and freedom of other persons (Nylander, 1969).

According to Justice Dore in Swindler (1955), "Any written or printed article published of and concerning a person without lawful justification or excuse and tending to expose him to public contempt, scorn, obloquy, ridicule, shame or disgrace, or intending to induce an evil opinion of him in the mind of right thinking persons, or injure him in his profession, occupation or trade is libelous and actionable, whatever the intention of the writer may have been. The word need not necessarily impute actual disgraceful conduct to the plaintiff; it is sufficient if members of public rendered him contemptible and ridiculous".

The constitution of Nigeria also clearly explains what defamation is. Section 391 of the Nigerian Penal Code states that: "Whoever by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning any person intending to harm or knowing or having reasons to believe that such imputations will harm the reputation of such person, is said ... to defame that person."

Articles 512–514 of the Nigerian Criminal Code are quite plain on this issue: "Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation. Such matters may be expressed in spoken words or in any audible sounds, or in words legibly marked on any substance whatever, or by any sign or object signifying such matters otherwise than by words, and may be expressed whether directly or by insinuation or irony. It is immaterial whether at the time of the publication of the defamatory matter; the person concerning whom such matter is published is living or dead."

3.2 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 effigy 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 (Nylander, 1969).

According to Crone (2002:4), the distinction between libel and slander is relevant only to the issue of damages. Damage is presumed in cases of libel. In cases of slander the claimant has to prove certain loss, unless the allegation falls within one of four exceptions where damage is presumed:

1. An allegation that the claimant has committed a crime punishable by imprisonment.
2. An allegation that the claimant is suffering from a contagious or infectious disease.
3. An allegation that the claimant is an unchaste woman or is a woman who has committed adultery.
4. An allegation that is likely to damage the claimant's business or profession.

On his part, Nylander (1969) believes "There is one important difference between libel and slander. A libel is actionable *per se*, i.e. without the necessity of proving special damage. With five exceptions, no action will lie for slander unless the plaintiff proves that he has suffered special damage. Special damage means actual and definite temporal loss- for instance, loss of employment or the refusal of persons to enter into contracts with the plaintiff as a result of the slander."

Libel

Bowles and Borden (2004) note the following about libel:

> "Libel is a false statement that exposes people to hatred, ridicule or contempt, lowers them in the esteem of their colleagues, causes them to be shunned or injures them in their business or profession."

Generally, libel falls into one of two classifications: (1) libel *per se*, words that are defamatory on their face and thus presumed to damage reputation; and (2) libel *per quod*, words that are not ordinarily defamatory but become damaging by facts or circumstances extrinsic to the story.

Examples of libel *per se* include words that falsely accuse someone of committing a crime or having a loathsome disease. An example of libel *per quod* would be the publication of an incorrect date for the granting of a divorce so that it appeared that someone had remarried before the divorce became final.

Types of libel

There are two major types of libel:

1. Criminal libel
2. Civil libel

The *Free Legal Dictionary* by Farlex sees criminal libel as "Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person. Defamation may be a criminal or civil charge. It encompasses both written statements, known as libel and spoken statements, called slander."

Crone (2002) says "A criminal libel must be in permanent form. The words must tend to vilify a person and to bring them into hatred, contempt and ridicule…criminal libel differs from civil libel in a number of respects. The accuracy or truth of a statement in criminal libel will not necessarily protect its maker from punishment. 'The greater the truth the greater the libel' is a phrase that is rooted in this branch of the law. It has always been recognised that the truth is more often to arouse fury than obvious falsehood. Unlike civil libel, those accused of criminal libel must establish that the words were true and that they were punished for the public benefit."

Crone adds that "Despite the availability of the laws of defamation, a person may think it advantageous to pursue his case for libel in the criminal court instead of, or as well as, the civil courts. The penalties for the maker of a serious libel are harsher for criminal libel than those imposed in the civil courts. An embittered individual may get far more satisfaction from the thought of sending a reporter, broadcaster or editor to jail than from pursuing an action for damages."

Slander

Slander occurs when an individual or group's reputation is attacked through spoken words or gesture, especially believed to be false and malicious but presented as fact.

Kayne (2012) says, "Slander is the spoken or transitory form of defamation of character, a legal term that refers to a falsehood presented as true which could harm the reputation of a person or entity. Slander also encompasses body gestures as in the case of sign language…In short, slander is temporarily uttered or gesticulated…Slander is a tort, or civil law, meaning a civil lawsuit can be brought against someone who is accused of slander."

For an individual to be successfully sued and found guilty of slander, the plaintiff has to establish that the accused actually uttered those words, that the words were overheard by a third party, that the words are false and that those words identify the plaintiff, and they have a malicious intent.

In Nigeria, slander actionable *per se* falls into five classes:

1. Statements imputing the commission of a criminal offence punishable by imprisonment
2. statements imputing certain contagious or infectious diseases
3. statements imputing promiscuity to a woman or girl
4. statements imputing unfitness or incompetence or calculated to disparage a person in any office, profession, trade or business
5. statements imputing that a person is an *osu*.

SELF-ASSESSMENT EXERCISE 1

Distinguish clearly between slander and libel.

3.3 Essential Elements of Defamation

Articles 512–514 of the Nigerian Criminal Code, state that "Defamatory matter is matter likely to injure the representation of any person by

exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation. Such matters may be expressed in spoken words or in any audible sounds, or in words legibly marked on any substance whatever, or by any sign or object signifying such matters otherwise than by words, and may be expressed whether directly or by insinuation or irony…".

Defamation can be either of libel or slander. When defamatory words are printed or legibly marked on any substance or audible words are recorded in a retrievable format, then it is libel. On the other hand, when spoken words, signs and gestures, with malicious intent and/or false claims about a person or entity's character are overheard or seen by a third party is slander.

Nylander (1969) writes that "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.

A plaintiff pleads innuendo, according to Nylander (1969) by "…giving the meaning which he attributes to the words and proving the existence of facts and circumstances which would convey such a meaning to the person to whom the words were published."

Nylander (1969) says "An innuendo may be true or false. A true innuendo is one which derives support from extrinsic facts, but a false one is only implied from the words themselves."

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. In other words, media personnel can discuss a potentially libelous item during the production process without fear of a successful libel lawsuit. However, in 1980 an Illinois jury found the Alton Telegraph liable for material that was never published. Publication resulted, the jury decided, during the newsgathering stage. In an attempt to verify accusations of wrongdoing by a local building contractor, reporters wrote a memo about the wrongdoing to a government official.

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. But an attorney might be able to prove individual identification or harm by the statement "All lawyers at the XYZ Law Firm are crooks." No exact number exists for deciding how small a group must be before any single member can claim to have been libeled. A "rule of 25" grew out of a libel case in the 1950s, but subsequent court decisions allowed members of groups larger than 25 to sue when individuals were closely identified with the group.

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.

SELF-ASSESSMENT EXERCISE 2

What factors must be present to establish defamation?

3.4 Defenses against Defamation

There are numerous defense options to the mass media and individuals against defamation. The following are identified in Nylander (1969):

- justification
- fair comment
- privilege
- unintentional defamation
- apology and payment into court
- accord and satisfaction: release
- *res judicata*
- statutes of limitation
- *volenti non fit injuria*

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 Nylander (1969) says that "If the defendant can prove that the statement is true, he has a complete defense to the action even if he made the statement maliciously; 'For the law will not permit a man to recover damages in respect of an injury to a character which he does not or ought not to possess.' The onus of proving a plea of justification lies on the defendant. In its formal form, the plea is stated as follows: 'The words complained of are true in substance and in fact'…If the statement contains an innuendo, the defendant must justify not only the primary meaning of the words, but also the innuendo."

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."

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).

Fair comment

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).

Nylander (1969) notes that "It is a defense to an action of defamation that the words complained of are fair comment made in good faith and without malice on a matter of public interest and, if sued for defamation, may plead the defense of fair comment or its alternative, usually called the **'**rolled-up plea'. The requisites of the plea of fair comment are:

1. The matter commented on must be of public interest
2. It must be an expression of opinion and not an assertion of fact
3. The comment must be fair, i.e. it must be based on facts accurately stated
4. The comment must not be malicious.

Malice will destroy a plea of fair comment Nylander (ibid).
The 'rolled-up' plea is a plea of fair comment and not one of justification *Odutola* [1960].

Privilege

There are certain occasions when the law recognises 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, according to Nylander (1969) 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 recognised 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 authorise the publication of any blasphemous or indecent matter. The protection given to newspapers by this section is extended to broadcast reports from a broadcasting station within Nigeria.

Qualified privilege

Nylander (1969) says "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 Nylander (ibid).

Unintentional defamation

Nylander (1969:30) notes that:

> "The Defamation Act (1961) has introduced a completely new form of defense, which subject to certain conditions will constitute a complete answer to proceedings for defamation in cases of 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.

Accord and satisfaction: release

Okoye (2008) explains that accord and satisfaction means a situation "…where there is a mutual settlement between the two parties to the satisfaction of both of them."

It must be noted, however, that a release under seal, by way of accord and satisfaction in respect of one joint tort-feasor, discharges the others because the action is one and indivisible. Thus, in an action against the author, printer and publisher of a libel, a release of any one of them will amount to a release of all the others Nylander (1969).

Res Judicata

The import of the principle of *Res Judicata* implies that if a plaintiff files a case of defamation against a defendant and the case is tried, regardless of its outcome, it is presumed that the case is concluded and the plaintiff cannot therefore file a fresh case, based on the same defamatory words, against the same defendant.

Nylander (1969) says that "It must be noted, however, that each separate publication of defamatory words give rise to a separate cause of action. A plaintiff might well bring an action against the writer of a defamatory letter to the press under the heading 'Letters to the Editor' and later bring another action in respect of the publication in the columns of the newspaper against the writer and the editor. Selling back numbers of a newspapers or periodical, which has either already been the subject of libel proceedings or is known to contain libel proceedings which has gone unnoticed, will constitute a fresh publication on which an action can be founded."

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 six years after the publication of the words complained of. The Limitation Decree, 1966, which applies to the former Federal Territory only, provides, however,

that an action claiming damages for slander cannot be brought after the expiration of three years from the date on which the cause of action accrued. For the purpose of limitation of actions, time does not commence to run against a plaintiff under disability. But once the disability ceases, time begins to run Nylander (ibid)

Volenti non fit injuria

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 authorisation the claimant is said to have given should be seen to refer to the publication of the defamatory matter."

Nylander (1969) cites an interesting case; "*Chapman v.Ellesmere,* the plaintiff, a trainer, complained about the publication of certain statements about him in the *Racing Calender*. Lord Justice Slesser, in the Court of Appeal, pointed out that the doctrine of *Volenti non fit injuria* applied to this publication as the trainer had undertaken to submit to the rules and regulations of the Jockey Club which was entitled to publish their decisions in the *Racing Calender*."

SELF-ASSESSMENT EXERCISE 3

What defenses can a defendant present to bail himself out of a charge of defamation?

3.5 Remedies for Defamation

Okoye (2008) writes that "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:

(a) Damages
(b) Injunction, which may be interim, interlocutory or perpetual
(c) Publication of retraction or correction
(d) Publication of apology and offer of amends."

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.

Types of damages

Crone notes that:

"Damages for defamation can fall under three possible headings:

1. Compensatory damages
2. Aggravated damages
3. Exemplary damages.

The first two are broadly concerned with compensation, and the third is aimed at punishing the defendant.

Compensatory damages

Compensatory damages aim to put the claimant back in position he would have been had the defamatory material never published. Under this heading the claimant is entitled to recover the monetary equivalent of everything he had lost and suffered as a result of the defamation.

There are two components to the compensatory award. Special damages amount to a sum equal to the actual financial or material loss suffered by the claimant. Damages for distress and injury to reputation are an intangible loss, and are more difficult to calculate. The jury must assess the effect of the defamation on the claimant's feelings.

Aggravated damages

Aggravated damages are awarded where the behaviour of the defendant has somehow added to the hurt and injury to the claimant that resulted from the mere publication of the defamatory words. Various factors may give rise to an award under this category of damages. Anything that looks like a campaign of vilification, even if many of the derogatory things said about the claimant are true, might qualify, as would repetition of the defamation after the original complaint is made. Failing to publish the claimant's denial or explanation, or making no attempt to check the defamatory allegations with him, could also be said to aggravate the injury. Similarly, failing to apologise and persisting in a plea of justification are normally put forward with some success as arguments for awarding aggravated damages.

Exemplary damages

In certain circumstances, the jury in a libel action may decide that the defendant should be liable not only to compensate the claimant for the wrong committed but should also suffer punishment for the way he has behaved. The appropriate course in such cases is to make an award of exemplary damages. They are a purely punitive measure that will only apply where the jury are satisfied that the defendant showed a cynical disregard for the feelings of the claimant by knowingly publishing the defamatory statement in the hope of profiting from it.

In *John v Mirror Group Newspapers* (1997), Elton John was awarded exemplary damages because the *Mirror* deliberately published for profit a defamatory statement about him.

SELF-ASSESSMENT EXERCISE 4

Explain the remedies for defamation?

4.0 CONCLUSION

The law of defamation exists not just to check the press, but also to protect the rights of individuals in the society. The media must ensure that they do not impinge on the rights of individuals and organisations in their role as watchdogs of the society.

5.0 SUMMARY

In this unit, we examined defamation, its definition, essential elements, defenses, and remedies.

We distinguished libel from slander, noting that slander occurs when an individual or group's reputation is attacked through spoken words or gesture, especially believed to be false and malicious and libel as a false statement that exposes people to hatred, ridicule or contempt.

The essential elements of defamation, amongst others are publication, identification, and defamation. Defenses against libel include justification, fair comment, privilege, unintentional defamation, accord and satisfaction: release and many others.

Finally, we identified remedies for defamation, which include damages, publication of apology, and offer of amends.

6.0 TUTOR-MARKED ASSIGNMENT

What methods can be adopted by a media house to ensure it avoids lawsuits and charges of defamation?

7.0 REFERENCES/FURTHER READING

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UNIT 2 SEDITIOUS PUBLICATIONS

CONTENTS

1.0 INTRODUCTION

Every legal society wishes to protect the freedom of expression while ensuring that it is not abused or used to generate disorder or chaos in the society. This unit therefore seeks to make you understand the nature of the offence of sedition, the contents of a publication that would be deemed as seditious, the proof and defense against a case of sedition.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define sedition
- list essential elements of sedition
- highlight defenses against sedition.

3.0 MAIN CONTENT

3.1 Nature of the Offence of 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" [Karibi-Whyte ,1969].

Karibi-Whyte in the Irish case of Reg. v. Sullivan, Frtzgerald, J., says "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."

It is imperative that we examine the provisions of the Nigerian law on the offence of sedition. Section 50 of the Nigerian Criminal Code defines seditious words as words having a seditious intention, and seditious publication as publications having a seditious intention.

Section 50(2) states that a "Seditious intention is an intention:

(a) to bring into hatred or contempt or excite disaffection against the person of the Head of the Federal Military Government or the military Governor of a state or the Government of the Federation or any State of Nigeria as by law established or against the administration of justice in Nigeria; or
(b) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or
(c) to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria; or
(d) to promote feelings of ill-will and hostility between different classes of the population of Nigeria."

Section 51 of the Criminal Code states that:

(1) "Any person who:
   (a) Does or attempts to do or makes any preparation to do, or conspires with any person to do any act with a seditious intention,
   (b) Utters any seditious words,
   (c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication,
   (d) Imports any seditious publication, unless he has no reason to believe that it is seditious, shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine of N200 or to both such imprisonment and fine and for a subsequent offence to imprisonment for three years; and any seditious publication shall be forfeited.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable on conviction, for a first offence to imprisonment for two years and such publication shall be forfeited."

Osinbajo and Fogam (1991) opine that "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."

This view aptly explains why Osinbajo and Fogam start their chapter on sedition with the legal comment in *Nwankwo v. State* (1985) which states that "Criticism is indispensable in a free society. In view of the freedom of speech and of the press, those who occupy sensitive posts must be prepared to face criticism in respect of their office so as to ensure that they are accountable to the people. They should not be made to feel that they live in an ivory tower and therefore belong to a different class. They must develop thick skins and where possible, plug their ears with wool if they feel too sensitive or irascible."

The import of these views is that ensuring order and stability in any state is sacrosanct but so also is protecting the freedom of expression and the right of individuals and the press to hold opinions, impart and receive ideas and information without interference in a free society.

Seditious libel

The Free Legal Dictionary by Farlex says seditious libel is "Written or spoken words, pictures, signs, or other forms of communication that tend to defame, discredit, criticise, impugn, embarrass, challenge, or question the government, its policies, or its officials; speech that advocates the overthrow of the government by force or violence or that incites people to change the government by unlawful means."

SELF-ASSESSMENT EXERCISE 1

What is the essence of the law of sedition?

3.2 Essential Elements of Sedition

Karibi-Whyte (1969) notes that "In order that a publication may be seditious within the definition of the criminal law, it must satisfy the following conditions:

1 It must be published.
2 It must express a seditious intention as previously defined.
3 It must not fall within any of the defenses already enumerated.

Publication

'Publication' has been defined by section 50 (1) of the criminal Code to include "All written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication." This is a very wide concept covering all aspects of publication which can be communicated to the public by sight. The category is limited to visual representation, thus excluding publication by wireless or radio. The definition would seem to include seditious publications in the form of cartoon drawings and probably sky-writing (Karibi-Whyte).

Seditious intention

To establish sedition, it must be proved that the words were published with seditious intention. The establishment of seditious intention is

paramount to the judgment on a case of sedition. A definition of seditious intention is provided by section 50(2) as earlier discussed.

According to Karibi-Whyte (1969), "…any statement which has as its object the incitement of hatred or contempt against the government as by law established, or any of its principal arms, or an incitement of the subjects to procure an alteration of the government otherwise than by lawful means, or an intention to promote ill-feelings between different classes of the population, is regarded as seditious."

It is clear that the most important requirement of the offence should be an intention on the part of the accused person to create public disorder or a reasonable anticipation of it. Thus, where the words complained of, are such as to satisfy reasonable men that there was the intention to produce public disorder; then the offence has been committed.

Sometimes, the publication of a seditious material may lead to violence in the society; this will only prove that there is general discontent and dissatisfaction among the people and/or that the publication has led to this occurrence. However, that is not to say that violence must follow the publication of a seditious material before it will be deemed seditious. It is enough for the publication to bring the government to hatred and ridicule, regardless of whether it led to violence or not.

To prove that a publication has seditious intent, all or some of following methods can be used:

1. The actual words published can be used to prove that the publication was seditious. A good example of this is the case of *African Press Limited v. The Queen* [(1952) as cited in Karibi-Whyte (1969). The words used in the statement alleged to be seditious were accurate as proof. It says in part thus:

> '…they are at the same time the most potent and most cleverly disguised enemies of your struggle for freedom. They are, with a few exceptions, incompetent, narrow-minded, arrogant and contemptuous. In spite of demonstrations to the contrary, they continue to imagine that you are not fit even for the bogus constitution that is now offered you. They are looking forward rather feverishly to your failures in the future and they are ready, not only to exploit such failures to perpetuate their petty dictatorship, but also to contribute them by subtly devices. At the moment, as far as it lies in their power, they are working like moles in the dark to subvert the possibility of the nationalists among you getting into power. As they do these cowardly acts in

secret, they pretend openly to be your friend; that is why they are most dangerous. And that is why I am warning you against them.'

2. The manner of publication may also suggest a seditious intention. A very good case in point is that of *Ogidi v. Commissioner of Police* [(1960). In this case, a telegram was sent to the Minister of Justice, Ibadan, and copies were also sent to the press and the radio for publication complaining against the acts of the customary court judges in Warri Division. Karibi-Whyte (ibid) quotes the judge, Brett J. as saying that 'we might have taken a different view of the publication which is now in question if it had been communicated only to the Minister.'

3. Other important and necessary/required factors like the purpose of publication, its time, and medium, the nature of the audience and its effect on them and a host of others. Again, Karibi-Whyte in *R v. Aldred* (1909) said:
"In arriving at a decision of this text you are entitled to look at all the circumstances surrounding the publication with the view of seeing whether the language used is calculated to produce the result imputed…You are entitled also to take into account the state of public feeling. Of course, there are times when a spark will explode a powder magazine; the effect of language may be very different at one time from what it will be at another."

3.2.1 Consent to Prosecute/Limitation Period

Before a criminal case of sedition can be instituted against an individual or a body, the Attorney- General of the federation or of the state concerned has to sign a written consent granting permission for the prosecution to be initiated. This is according to the provisions of Section 52 (1) and (2) of the Criminal Code.

This is due to the serious nature of the offence and its implication on the peace and stability of the country.

However, Karibi-Whyte (1969) states that "since 1963, with the introduction of the Republican Constitution and the delegation of powers of institution of criminal prosecution to the Director of Public Prosecutions, the written consent of the Director of Public Prosecutions alone would be valid for the purposes of section 52. In *Attorney-General, Western Nigeria v. African Press and Others*, Ademola, C.J.N. said:

'Since Section 47 of the Constitution authorises the Attorney-General to exercise his constitutional powers in person or through the Director of

Public Prosecutions or other officers, a prosecution instituted by the Director of Public Prosecutions ranks in law as if it had been instituted by the Attorney-General personally and no further evidence of consent is necessary.'

The consent required for prosecution now is either that of the Attorney-General or of the Director of Public Prosecution, and the question whether in instituting the proceedings the Director of Public Prosecution was acting in accordance with any instructions he may have received from the Attorney-General is not one into which the court may inquire."

Limitation period

Prosecutions for seditious offences must be instituted only within six months of the publication of the seditious matter. Prosecutions initiated after this period will be debarred. This is according to the provisions of Section 52 (1) and (2) of the Criminal Code.

Section 52(3) also stipulates that in order to convict an accused person for sedition, at least two pieces of evidence will be required. The uncorroborated testimony of one witness is not sufficient.

SELF-ASSESSMENT EXERCISE 2

Explain in detail, with examples, the factors that must be present to prove a case of sedition?

3.3 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 (Karibi-Whyte, 1969).

Nonetheless, Osinbajo and Fogam (1991) provide 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 authorised 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. Also, if a bookseller or vendor is accused of distributing seditious material, ignorance on the content of publications can be a defense. This position is valid based on the provisions of the law of defamation based on Section 381 of the Criminal Code which provides that: 'The sale by any person of any book, pamphlet, or other printed or written material, or of any number or part of any periodical, is not a publication thereof for the purpose of this chapter, unless such persons **knows** that such book, pamphlet or printed or written matter, or number or part, contains defamatory matter; or in the case of any part or number of any periodical, that such periodical habitually contains defamatory matter.'

SELF-ASSESSMENT EXERCISE 3

What can be used to justify the publication of a seditious content?

4.0 CONCLUSION

The necessity for law, order and the respect of constituted authority is salient. It is mandatory for the state to ensure it guards the integrity of the state against individuals or organisations who may want to 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 administration in power so as to ensure stability in government. The media must thus ensure that it informs the people of what they are required to know and enlightens them about the salient issues affecting the governance without having to recourse to sedition.

5.0 SUMMARY

From this unit, we learnt that sedition occurs 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.

We also learnt that to prove a case of sedition in the court of law, it must be established that the alleged words were published, they convey a seditious intention and there is no defense for the use and publication of such words. Individuals or organisations whose words are evaluated as seditious can justify their actions under the law using the following pleas: lawful excuse and showing that words used were not seditious.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the importance of having the Attorney-General of the federation or of the state concerned sign a written consent granting permission for the prosecution of sedition to be initiated.

7.0 REFERENCES/FURTHER READING

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UNIT 3 PRIVACY

CONTENTS

1.0 INTRODUCTION

Privacy entails the right of an individual to have physical, psychological and emotional space for her/himself in the society within the ambience of the law. The role of the media however is to ensure disclosure to the public, information they deem newsworthy and/or important for the public good about individuals, corporate bodies and government.

This unit is dedicated to explaining the law of privacy and how the media can effectively perform its function of informing the public of information it deem necessary without running the risk of infringing on the right of individuals "to be left alone".

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define privacy
- list the four popular areas or aspects of privacy
- highlight the likely defenses for a suit on the infringement on an individual's privacy.

3.0 MAIN CONTENT

3.1 Understanding Privacy

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria provides that "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communication is hereby guaranteed and protected."

But it does not define privacy and neither does any other part of the 1999 Constitution. The deliberations on what really constitute privacy and the breach of it is not limited to Nigeria. From Europe to America, defining privacy and its violation has been a controversy.

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.

"Although the concept of libel has its roots in English common law of the Middle Ages, the law of privacy is a 19th century American development. Before 1890, no American court had recognised a right of privacy…In 1890, an article entitled "The Right of Privacy" by Samuel D. Warren and future Supreme Court Justice Louis Brandeis was published in the *Harvard Law Review*. Although there is little evidence to support the assertion, the two Boston lawyers claim inspiration for the article from gossip in the press about the social affairs of the wealthy Warren family. Warren and Brandeis argued that the growing excesses of the press required the courts to consider granting private individuals protection against the hounding media. In essence, "The Right of Privacy" attempted to establish a common law right of privacy using property rights, defamation, and breech of confidence as its basis. The authors argued that property owners should be allowed to apply the same right of protection of their houses and lands from trespass to the protection of their private lives" (Creech, 2003).

"Warren and Brandeis argued, "Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops'" (Pember, 2003/2004).

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.

SELF-ASSESSMENT EXERCISE 1

Why is there a controversy over the definition of privacy? Trace the history of the "Right of Privacy."

3.2 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.

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. If the name of the rock star Elton John is used in an advertisement for dental floss without his permission, the suit cannot be defended on the basis that because Elton John's real name is Reginald Kenneth Dwight, his "name" was not appropriated illegally. Only the names of people are protected under appropriation. The names of businesses, corporations, schools and other "things" are not protected under the law. However, the use of a trade name like Kodak or Crest can create other serious legal problems…a photograph, a painting and a sketch- anything that suggest to readers and viewers that the plaintiff is pictured-is a likeness. federal courts in New York State ruled that a sketch of a black sitting in the corner of a boxing ring was, for purposes of an invasion-of-privacy suit, the "likeness" of former heavyweight champion Muhammad Ali. The boxer looked a little like Ali, and the sketch was accompanied by a verse that referred to the boxer as "the Greatest" (Pember, 2003/2004).

In *Onassis v. Christian Dior*, Jackie Onassis was successful in her claim against Christian Dior's advertising series that used a model who

strongly resembled the former first lady to sell their line of clothing. Citing *Negri v. Scering*- in which silent film star Pola Negri objected to the publication of a scene from one of her movies so captioned as to appear that she endorsed use of the antihistamine drug Polaramine- the Supreme Court of New York noted that 'if a picture is a clear and identifiable likeness of a living person, he or she is entitled to recover damages suffered by reason of such use'" (Creech, 2003).

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.

For instance, a regular Nigerian may wake up to see his or her picture on the box of Dangote noodle packs. He or she may argue that he/she suffered embarrassment and humiliation with such use but it will be difficult to claim that Dangote used his/her picture to sell the product because Nigerian children will buy and eat Dangote noodles because he/she eats it. But if Kanu Nwakwo or Funke Akindele's picture were used, either or both can claim right to publicity because they may believe that Nigerian children may buy the product if it is believed that

they eat it. Therefore, ordinary citizens can claim right to privacy while the famous can claim right to publicity.

It is therefore important to note that the right to privacy dies with the death of an individual, but the right to publicity may live on. Only the living can claim that their right to privacy has been intruded upon. But if a famous person were to have heirs, the **principle of descendibility** will apply. That is, permission must be sought or payment for licensing must be made before the use of a name, picture or image of a late but famous person for commercial purposes. If this is not done, the heirs to the estate of late public figures can sue.

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.

Pember (2003/2004) cites the following cases to show that there is no expectation of privacy in public places:

"A pharmacist in Seattle, Wash., sued KING-TV for invasion of privacy after the television station photographed the interior of his pharmacy through the front window. The druggist had been charged with cheating the state out of Medicaid funds. He refused to talk with the reporters after the charges were made, so the KING-TV camera operator placed the camera against the outside of the store's front window and photographed the druggist as he talked on the telephone. The filming was done from the exterior of the building, from a place open to the public. The court ruled that an intrusion must be something that an intrusion must be something that the general public would not be free to view. In this case, any passerby could have seen what was recorded on film by the KING-TV camera operator. There was no unwarranted intrusion.

American Airlines flight attendant Beverly Deteresa sued ABC for secretly recording a conversation she had with ABC producer Anthony Radziwill. The plaintiff worked the flight that O.J. Simpson took to Chicago the night that Nicole Brown Simpson and Ronald Goldman were killed. Radziwill asked Deteresa to appear on television as the two talked at her front door. She declined, but Radziwill secretly taped the conversation and instructed a camera crew across the street to videotape the discussion between the producer and the flight attendant. A brief segment was later shown on ABC news. The 9th U.S. Circuit Court of Appeals affirmed a lower-court decision granting a summary judgment to the television network. There was no reasonable expectation of privacy when the plaintiff was talking with a journalist in plain sight of anyone who passed by on the public street.

It is just unreasonable for individuals to expect privacy in other settings where people gather. A woman sitting in a restaurant complained of intrusion after a television news crew videotaped patrons sitting in the room. The Iowa Supreme Court ruled that someone sitting in a restaurant could not have a legitimate expectation of privacy.

It is worthy of note that when intrusion occurs, it can be through the use of technological equipment like tape recorders, hidden cameras and others. There has been much debate on whether it is allowed or ethical. And different cases have been won or lost on the use of hidden recording devices.

In 1992, the Society of Professional Journalists and the Poynter Institute for Media Studies drafted guidelines for the use of hidden cameras.

These guidelines outlined in the American Journalism Review state that hidden cameras should be used only:

- When the information is of profound importance.
- When all other alternatives for obtaining the same information have been exhausted.
- When the individuals involved and the news organisations apply – through outstanding quality of work as well as the commitment of time and funding-the excellence needed to pursue the story fully.
- When the harm prevented by the information revealed through deception outweighs any harm caused by the act of deception.
- When the journalists involved have conducted meaningful, collaborative and deliberate decision to justify deception.

Pember however notes that "the guidelines say that winning a prize, beating the competition, getting a story cheaply, doing it because others have done it or doing it because the subjects of the story are unethical are not sufficient reasons to justify the use of hidden cameras.

Worthy of note is the discussion on **intrusion and the publication of stolen or illegally obtained materials**. A number of times, journalists come across stolen or obtained illegally newsworthy materials. Past cases have proved that a journalist may not be liable if they are not involved in the theft or illegal acquisition and if they are not aware it was stolen. However, journalists are still expected to be careful with the use of such materials as its use may still constitute liability.

Publication of private (embarrassing) information about individuals
The third privacy tort is the publication by the media of private, truthful, non-defamatory but embarrassing information about an individual.

Creech (2003) writes that "Sometimes an invasion of privacy case can be brought against the media for the publication of truthful, non-defamatory facts that are embarrassing to an identified individual. Generally these facts must be communicated to a widespread public, be private in nature (rather than newsworthy), and be highly offensive and objectionable to a reasonable person.

The plaintiff in a private facts case carries the burden of proving each element. Failure to convince the court of any one of these three parts of the law means the lawsuit is doomed (Pember, 2003/2004).

Publicity

For a private fact case to be established, it is essential that the plaintiff shows that the 'private' information was communicated to a large number of people. When a story is published in the media, it is taken for granted that it has already been publicised and that a large group of people are now aware of the information.

Private facts

A plaintiff in a private fact case will also have the burden of establishing that the information published about him are indeed private and they were not known to the public prior to that time.

"If a large segment of the public is already aware of supposedly intimate or personal information, it is not private. Oliver Sipple, who deflected a gun held by a woman who tried to assassinate President Gerald Ford, sued the San Francisco Chronicle after a columnist noted that Sipple was a homosexual and that that may be the reason Ford has never thanked his benefactor for his heroic act. But Sipple's suit failed, in part at least, because his sexual orientation was hardly a secret in San Francisco. A California Court of Appeals noted that Sipple routinely frequented gay bars, marched in parades with other homosexuals, and openly worked for the election of homosexual political candidates, and that many gay publications had reported stories about his activities in the homosexual community. That he was a homosexual was not a private fact, the court ruled. A court in Massachusetts ruled that because the plaintiff in a private action had told three other persons about some personal information, the information was not a private fact for purpose of an invasion of privacy lawsuit" (Pember, 2003/2004).

It is also worthy of note that documents and files and indeed all pieces of information that are considered to form part of public record, like court files, health records, police files and others can be published by the media without fear of liability. So should the names of rape victims or those of individuals who are sexually assaulted be published? There is a lot of contention on this. But the media should be guided more by ethics than by legislation on this issue.

Highly offensive legitimate public concern

After establishing that private facts about an individual have been publicised and to a large segment of the community, the plaintiff must also establish that the publication of the material is offensive to a reasonable person. It is the responsibility of the jury, or better put, it is a

jury question to determine whether a material is offensive to a reasonable person or not.

Pember (2003/2004) observes that "Frequently, courts are faced with the real dilemma that while revelation of the material was extremely offensive and embarrassing, its publication was of great importance for the public. Except in extremely unusual circumstances, the press will win such cases. The judiciary places great weight on the role of the press as an agent to inform and enlighten the public on matters of interest and importance. Judges have ruled time and again that it is the responsibility of the press to bring such "newsworthy" information to the people. And courts have been hesitant to define narrow limits on what the public needs to know or on the kinds of information in which the people have a genuine interest. And remember, the publication of the material must be offensive to a reasonable person. The feelings of a hypersensitive person or someone who is especially sensitive do not count."

Creech (2003) cites the following cases:

- In 1964, in *Daily Times Democrat v. Graham*, Flora Bell Graham won a $4000 judgment against the Culiman County, Alabama *Daily Times Democrat*. The paper had published a picture of Graham taken as she emerged from a Fun House at a county fair. The 44-year-old housewife's skirt had been blown over her head by air jets, exposing her legs and underpants. Although the picture had been taken in a public place, the Alabama Supreme Court found the picture offensive to modesty and decency because it revealed private information in which the public had no legitimate interest.
- Certainly, *Time* magazine crossed the line when it photographed hospital patient Dorothy Barber against her will. Barber had a rare disease that caused her to lose weight even though she ate a great deal of food. *Time* referred to Barber as "The starving glutton" and "Insatiable Eater Barber" who "eats for ten." In *Barber v. Time* Inc., the Missouri Supreme Court found the story to be an invasion of privacy and noted that privacy rights include the receipt of medical treatment without "personal publicity".
- Stories dealing with matters of public concern are generally not subject to successful invasion-of-privacy claims. When the *Washington Post* printed an article about heroin addiction and included the photograph of Monica Little, who had been interviewed as part of the story, she sued for privacy invasion. Little contended that although she had agreed to be interviewed, she had used false name and her family did not know that she was an addict. The use of a photograph had damaged her anonymity. She claimed that the Post had intentionally caused her emotional

distress. In *Little v. Washington Post*, 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. In short, the *Post* did not go beyond the limits of her consent.

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. When an unauthorised biography of famous baseball pitcher Warren Spahn portrayed him as a war hero, Spahn was able to bring a successful suit in *Messner Inc. v. Warren E. Spahn.* Even though the material was flattering, the "gross misstatement of fact" portrayed the former pitcher in a false-light, thereby causing him emotional distress. False-light claims often result from dramatisations and fictional accounts of real-life incidents (Creech, 2003).

There are three important elements in the tort: The material is substantially false; the false statement or material is offensive to a reasonable person; the defendant who published the false material was at fault (Pember, 2003/2004).

A 96-year-old Arkansas resident sued the *Sun* for using her photo to illustrate a totally fabricated story about a 101-year-old female newspaper carrier who had to give up her route because she was pregnant. Plaintiff Nellie Mitchell's photo had been published 10 years earlier in another tabloid owned by the same company in a true story about the Mountain Home, Ark. woman. But the editors at the *Sun* needed a picture to illustrate their phony story and simply used Mitchell's, undoubtedly thinking she was dead. A U.S. District Court jury awarded the elderly woman $1.5 million in damages. The simple rule for writers who want to be dramatists is this: If you change the facts, change the names and don't use photos of real people (Pember, 2003/2004).

In *Cantrell v. Forest City Publishing Co.* (1974), according to testimonial given in court, the story contained a number of inaccuracies.

It implied that reporters had spoken with Mrs. Cantrell in her home and that the home was untidy and her children were poorly clothed. Mrs. Cantrell charged that the story made them the objects of pity and ridicule.

In reality, Mrs. Cantrell had not been present when reporter Joseph Eszterhaus came to call. Eszterhaus spoke with one of her children, while a photographer snapped some pictures. Writing for the Supreme Court, Justice Potter Stewart noted:

> "There was no dispute during the trial that Eszterhaus…must have known that a number of the statements in the feature story were untrue. In particular, his article plainly implied that Mrs. Cantrell had been present during his visit to her home and that Eszterhaus had observed her "wearing the same mask of non-expression she wore at the funeral." These were "calculated falsehoods," and the jury was plainly justified in finding that Eszterhaus had portrayed the Cantrells in a false light through known or reckless untruth" (Creech, 2003).

SELF-ASSESSMENT EXERCISE 2

Distinguish clearly among the four forms of invasion of privacy.

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. For instance, Pember (2003/2004) cites the *Schifano v. Greene Country Greyhound Park, Inc.* case in which "Sam and Joseph Schifano sued the Greene County Greyhound Park, a dog racing track, for including their photo in an advertising brochure for the facility. The plaintiffs, who visited the park often, were photographed while they sat with several other persons in what is called The Winner's Circle, a section of the park that can be reserved by interested groups of spectators. There was no written consent for the use of their picture, but there was ample evidence that park officials had told the plaintiffs why they were taking the pictures and gave them a chance to leave if they did not want to be in the picture. "Plaintiffs, neither by objecting nor moving, when those options were made available by park employees,

consented to having their photograph taken at the park," the Alabama Supreme Court ruled in 1993".

It is however worthy of note that consent does not always work as defense even if it was given by the plaintiff. Pember (2003) states three clear instances:

i. Consent given today may not be valid in the distant future, especially if it is gratuitous oral consent.
ii. Some persons cannot give consent. E.g. under age, psychologically deranged etc.
iii. Consent to use the photograph of a person in an advertisement or on a poster cannot be used as defense if the photograph is materially altered or changed.

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. "When a temporarily deranged man in Idaho ran nude out of his house brandishing a gun, a local television station filmed the event. On regaining his senses, the man filed an embarrassing privacy suit against the TV station. He claimed that the station could have edited the film so that he was not pictured nude. Although he won the initial judgment, in *Taylor v. KTVB, Inc.*, the Idaho Supreme Court ordered a new trial because the event was newsworthy" (Creech, 2003).

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).

SELF-ASSESSMENT EXERCISE 3

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?

4.0 CONCLUSION

The right to privacy seeks to protect the individual. The media must ensure that in the discharge of its duties of informing the public and acting as watchdogs, it does not intrude into the lives of the citizens.

5.0 SUMMARY

Privacy is "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).

There are four privacy torts: Appropriation, which is the use of a person's name or likeness for commercial use without permission or consent; intrusion, which is the invasion of an individual's solitude to illegally gather information about him/her; publication of embarrassing private facts about a person which are of no legitimate public concern and the publication of information that put a person in false light.

Consent, newsworthiness, legitimate public interest and the use of public record are the available defenses in a privacy suit.

6.0 TUTOR-MARKED ASSIGNMENT

Interview a soft-sell magazine editor on his or her paper's policy on privacy and the procedure he or she employs in avoiding privacy suits.

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UNIT 4 OBSCENE, INDECENT AND HARMFUL PUBLICATIONS

CONTENTS

2.0 INTRODUCTION

For the sake of maintaining the dignity of persons and societal morality, the law provides restrictions on the publication and distribution of materials that based on the subsisting standard of morality in the society, that are deemed obscene, indecent, immoral or offensive and ethnically or racially prejudice.

This unit examines those laws that seek to protect the society from such publications.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define harmful, obscene and indecent publications
- state the laws against harmful, obscene and indecent publications enumerate the implications of harmful, obscene and indecent publications.

3.0 MAIN CONTENT

3.1 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).

Crone (2002) quotes that Section 1 of the English Obscene Publications Act of 1959 says '…an article shall be deemed if its effects or (where the article comprises two or more distinct items) the effect of any of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all the relevant circumstances, to read, see or hear the matter contained or embodied in it.'

Adeyemi writes that 'In Lagos State, the statutory definition of obscenity is that the publication in question, taken as a whole, must be such that its effect is to 'tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it' (Obscene Publications Act, 1961, Section 3(1)).

He cites Lord Parker, C. J. as saying in *R. v. Stanley* that "The words "indecent" or "obscene" convey one idea, namely, offending against the recognised standards of propriety, indecent being at the lower end of the scale…As it seems to this Court, an indecent article is not necessarily obscene, whereas an obscene article almost certainly must be indecent'

[(1965) 1 All E.R. 1035, pp. 1038-9]. Thus where a material is declared not to be obscene, it can still be held to be indecent.

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 behaviour, for examples, D.H. Lawrence's *Lady Charterly's Lover*, or our own Ekwensi's *Jagua Nana.* Naiwu's Osahon's *Sex is a Nigger* may also come also come within this meaning. 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 [Osinbajo and Fogam, 1991].

3.1.1 An Article

Section 2 of the 1961 Obscene Publications Act says an "article" means anything capable of being or likely to be looked at and read or looked at or read, and includes any film or record of a picture or picture and any sound record.

'Article' means 'any description of an article containing or embodying matter to be read or looked at or both, any sound record, any film or other record of a picture or pictures'. This wide definition includes anything that can be read, viewed or otherwise appreciated, including books, magazines, audio and video recordings, pictures and new media. It also includes negatives or information kept in electronic form (*R v Fellows and Arnold* (1997)). However, television and radio transmissions are specifically exempted [Crone 2002].

However, Section 203 of the Penal Code in Nigeria appears to include electronic form with its definition. It says "Whoever to the annoyance of others sings, recites, utters or reproduces by any mechanical means any obscene song or words in or near any public place, shall be punished with imprisonment for a term which may extend to three months or with fine or with both."

3.1.2 Taken in Part/as a Whole

Section 3(1) the 1961 Obscene Publications Act says that:

"An article shall be deemed obscene for the purposes of the Act, if its effect taken as a whole is such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances to read, see or hear the matter embodied in it."

Section 3(2) states:

"The provision of this section shall extend to any article of two or more distinct items, the effect of which is to tend to deprave and corrupt."

The implication of this section is that the judge will have to look at the publication in its entirety before taking a decision on whether it is obscene or repugnant to the current moral standards in the society. It will not be acceptable for the judge to make a judgment on the case by reviewing isolated sections of the publication.

Crone (2002) however notes that "where the material consists of a number of separate and independent parts like those found in newspapers and magazines, the court may convict if any single item satisfies the test of obscenity despite the fact that the rest of the publication is harmless."

3.1.3 Deprave and Corrupt

Judicial suggestions have varied from a view of "corruption" as being something capable of destroying (or being destructive) of the fabric of society to the capability of the offensive matter to lead its audience morally astray (Osinbajo and Fogam, 1991).

Crone (2002) cites the case of D.H. Lawrence's *Lady Charterly's Lover* as the case that produced a clear definition of the words: deprave and corrupt. According to *R. v Penguin Books Ltd.* (1960): "Deprave means to make morally bad, to pervert, to debase or corrupt morally.

Corrupt means to render morally unsound or rotten, to destroy the moral purity or chastity, to pervert or ruin a good quality, to debase, to defile."

In showing that an article has the capacity to deprave or corrupt, the prosecution needs not show that it has led any of the individuals who had been exposed to it to carry out any sexual or physical act. It is enough to show that the article has the capacity to affect the emotions of individuals exposed to it.

Osinbajo and Fogam (1991) cite two very interesting cases worthy of mention in this regard.

The first is the case of *COP (Mid-West) v. Igene*. According to them, the fact of the case is as follows:

The accused persons ran a bookstall at the Benin Airport. Two detective constables went to the bookstall and collected magazines. The magazines, which bore the following titles: "Ways of Loving", "Foreplay", "Sex in Marriage", "Response and Sense" had nude photographs. The magazines purported to teach the techniques of sex and family planning, illustrating their teaching with different positions of copulation to give sexual satisfaction to adults and married couples. Some of the magazines were marked "Educational Material for Adults only, "Sales to Minors Prohibited". The accused persons were charged under Section 175(1) (a) of the Criminal Code Laws of Western State of Nigeria 1959 also applicable to the then Mid-Western State, with "being in possession of obscene printed matters and publicly exhibiting obscene printed matters which tend to corrupt morals."

In dismissing the prosecution's case the learned judge adopted the "corrupt and deprave test', and wondered whether photographs, books or magazines could actually corrupt or deprave, since, if it were that easy to corrupt by this means, thousands of television viewers who regularly see violent films would already be criminals.

The second is the case of *R v. Anderson* [(1972) 1 Q.B. 304] where a magazine titled *OZ No. 28 School Kids Issue*, was alleged to contain obscene matter. The magazine which was even partly written by school children was meant for school children. It contained salaciously written articles on the joys of oral sex and some graphic pictures and cartoons of various forms of heterosexual and homosexual or heterosexual clubs for "erotic minorities". One of the arguments of the defence which the judge accepted as sound was the "aversion theory", that is "that the material was so repulsive - that it could only put readers off the depicted activity. The incongruous result of this "defence of crudity," is that where the purveyor of obscenity desires the protection of the law his best bet is to ensure that his material is grossly obscene!

Individuals in the legal profession have however condemned this stand. Osinbajo and Fogam say "There is no reason for the law to, on account of a logical technicality refuses to address an absurdity by its proper name." They also quote (in their footnote of that page) Lord Denning in G. Robertson's *Obscenity* as saying he could not regard the argument as anything than "mere sophistry".

3.1.4 Persons Likely to Read, See or Hear

To decide on whether the content of a publication is obscene or not, the court will have to determine whether it has the capacity to corrupt or deprave a significant proportion of the audience for whom it was published.

The emphasis in the Obscene Act of 1961 was on the effect of the offending article on its buyers or audience. This is the concept of "relative obscenity". According to this concept, an article cannot be inherently obscene. It will only be obscene judging by its effects on its likely customers. If the offending article is for example a magazine for teenagers the question before the court will be whether the contents of the article would be likely to corrupt and deprave teenagers. If the same magazine is sold to adults, it may not be regarded as obscene, since adults are not likely to be corrupted or depraved by it. Taken to its logical conclusion, "relative obscenity" implies that an article cannot be legally obscene no matter how obviously filthy or disgusting it may be or no matter its potential tendency to deprave or corrupt. An article is only obscene if its likely audience will be depraved or corrupted by it (ibid: 131).

SELF-ASSESSMENT EXERCISE 1

Explain in detail the elements of obscene and indecent publications.

3.2 Essential Elements of Obscene and Indecent Publications

Before a conviction can be made on obscene and indecent publications, the following conditions must subsist, according to Adeyemi (1969):

1. There must be an article
2. It must be obscene/indecent
3. It must be published.

Establishing intention

There is a discussion on whether there is a need to establish the intention of an individual who contravenes this act before a conviction can be made. That is, is there a need to establish that the prohibited act was done intentionally.

Crone (2002) states unequivocally that "The offence is one of strict liability. The test for obscenity will be satisfied if the prosecution establishes the fact of the publication and the effect of the published article. The intention of the author or publisher is irrelevant."

Osinbajo and Fogam (1991) on their part believe the offence is not one of strict liability. They say "It is the view of the present writers that offences under the Act of 1961 were not meant to be strict liability offences."

They argue that "In order to fully grasp the implication of the controversy under the Nigerian law, it is important to recognise the basis of criminal responsibility under the Nigerian law (of southern States). The crucial section under Chapter V is section 24. The first paragraph states that: 'Subject to the express provisions of the code relating to negligent acts and omissions a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will or for an event which occurs by accident'…."

SELF-ASSESSMENT EXERCISE 2

Present your opinion on the need to establish the intention of an individual who contravenes the act of obscenity and indecency before a conviction can be made, using evidences from the law or cases known to you.

3.3 Defenses for the Publication of Obscene and Indecent Content

Adeyemi's (1969) explanation and enumeration on the defences to a charge of obscene and indecent publications are astute. It is therefore presented below:
"All the defenses available generally in criminal law will apply in cases of obscene and indecent publications. In addition, both the 1961 enactments provide other specific defenses. Under the Obscene Publications Act, for example, it is a defense where:

1. The exhibition concerned takes place in a private house to which the public are not admitted.
2. The exhibition is made in the course of television or sound broadcasting.
3 The person charged had not examined the article in question and he had no reasonable excuse to suspect that his publication would be obscene.
4. The publication can be justified as being for the public good on the ground that it is in the interests of science, literature, art or learning or of other objects of general concern.
5. That the offence was committed more than two years before the commencement of the prosecution.

It may be observed, lastly that the ‘‘Horror of Comics’ Act requires, for prosecution of the offence it creates the consent of a ‘Law Officer’. This requirement will have the requirement of limiting the instances of prosecution that can be brought under this Act. The frequency would probably have been greater if the police had been empowered to prosecute without necessarily seeking such consent.”

SELF-ASSESSMENT EXERCISE 3

Justify from legal records the requirement that a ‘law officer’ must consent to a prosecution of a ‘Horror of Comics’ offence.

3.4 Harmful Publications

Section 2(2) of the Children and Young Persons (Harmful Publications) Act of 1961 states:

‘This 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:

(a) the commission of crimes
(b) acts of violence or cruelty
(c) 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.’

The Children and Young Persons (Harmful Publications) Act of 1961is also known as the “Horror of Comics’ Act. Based on the dictates of this Act, no one shall import, prepare a plate, make a photographic film, print, publish, sell, lets or hire any book or magazine to which this Act applies or has any such book or magazine in his possession.

Punishment for this offence carries imprisonment of six months or a fine of 100 pounds or both. However, whoever is accused under this Act, and can prove that he had not examined the content of the publication and had no reason to believe it contravened the Act will be discharged.

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."

Osinbajo and Fogam (1991) however posit that "…describing the act as the law on indecent publication is not entirely accurate. In the first place, some of the incidents listed in Section 2(2) can in fact be described as obscenity, as opposed to mere indecency. Aside from this, the expression "indecent" may well be inappropriate for the types of acts envisaged under the Act. The argument that all harmful publications must be indecent is not particularly helpful here as it does not assist in clarifying the meaning of "indecent". After all, all obscenity must also be indecent."

SELF-ASSESSMENT EXERCISE 4

Discuss the controversy on the Children and Young Persons (Harmful Publications) Act of 1961 being described as the 'the law on indecent publications.'

4.0 CONCLUSION

The regulation on indecent, obscene and harmful publications is at the heart of ensuring public morality and values. The law is however regarded as suspect because many believe that it threatens the right of the press to freedom of expression and freedom to hold opinions.

At any rate, it is the duty of the media to ensure that they entrench the freedom of expression without depraving public morality and values.

5.0 SUMMARY

An 'indecent publication' may be defined as a communication to another person (be this 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).

Before a conviction can be made on obscene and indecent publications, the following conditions must subsist, according to Adeyemi (1969):

there must be an article, it must be obscene or indecent, and it must be published.

The core defenses in an obscene/indecent publication case are that the individual is not aware of the content of the publication in his possession, the publication was not made in a public case, the prosecution commenced two years after the publication has been made and the publication can be justified as being for the public good on the ground that it is in the interests of science, literature, art or learning or of other objects of general concern.

6.0 TUTOR-MARKED ASSIGNMENT

Justify the need for an obscene and indecent publications law.

7.0 REFERENCES/FURTHER READING

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MODULE 4 MEDIA LAWS: INTELLECTUAL AND INSTITUTIONAL

UNIT 1 COPYRIGHT

CONTENTS

1.0 INTRODUCTION

This unit is dedicated to explaining the law of copyright, its nature, conditions, duration, ownership, the factors that constitute infringement, and the remedies available in law.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain clearly the concept of copyright
- identify the ownership of copyright and the situations in which it can be transmitted
- discuss the subjects and conditions for copyright
- enumerate what constitutes an infringement of copyright
- identify the remedies available for infringement of copyright.

3.0 MAIN CONTENT

3.1 Nature of 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).

A lot of creativity would be lost if there was no copyright law- a law that protects the author of a work, idea, skill or creativity from having his work printed, published, sold and distributed without his permission.
The essence of copyright, therefore, is to ensure that individuals benefit maximally for a stated period of time, from their ingenuity, creativity and efforts, and prevent the reproduction, publishing, performance, adaptation, recording and distribution of the work of others without their consent and permission.

SELF-ASSESSMENT EXERCISE 1

What does the law of copyright seek to protect?

3.2 Subjects and Conditions for Copyright

Section 1(1) of the Copyright Decree of 1988 provides that: "Subject to this section, the following shall be eligible for copyright:

(a) literary works
(b) musical works
(c) artistic works
(d) cinematograph films
(e) sound recordings
(f) broadcasts.

Literary work: Includes, irrespective of the literary quality, any of the following works or works similar thereto: novels, stories, and poetical works; plays, stage directions, film scenarios and broadcasting scripts; choreographic works; computer programmes; text-books, treaties, histories, biographies, essays and articles; encyclopedias, dictionaries, and anthologies; letters, reports and memoranda; lectures, addresses and sermons; law reports, excluding decisions of courts; written tables or compilations.

Musical work: Means any musical work, irrespective of musical quality and it includes works composed for musical accompaniment.

Artistic work: Includes, irrespective of artistic quality, any of the following work or works similar thereto- paintings, drawings, etchings, lithographs, woodcuts, engravings and prints; maps, plans, and diagrams; works of sculpture; photographs not comprised in a cinematograph film; works of architecture in form of buildings models; and works of artistic craftsmanship and also pictorial woven tissues and articles of applied handicraft and industrial art.

Cinematograph film: Includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound tract associated with the cinematograph film.

Sound recording: Means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a cinematograph film.

Broadcast: Means sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programmes and includes re-broadcast.

Adesanya (1969) also states the following about works that are subject to copyright:

"A letter is an 'original literary work' and is therefore covered by copyright. The publication of the private letters of another in book form will also be protected. Advertisements, as literary work, are entitled to copyright protection. Copyright subsists in a newspaper report. Hence a reporter was held entitled to the copyright of his verbatim report of a public speech. But there can be no copyright in news as such, but only in the literary form given to news. But news agencies may be protected from having information obtained by them disseminated in breach of faith. As regards law reporting, the head notes or the side or marginal

notes are regarded as products of such skill and mental exertion that they are accorded copyright protection. Photographs and cartoons, at least those which exhibit original skill and labour in the choosing or arrangement of the subject, are covered by copyright."

However, there are **works that cannot be copyrighted**. One major kind of work that cannot be copyrighted is a works that is "libelous, immoral, obscene or irreligious." Adesanya (ibid) says "Even where a work is a proper subject of copyright, an infringement of the copyright in such a work will not be enforced if the work is libelous, immoral, obscene or irreligious. This is because copyright in a work pre-supposes a right to sell the work, but an author of an obscene, immoral or irreligious work cannot sell it. Similarly, there will be no copyright in work calculated, and likely to deceive the public."

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. In such an instance the law is protecting the particular literary or pictorial form in which an author chooses to express herself or himself, not the idea or plan or method itself. For example, an individual writes or publishes a book in which she outlines a new mathematical formula. Although the book

> itself may be protected by copyright, the formula cannot be, and others may use it freely. In other words, the copyright on an article or a book does not preclude the public from making use of what the book teaches.

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

According to [Osinbajo and Fogam (1991], the conditions are:

A. Originality
B. Reduction into concrete form
C. Qualified person
D. Work originating in Nigeria

Before explaining the conditions, the authors make a noteworthy observation:

> "A preliminary observation is that under the Copyright Decree 1988, no formalities are required for the subsistence of copyright in Nigeria. The Decree does not provide for any system of registration of copyright whether voluntary or compulsory. As a result, the subsistence of copyright in a particular subject matter can only be made by ascertaining first, whether it is the type in which copyright can subsist. The works eligible for copyright have already been mentioned; but whether copyright does in fact exist in those works is subject to some other conditions."

Originality: Implies that before copyright can subsist in a particular work, the work must owe its origin to the author. An author cannot claim copyright for a work that is not originally his. The work may be of high quality or it may be low, that is not significant to the test of originality. Adesanya (1969) posits that copyright subsists in every original literary, dramatic, musical or artistic work. The work concerned must be 'original' in the sense that it must not be a verbatim reproduction of prior work, but not in the sense that it must itself be a product of original or inventive thinking. Thus once originality in skill and language have been exhibited, the work will be given copyright protection notwithstanding that its ideas and thoughts are a piracy of another copyright work."

Reduction into concrete form: Osinbajo and Fogam (1991) say that "In addition to a work being original, 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: According to Section 2(1), "Copyright shall be conferred by this section on 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 – an individual who is a citizen of, or is domiciled in Nigeria; or a body incorporated by or under the laws of Nigeria."

Work originating in Nigeria: 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."

SELF-ASSESSMENT EXERCISE 2

Justify the basis for which some works may not be eligible for copyright.

3.3 Duration of Copyright

Copyright is a monopoly right. The law of copyright attempts to balance the protection of the author with the need for a free flow of ideas and information in order to allow people free access to works in order to achieve this balance, copyright is limited in duration (Cranwell, 2002).

The expiration of copyright for different categories of work in Nigeria is spelt out in Schedule 1 of the Nigerian Copyright Decree 47 of 1988.
For literary, musical or artistic works other than photographs, the expiration is "70 years after the end of the year in which the author dies; in the case of government or a body corporate, 70 years after the year in which the work was first published".

For cinematograph films and photographs, the expiration is "50 years after the end of the year in which the work was first published."

For sound recordings, the expiration is "50 years after the end of the year in which the recording was first made."

For broadcasts, the expiration is "50 years after the end of the year in which the broadcast first took place."

SELF-ASSESSMENT EXERCISE 3

Under what category will newspapers and magazines fall and when will their copyright expire?

3.4 Ownership and Transmission of Copyright

Copyright belongs to the author of the work. It seems quite simple to determine but that is not always the case. There are circumstances and situations that have made it controversial or ambiguous to determine who the real author of a work is. However, much of such controversies have been sorted out and there are general principles and agreements on the owner of copyright in different situations and for different kinds of work.

Copyright in literary, dramatic, musical and artistic works belongs to the author of the work. This means that the person whose skill and efforts produced the work – for example the writer of the book, not the secretary who typed it (Cranwell, 2002).

If the author was, however, employed by another under a contract of service or of apprenticeship, and the work was done in the course of that person's employment, copyright in the work shall, in the absence of any agreement to the contrary, vest in that employer. If, however, the work is an article or other contribution to a newspaper, a magazine or a similar periodical, there is, in the absence of any agreement to the contrary, deemed to be reserved to the author a right to restrain the publication of the work unless it is published as part of a newspaper, a magazine, or a similar periodical. Thus, an author is given a statutory right to restrain anyone from publishing his work except in a newspaper (Adesanya, 1969).

Whether a person is employed under a 'contract of service' or not is a question of fact and not of law. In this regard, 'the greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the ground for holding it to be a contract of service; and similarly, the greater the greater the degree of independence of such control, the greater the probability that the services rendered are of the nature of professional services, and that the contract is not one of service. It, therefore, follows that persons on the regular employment of a newspaper will usually be regarded as employed under contracts of service. But such persons will be able to

retain the copyright in any work done by them outside their working hours and outside the scope of their employment (Adesanya, 1969).

But the courts have often sought to distinguish "contract of service" from a "contract of services." The traditional test for distinguishing between the two is to determine whether the person employed is under the direction and control of the employer as to the manner in which he shall carry out his work, or whether he was employed to exercise his skill and achieve an indicated result in such manner as he should, in his own judgment determine. In the former case, the person employed would be regarded as a servant and thus subject to a "contract of service" while in the latter he would be regarded as an independent contractor and subject to a "contract for services" (Osinbajo and Fogam, 1991).

If two or more people jointly create a work and their contributions are indivisible, then, unlike the tune and the lyric in a song, copyright is owned jointly. If a ghost writer produces an autobiography or a newspaper series, the ghost writer owns the copyright subject to any agreement otherwise (Cranwell 2002).

In a collective work, defined by the Act as meaning among other things, 'a newspaper, review, magazine, or similar periodical; or any work written in distinct parts by different authors…', two distinct copyrights exist: there is the copyright for the collective work as a whole, and there is another in the different works of the various contributors to the collective. Thus, the author of the collective work will be the person who edits the whole work, while each contributor will be the author of his own contribution (Adesanya 1969).

Is it possible to transfer the right to a work? Yes, **copyright is transmissible**. That is to say that a person in which the copyright to a work subsists can transfer the copyright to another. Section 10(1) of the Nigerian Copyright Decree 47 of 1988 states that "Subject to the provision of this section; copyright shall be transmissible by assignment, by testamentary disposition or by operation of law, as movable property." Section 10(7) provides that "An assignment, license or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist; and the prospective copyright in any such work shall be transmissible by operation of law as movable property."

Therefore, a person can transfer the copyright of his work in part, fully, for a specified period, in specific geographical area to another based on the provisions above, through an assignment or a license.

An **assignment,** according to *Black Laws Dictionary*, "Is the transfer by a party of all or part of its rights to some kind of property, usually intangible property." According to Section 10(3) of the Nigerian Copyright Decree, an assignment must be in writing before it can be recognised. Osinbajo and Fogam (1991), referring to Section 10(3) and (8) note that "Assignments may relate to specific areas or for a limited period and future works or even an existing work in which copyright does not yet subsist can also be assigned." They however observes that "No particular form of writing is prescribed by the statute and so makes it difficult at times to determine the legal effect of a document dealing with the disposition of a work or the copyright subsisting in it."

A **license** is a permission given by the owner of a copyright to another (individual or body corporate) to undertake actions on the work (that would not be legal) if the license had not been given or issued. According to Section 10(4), a non-exclusive license to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct.

As it relates to materials written for the media, the copyright to the work of a journalist working under the full employ of a media organisation belongs to the organisation, unless otherwise stated while the copyright to the work of a freelance journalist may vary, depending on the agreement that is reached with the organisations to whom he submits his articles and/or pictures.

Pember (2003/04) highlights and explains the different arrangements that may be available in this regard. They are provided below:

1. All rights: The creator sells complete ownership of the story or photograph.
2. First serial rights: The buyer has the right to use the piece of writing or picture for the first time in a periodical published anywhere in the world. But the publisher can use it only once, and then the creator can sell it to someone else.
3. First North American serial rights: The rights are the same as those provided in number two, except the publisher buys the right to publish the material first in North America, not anywhere in the world.
4. Simultaneous rights: The publisher buys the right to print the material at the same time other periodicals print the material. All the publishers, however, must be aware that simultaneous printing will occur.
5. One-time rights: The publisher purchases the right to use a piece just one time, and there is no guarantee that it has not been published elsewhere first.

SELF-ASSESSMENT EXERCISE 4

Does a newspaper editor require any form of license to publish a letter to the editor or an article sent to his organisation by a member of the public?

3.5 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).

An example of a judgment to support this view is the ruling:

> "In *Nash v. CBS*, 899 F.2d 1537 (1990) a case involving the infamous John Dillinger, the subject of a widely publicised manhunt by local police and the FBI during the 1930s. Most historians believed that Dillinger was killed on July 22, 1934, when he was shot by government agents who ensnared him in an ambush as he left the biography movie theatre in Chicago. Jay Robert Nash has written at least two books that dispute this conclusion. Nash argues that Dillinger learned about the ambush and sent a look-alike to the theatre instead. The FBI, embarrassed that its setup failed, kept quite. And Dillinger retired from a life of crime and lived the rest of his life on the West Coast. A 1984 episode of the CBS television series "Simon and Simon" involved a story that suggested that Dillinger was still alive,

> living in California. Nash sued the network, claiming copyright infringement. The officials at the network admitted that they had seen Nash's books and said that they used some of his ideas. But, they argued, Nash claimed to be writing history, and history is a collection of facts. Such material cannot be copyrighted. The court agreed. The network might be liable if Nash portrayed his work as a novel, as fiction. But he didn't. "The inventor of Sherlock Holmes controls the character's fate while the copyright lasts; the first person to conclude that Dillinger survives does not get his dibs on the history," Judge Easterbrook wrote. Nash's rights lie in his expression, not in the naked truth."

Therefore, "A news story or even an entire issue of newspaper is literary work and as such eligible, to copyright; but the news element in a newspaper story is not subject to copyright. The law of copyright does not operate to give any person an exclusive right to state or describe particular facts. News is *publici juris* (i.e. the history of the day) which is not the creation of the reporter. It is in the public domain and cannot therefore be appropriated by an individual" (Osinbajo and Fogam, 1991).

It is however worthy of note that some newspapers and magazine in Nigeria plagiarise other publications by publishing their stories and/or articles word-for-word in their publications, albeit citing that the story is "culled from" so and so publication as a way of acknowledging the source. On this, Osinbajo and Fogam (1969) observe that "the general rule is that is an infringement of copyright for a newspaper to publish without permission copies of news stories, articles or photographs published in another paper, even though the source of information is acknowledged. Being "literary works" the article or news story is an eligible work for copyright protection. The copying newspaper therefore will be liable if the source of work is Nigeria. But it so happens that most of the articles or news stories so copied are from foreign newspapers or periodicals. They may not be eligible for protection by the Copyright Decree 1988. This is so because as seen earlier, section 2, 3, and 4 of the Decree confer protection only on works published by individuals who are citizens or domiciled in Nigeria; or if the work is first published or made in Nigeria. The copying newspapers can therefore escape liability on that score."

SELF-ASSESSMENT EXERCISE 5

Can a Nigerian newspaper sue another for copyright infringement on a news story they both sourced from the News Agency of Nigeria?

3.6 Infringement of Copyright

When can it be said that the copyright on a work has been infringed upon and what actually constitutes an infringement on the copyright on a work?

Copyright confers on an owner, *inter alia*, the sole right to produce or reproduce the work concerned or a substantial part of it in a material form. Therefore, one who reproduces the work of another or a substantial part of it, without the other's consent, infringes the copyright in the work (Adesanya, 1969).

Persons who believe that their exclusive right to control the use of a copyrighted work has been violated will sue for infringement. The federal copyright statute does not actually define infringement. The law simply states that anyone who violates any of the "exclusive rights" of the copyright holder is guilty of an infringement of copyright (Pember, 2003/04).

In considering the question of infringement, it must be borne in mind that copyright protection is not given to ideas or information, but only to the particular mode of giving expression to one's ideas or thoughts. Thus, if two authors produce similar works independently of each other, neither will be guilty of infringing the other's copyright, even if the latter was inspired by, and got his ideas from, the earlier work.

According to Section 14 of the Nigerian Copyright Decree of 1988, copyright is infringed by any person who without the license or authorisation of the owner of copyright:

(a) Does, or causes any other person to do an act, the doing of which is controlled by copyright.
(b) Imports into Nigeria, otherwise than for his private or domestic use, any article in respect of which copyright is infringed under paragraph (a) of this subsection.
(c) Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection.
(d) Distributes by way of trade, offers for sale, hire or otherwise or for any purpose pre-judicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection.

(e) Makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work.
(f) Permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright.
(g) Performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

Adesanya (1969) provides that the following acts do not constitute an infringement of copyright:

1. Any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper summary. A student, who reproduces a book for his own use as opposed to use by other students, will be protected by this provision. Where the work is reproduced for the purposes of criticism or review an acknowledgement of the source is advisable.
2. The making or publishing of paintings, drawings, engravings or photographs of a work or sculpture permanently placed in a public place or building.
3. The inclusion of short passages from published literary works into a collection which consists mainly of non-copyright materials, and which are genuinely intended and so described in the title, for the use of schools; provided that not more than two of such passages from works by the same author are published by the same publisher within five years; and provided also that the source of such passages are acknowledged.
4. The publication in a newspaper of a report of a lecture delivered in public, unless a written or printed notice prohibiting the report is conspicuously displayed at the main entrance to the building in which the lecture is to be delivered. Despite the presence of that notice, however, a newspaper may safely publish a fair summary of the lecture. Also, notwithstanding the presence of such conspicuous notice of prohibition, a newspaper report of a political address delivered at a public meeting will not constitute an infringement of a copyright.
5. The reproduction, 25 years (or 30 years in the case of a work in which copyright subsists at the passing of the Act) after the death of the author, of a copyrighted work, provided the person reproducing the work has given a written notice of his intention to do so and has paid royalties in respect of all copies sold by him

for the benefit of the owner of the copyright, at the rate of ten per cent of the published price of the work.

In order to determine that a work is an infringement on an author's copyright, some elements have to be proved. Pember (2003/04) says "Courts that litigate copyright cases seem to focus most often on three criteria to determine whether a particular use is an infringement. A brief outline of each of these three points follows:

i. Is the copyright on the plaintiff's work valid? While this inquiry will look at matters such as the proper registration of the work, the heart of this examination is to determine whether the copyrighted work is an original work that can be protected by copyright.
ii. Did the defendant have access to the plaintiff's work prior to the alleged infringement?
iii. Are the two works the same or substantially similar?"

For a plaintiff to be able to win a case of copyright infringement, he has to be able to prove certain elements, the first of which is that his work is **original** and that the work is **copyrightable**. Originality presupposes that the content of the work or the information contained therein is original to the author. An author cannot lay claim to information in the public domain or historical facts. Similarly, a work on an illegal, immoral, indecent, obscene and irreligious matter is not copyrightable and as such, the author of such work cannot claim that the copyright on his work has been infringed. There cannot be copyright infringement on a work that is not copyrightable in the first instance.

Pember (2003/04) cites the case of *Alexander v. Haley*, (450 F. Supp. 40 1978) in which "Margaret Alexander brought an infringement suit against Alex Haley, claiming that he had copied portions of her novel *Jubilee* and her pamphlet *How I Wrote Jubilee* when he wrote and published his successful novel *Roots*. But the court noted that most of what Alexander claimed Harley had stolen was history-the story of the slave culture in the United States-or material in the public domain, such as folktales about early American black culture. "Where common sources exist for the alleged similarities, or the material that is similar is not original with the plaintiff, there is no infringement," the court ruled.

The second element that will have to be proved to convince a court that a defendant had indeed infringed on the copyright of a work is to establish that she/he had **access** to the work. It is normal to assume that an individual cannot infringe the copyright on a work he does not have access to. The concept behind the principle is that it is possible for two individuals to author a very similar work without either of them copying

from the other. Judge Learned Hand in *Sheldon v. Metro-Goldwyn-Mayer Pictures* 81 F.2d 49 (1939) was quoted by Pember (2003/04) as saying "If by some magic a man who had never known it were to compose a new Keats's "Ode on a Grecian Urn," he would be an "author" and if he copyrighted it, others might not copy that poem, though they might of course copy Keats's."

The thrust of the matter is that if the plaintiff cannot establish access to his work by the infringer, he cannot establish an infringement of his work.

The third and most popular element which the plaintiff has to establish is the **substantial similarity** between his work and the work of the individual who is accused of infringing on his copyright. Similarity can be easily established by showing that the defendant copied from the plaintiff.

"More often than not, however, direct or literal copying is not an issue. In these cases the defendant is not accused of taking a particular line or segment of a work, but of appropriating "the fundamental essence or structure of the work." There must be more than minor similarities between the two works; they must be substantially similar" (Pember, 2003/04).

But it has become quite clear that the important factor is not necessarily the quantity or proportion of the original work which has been exploited. The courts have observed on several occasions that the quality of the piracy is of much greater significance than the quantity, so that there may be infringement though the quantity is a tiny portion of the whole.

The amount of work used is not as important as the relative proportion of a work used. Word counts, for example, really don't mean as much as percentages. The use of 500 words from a 450-page book is far less damaging than the use of 20 words from a 40-word poem. How much of the work, in relation to the whole, was used? Courts will consider exact copying when looking at this question; but they will also consider paraphrasing. Pirates will find little refuge in a dictionary of synonyms (Pember, 2003/04).

The essence is to show that the vital qualities of the original work can be recognised from the infringed copy. The fact that the original work is also in circulation matters, as an infringement on the work will diminish the value on the original.

SELF-ASSESSMENT EXERCISE 6

Why will a newspaper report of a political address delivered at a public meeting not constitute an infringement of a copyright, despite the presence of a conspicuous notice of prohibition at the venue of the meeting?

3.7 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).

Points one to three (1-3) have been discussed already. The fourth and the fifth are the ones that require more clarification.

Fair dealing "is a concept which permits the limited copying of an original creation in which copyright subsists. The concept is found in Schedule 2(a) of the decree which is to the effect that any fair dealing with literary, musical, artistic or cinematograph film for the purposes of research, private use, criticism or review or the reporting of current events is not an act constituting an infringement of copyright" (Osinbajo and Fogam, 1991).

The concept of **fair dealing** is similar to the common law and American concept of **fair use**. Pember (2003/04) writes that "the 1976 copyright law contains the common law doctrine of fair use. Section 107 of the law declares, "The fair use of a copyrighted work…for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research is not an infringement of copyright." In declaring whether the use of a particular work is a fair use, the statute says that courts should consider the following factors.

1. The purpose and character of the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole.

4. The effect of the use on the potential market for or value of the copyrighted work.

Each factor on this list will be considered separately as the doctrine of fair use is explored.

Fair use which was defined by an American court [*Triangle Publications v Knight-Ridder*, 626 F. 2d 1171 1980 as cited in Pember (2003/04) as "A rule of reason …to balance the author's right to compensation for his work, on the one hand, against the public's interest in the widest possible dissemination of ideas and information on the other."

Pember (2003/04) says that "This doctrine, then, permits limited copying of an original work that has been properly copyrighted and has not yet fallen into the public domain. 150 years ago all copying of a copyrighted work was against the law. This absolute prohibition constituted a hardship for scholars, critics and teachers seeking to use small parts of copyrighted material in their work. A judicial remedy for this problem was sought. It was argued that since the purpose of the original copyright statute was to promote art and science, the copyright law should not be administered in such a way as to frustrate artists and scientists who publish scholarly materials…the doctrine of fair use emerged from the courts, and under this judicial doctrine, small amount of copying were permitted so long as the publication of the material advanced science, the arts, criticism and so forth.

If a defendant therefore is able to prove to the court that the infringement was a fair use of the work, and the court, after considering the specific use believes it to be fair, may have a defense against copyright infringement.

The last available defense in law for litigation on copyright violation is that the infringement is an exception from copyright control based on the provisions of the statute in Schedule 2 of the Copyright Decree of 1988. The following acts, in addition to fair dealing are exempted from the right of copyright:

i. The doing of any of the aforesaid acts by way of parody, pastiche, or caricature.
ii. The inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public.
iii. The reproduction and distribution of copies of an artistic work permanently situated in a place where it can be viewed by the public.

i. The incidental inclusion of an artistic work in a film or a broadcast.
ii. The inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgement of the title and authorship of the work.
iii. The broadcast of a work if the broadcast is approved by the broadcasting authority as an educational broadcast.
iv. Any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if a reproduction is made for any such purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of the period of 12 months after it was made.
v. Subject to schedule 3 of this Decree, the making of a sound recording of a literary or musical work, and the reproduction of such a sound recording by the maker or under license from him, where the copies thereof are intended for retail sale in Nigeria and the work has already been previously recorded under license from the owner of the relevant part of the copyright whether in Nigeria or abroad, subject to such conditions and to the payment of such compensation as may be prescribed.
vi. The reading or recitation in public or in a broadcast by any person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement: provided that such reading or recitation is not for commercial purpose.
vii. Any use made by a work by or under the direction or control of the government, or by such public libraries, non-commercial documentation centres or scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived thereof and no admission fee is charged for the communication, if any, to the public of the work so used.
viii. The reproduction of a work by or under the control of a broadcasting authority where the reproduction or any copies thereof are intended exclusively for a lawful broadcast and are destroyed before the end of a period of six months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work.
ix. The broadcasting of a work already lawfully made accessible to the public and subject (without prejudice to the other provisions of this schedule) to the condition that the owner of the broadcasting right in the work shall receive a fair compensation determined, in the absence of agreement, by the court.

x. News of the day publicly broadcast or publicly communicated by any other means.
xi. The communication to the public of a work, in a place where no admission fee is charged in respect of the communication, by any club whose aim is not profit making.
xii. Any use made of a work for the purpose of judicial proceeding or of any report of any such proceeding.
xiii. The making of not more than three copies of a book (including a pamphlet, sheet or music, map, chat or plan) by or under the direction of the person in charge of a public library for the use of the library if such a book is not available for sale in Nigeria.
xiv. The reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access.
xv. Reproduction of published work in Braille for the exclusive use of the blind, and sound recordings made by institutions or other establishments approved by the government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled persons.

SELF-ASSESSMENT EXERCISE 7

Justify the principle of fair dealing or fair use under the copyright law.

3.8 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.

Section 16 of the decree says that all infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of the infringing copies shall be deemed to be the property of the owner who may take recovery of them.
According to Section 17 of the Copyright Decree, the person whose rights have been infringed shall be entitled to an award of damages, injunctions and any other remedies as the court may deem fit to award in the circumstances.

In addition, Section 26 says that a plaintiff whose right to copyright has been infringed shall be entitled to damages, injunction, and account for profit or conversion.

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

1. Damages
2. Injunction
3. Account of profit
4. Conversion or recovery of infringing copies of work.

Damages: This is the money or compensation that is awarded to the winning party (usually the plaintiff) in a civil lawsuit. The owner of copyright is entitled to damages if it is proved that the copyright on the work was infringed and he suffered losses as a result of the defendant's action. Adesanya (1969) cites Lord Wright in *Sutherland Publishing Co. v. Caxton Publishing Co.* (1936) as saying that "the owner of an infringed copyright may bring action in damages, and the measure of damages is the depreciation caused by the infringement to the value of the copyright as a chose in action".

Adesanya (ibid) says a "'chose in action' is any intangible object of property, e.g. shares in a company, a contract debt, a copyright" and that "any loss suffered by the copyright owner as a result of the reduction in the sale of his work or any reduction in the probable profit will be taken into account in awarding damages to him."

Injunction: Is an order of the court restraining the commission or the continuance of a wrongful act or omission [Adesanya, 1969]. It is important that the plaintiff secures an injunction to limit the loss, havoc or impact of the infringement on his work pending the determination of the case by a court.

An injunction may be interlocutory or perpetual, depending on the case. An interlocutory injunction is granted prior to the determination of the case to limit the impact of the infringement on the owner of the copyright. It is usually issued immediately after the issuance of the writ, but at the application of the plaintiff and the discretion of the court.

If a plaintiff is unsuccessful in proving that an infringement has been made on the copyright that subsists in his work, the injunction will be lifted and the defendant will be discharged and acquitted. If however, the plaintiff is successful in convincing the court in his claim of an infringement on his work, the injunction becomes perpetual. A perpetual injunction is a permanent order of the court restraining the defendant, permanently from the commission or the continuance of a wrongful act.
If the infringement of the copyright on a work is such that it is done once, the havoc is irredeemable and is unlikely to be repeated, then, an

injunction is unlikely to be the best form of remedy (for the plaintiff) in such a case.

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.

That probably explains why, according to Adesanya (1969) "A plaintiff cannot, however, obtain both an account and damages for the same infringement, since a claim for an account condones the infringement."
Conversion or recovery of infringing copies of work: According to Section 16 of the Decree, the owner of a copyrighted work which is infringed is regarded as the owner of all infringing copies of the work, or of any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of the infringing copies shall be deemed to be his property and he is entitled by law to take recovery of them.

"He may, therefore, bring an action for the recovery of possession of the plates and infringing copies, or for damages for conversion. Where the defendant, in a proceeding in respect of the infringement of the copyright in a work, alleges and proves that he was not aware, at the date of the infringement, of the existence of copyright in the work, and that he had no reasonable cause to suspect that copyright subsists in the work, the plaintiff is entitled to only an injunction in respect of the infringement" (Adesanya, 1969).

A person who infringes on an author's copyright, especially a performer's right, according to Section 27 of the Copyright Decree, can also be held **criminally liable**. The penalty after conviction ranges from fine or imprisonment or both.

SELF-ASSESSMENT EXERCISE 8

A Nigerian newspaper publishes an article that had been earlier published by another Nigerian newspaper without permission.

(a) Would the citation at the end of the latter publication that the article was "culled from so and so newspaper" exonerate the infringing newspaper from being culpable?
(b) Which of the remedies discussed above would be ideal in compensating the newspaper in which the copyright of the article subsists.

4.0 CONCLUSION

It has been argued in some quarters that copyright is restrictive and hinders creativity. But it is obvious that the law of copyright actually seeks to protect creativity by ensuring that individuals benefit from the efforts of their hard work and ingenuity.

The message for media professionals is that they should do their own work and acknowledge it when they have no other choice than to cite a "small" and "insignificant" portion of another's work.

5.0 SUMMARY

property that 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.

Injunctions, damages, account of profits and recovery or conversion of infringing copies or work are the remedies available for the violation of the copyright in a work.

6.0 TUTOR-MARKED ASSIGNMENT

Why are there exemptions to a violation of copyright?

7.0 REFERENCES/FURTHER READING

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UNIT 2 LAW AND ETHICAL REGULATION OF THE NEW MEDIA

CONTENTS

1.0 INTRODUCTION

This unit explores the new media, the challenges that accompany its regulation and the implications of publishing defamatory or indecent materials through the Internet or infringing on the copyright of author's work on the Internet.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- explain the various aspects of the new media
- enumerate regulations against indecent publication on the Internet
- state the implications of publishing defamatory materials on the Internet
- write on copyright infringement on author's work on the Internet.

3.0 MAIN CONTENT

3.1 New Media in Nigeria: 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 Nigeria, 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. So pathetic is it that in September 2011in Nigeria, a video was posted on the Internet of an alleged female student of Abia State University in South East Nigeria who was gang-raped by five male students. The ordeal (based on the video recording) lasted for about an hour and at a point, the victim became suicidal, asking that she be killed. I do not know which is worse, the fact that she was raped or the fact that the rapists found it exciting enough to share their atrocity with the world! Some people who watched the video commented (on chat forums) that she was not a student but a street hawker. I ask: does anyone deserve to be raped? In any case, the essence of the illustration is just to show one fact; people the world over see the Internet as a no-law zone and a 'space' in which they can do as they please!

Unfortunately, this is not the case. There is regulation in the world and the new media and indeed the Internet is not exempted. The laws that apply to the traditional media also apply to the new media and violations executed on the Internet can be redressed.

There are no specific laws on the new media in Nigeria 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 Nigeria 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 Nigeria. Almost all traditional media organisation 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 organisations, individual journalists or authors and private persons and organisations 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 Nigeria 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 Nigeria.

SELF-ASSESSMENT EXERCISE 1

Why do you think there is a dearth of Internet or new media specific laws in Nigeria?

3.2 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.''

3.2.1 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.

This provides the prospective claimant the opportunity to choose where to issue proceedings and what law to use. This is due to the fact that an action for defamation can arise in the country where the information is downloaded and viewed as well as in the country where it is posted online. Claimants will just have to confirm the law and the opportunities and challenges of the respective countries and the provisions they have on defamation via the Internet.

In Overs (2002), "the courts are beginning to recognise the complex issues involved in defamatory statements published on the Internet and read in other jurisdictions. In 2000, the House of Lords held that a Russian businessman could sue a United States magazine called *Forbes* in England in respect of alleged defamatory statements published on the magazine's website (*Berezovsky v Michaels (2000*). In the case of *Gutnick v Dow Jones (2001)* the Australian Supreme Court allowed Gutnick, an Australian, to sue Dow Jones, a United States company, for defamation in Australia in relation to an article published by Dow Jones on its website. The court rejected the contention by Dow Jones that the proceedings should take place in the United States because the article was only intended to be read there."

If an individual or body corporate however issues proceeding in another jurisdiction, they must worry about enforcement as there are courts that do not recognise judgments in other jurisdiction if there is no mutual agreement or joint law between them and the issuing jurisdiction.

SELF-ASSESSMENT EXERCISE 2

Why is defamation on the Internet actionable?

3.3 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.

Even the Nigerian Copyright Decree No 47 of 1988 (See Section 2 (1a&b)) protects only copyright in works printed or published: in Nigeria, by Nigerian authors, by persons domiciled in Nigeria, or body corporate incorporated under the laws of Nigeria. The modification to the Nigerian Copyright law: Copyright Act CAP. 68 LFN 1990 has not altered this section.

"For international copyright protection under the Universal Copyright Convention the formula ©, the name of the copyright owner and the date of first publication must be placed on a work" (Overs, 2002).

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.

SELF-ASSESSMENT EXERCISE 3

Does the Berne Convention have any impact on the Nigerian copyright law?

3.4 Internet and Morality

The laws still affect publications on the Internet as such publications of any article are capable of corrupting persons who are likely to read, see or hear it.

In Nigeria, Obscene Publications Act No 15 of 1961, Children and Young Persons (Harmful Publications Act, 1961, Child's Right Act of 2003 and Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, No. 24 2003 are some of the laws that can be evoked to combat the publication of indecent and obscene material on the Internet in Nigeria.

A lot of them forbid the publication of indecent and obscene articles but they are not specific to the Internet. The Child's Right Act of 2003 now makes publication of pornographic pictures of children an offence.

In the United Kingdom, under the Obscene Publications Act 1959, as amended by the Criminal Justice and Public Order Act 1994, a person who makes obscene material available for transmission or downloads or communicates obscene material by electronic transmission commits an offence.

"It is not possible to access the Internet without an Internet service provider. As a result, the Internet Service Providers have been targeted

by law enforcement agencies and action groups for providing access to obscene material. For example, in Germany in 1997 the local manager of CompuServe was prosecuted in connection with child pornography on the Internet, which was hosted on CompuServe's servers. However, the Government and the European Union support self-regulation by Internet service providers rather than the passing of specific obscenity legislation. Under article 15 of the E-commerce Directive, Internet service providers will not be obliged to monitor the information and content transmitted and stored on their systems, although they will be required to remove unlawful material from their sites if it is brought to their attention" (Overs, 2002).

Adebiyi (2009) says "The dissemination of pornography, via the Internet has raised numerous legal questions. The major issues that need to be examined are in respect of the liability of the author of the material and the additional liability of the network service provider."

Adebiyi (ibid) cites the "American case of *State of New York v. BuffNet*, An Internet service provider (ISP) pleaded guilty to the misdemeanour charge of knowingly providing access to child pornography. A two-year investigation found that ISP, BuffNet, knowingly hosted a child pornography newsgroup called "Pedo University". The police notified BuffNet that they were hosting illegal content, yet BuffNet failed to remove the newsgroup from its servers. Police then seized the ISP's servers. BuffNet was levied a $5000 fine, and removed the obscene content."

SELF-ASSESSMENT EXERCISE 4

In what respect does the mass media law in Nigeria relevant to social media?

4.0 CONCLUSION

There are no much law regulating the legal and social atrocities committed on the Internet and little or nothing is being done to address this grave challenge in Nigeria. Adebiyi's (2009) comment captures the situation completely: "Much of the international work has so far been centered in western European and OECD countries; the potential extent of computer crime is as broad as the extent of the international telecommunication systems. All regions of the world must become involved in order to prevent this new form of criminality. Ensuring the integrity of computer systems is a challenge facing both developed and developing countries. It is predicted that within the next decade, it will be necessary for developing nations to experience significant technological growth in order to become economically self-sufficient

and more competitive in world markets. As dependence on computer technology grows in all nations, it will be crucial to ensure that the rate of technological dependence does not outstrip the rate at which the corresponding social, legal and political frameworks are developing. It is important to plan for security and crime prevention at the same time that computer technology is being implemented."

5.0 SUMMARY

We have discussed the Internet and how defamation, obscene publication and copyright infringement can be committed on the Internet. The Internet, by making information posted on it available to the whole world simultaneously publishes the information posted on it automatically, an important element in defamation and obscene publication cases.

Media organisations and individual authors must ensure that they apply the regular media laws in their publications on the Internet as they do while publishing in traditional media.

6.0 TUTOR-MARKED ASSIGNMENT

Will regulation of the Internet hinder the freedom of expression? Interview a member or executive of the Nigerian Union of Journalist for his/her opinion, on the question.

7.0 REFERENCES/FURTHER READING

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UNIT 3 PROTECTION OF NEWS SOURCES OR WHISTLE-BLOWERS

CONTENTS

1.0 INTRODUCTION

Information is the life wire of communication: without it (the latter) cannot endure. And the sources of information for the media are the springs that have continuously nourished the profession. Without news sources or whistle-blowers, the media will be unable to effectively carry out its function as a watchdog in the society. The media must therefore ensure they protect the sources of information in order to ensure their survival as agents of communication and change.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- identify sources of news for news media
- explain the importance of protecting the identity of news sources (whistle-blowers)
- cite cases to present the different positions of the law on protection of news sources
- enlighten journalists on how to deal with sources that require confidentiality.

3.0 MAIN CONTENT

3.1 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.

3.2 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.

"The jailing of a reporter who refuses to cooperate with government authorities who want him or her to divulge confidential information is not a common occurrence in the United States today. But it does happen. In 1993, Staurt (Fla.) News reporter Tim Roche served 18 days in jail because he refused to reveal the name of the person who gave him a copy of a sealed court order in a child custody case. In December of 1995 Houston Chronicle reporter Jennifer Lenhart was jailed for refusing to reveal the names of grand jury members who told her about secret deliberations in a police shooting case. In October of 1996 a judge in Florida sentenced Miami Herald reporter David Kidwell to 70 days in jail because he refused to answer a prosecutor's questions about an interview he had with a man accused of killing his step-daughter. Kidwell spent two weeks in jail before a federal judge freed him and directed the state appeals court to reconsider the case in light of numerous federal court rulings that recognise a first amendment privilege for reporters.

In June of 1999 a federal judge ordered two Atlanta Journal-Constitution reporters, Ron Martz and Kathy Scruggs, to be jailed for refusing to reveal who told them that security guard Richard A. Jewell was leading suspect in the bombing at the 1996 Olympic Games in Atlanta. In February of 2000, reporter Tim Crews of the Sacramento Valley Mirror was jailed for five days for refusing to reveal the names of the sources of his story that a former California Highway Patrol officer had stolen a gun from a county police drug task force. And in 2001 a freelance writer named Vanessa Leggett was jailed for almost five months in Texas because she refused to give her notes from an interview to a grand jury investigating a murder" (ibid).

Journalists are most of the time able to access materials and gather information that may be difficult for other individuals and institutions. They have sources' confidence and are able to elicit information from them, they are able to interview rebels and the rebellious, they gain access to protests and protesters and more often than not, the government and law enforcement agencies want to obtain this information from the media for their purposes.

"Hence, reporters are often asked to reveal information they have gathered but chosen not to publish or broadcast. Most of the time journalists comply with such requests. At times, however, they refuse. When this happens, the persons interested in obtaining this information often get a subpoena to force the journalist to reveal the name of the news source or to disclose the confidential information. Or government agents may get a warrant to search a newsroom or a reporter's home to find the information they want" (ibid).

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

i. Do not routinely promise confidentiality as a standard interview technique.
ii. 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.
iii. Do not rely exclusively on information from a confidential source. Get corroboration from a non-confidential source or documents.
iv. 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?
v. Consider whether you can use the information without disclosing that it is obtained from a confidential source.

Pember (ibid) adds that reporters should always consult with a supervisor or editor before promising anonymity to a source; if a legal action results the journalist will have to rely on the news outlet to assist in defending the action.

It does happen that some unprincipled journalists break their promises without a reasonable excuse. This action is unethical and can affect the image of the medium and the goodwill of the reporter. Not only those, instances have shown that news sources can actually sue for a breach of contract and win!

Pember cites the case of *Cohen v. Cowles Media Co*., 445 N.W. 2d 248 (1989) "In 1982 Dan Cohen, who was closely associated with the Republican campaign for the governorship of Minnesota, approached reporters for both the *Minneapolis Star* and *Tribune* and the St. Paul Pioneer Press Dispatch and said he would give them previously unpublicised information about Marlene Johnson, the Democratic-Farmer-Labour candidate for lieutenant governor. All the reporters had to do was to promise never to reveal Cohen's name as the source of the

information. The reporters agreed and Cohen supplied them with 12 and 13-year-old court records showing that Johnson had been arrested for unlawful assembly (she was at a protest rally) and that she had been convicted of petty theft for leaving a store without paying for a $6 worth of sewing goods (the conviction was later vacated). Editors at both newspapers decided to publish the information about the candidate, but because the election was just days away, they felt it was necessary to include Cohen's name as the source of the information to give readers the opportunity to evaluate the charges against Johnson. When Cohen's name was published, he lost his job. He angrily sued for breach of contract, claiming he and the reporters had entered into a contract agreement when he provided the information for a promise of confidentiality. A Minnesota trial court agreed and awarded the public relations man $200, 000 in compensatory damages and $500, 000 in punitive damages". The case moved from one appeal court to the other.

In 1992, Cohen was finally awarded $200, 000 in damages in his suit against the newspaper by the Minnesota Supreme Court.

SELF-ASSESSMENT EXERCISE 1

Should a journalist lose an opportunity to publish an exclusive story because of his/her inability to make a confidentiality pact?

3.3 Nigerian Journalists and the Protection of News Sources

Journalists cannot survive without news sources and news sources will not reveal information to journalists if their anonymity cannot be guaranteed. Government agencies, legislative chambers and the judiciary sometimes demand that journalists reveal their news sources or the vital information obtained from these sources for their purposes. Journalists are thus in a serious dilemma.

Unfortunately, there is no outright law that protects the journalist or supports them in their efforts to protect their news sources. Many have argued that the need for journalist to protect their news sources is purely an ethical issue and the law and society cannot be hindered as a result of this.

Therefore, whether a journalist will be forced to release his news sources or information derived from them is determined on a case by case basis. In the United States, the court is less likely to require a journalist to reveal his sources and information obtained from them in a civil case. But a subpoena may not be squashed if the information required from the reporter is deemed to be necessary and critical to the prosecution and that the information may not be available through any other means.

Osinbajo and Fogam (1991) cite the following three cases regarding journalists and the protection of news sources in Nigeria:

> "In *Tony Momoh vs. The Senate* [(1981) 1 N.C.L.R. 105, Court of Appeal decision (1983) 4 N.C.L.R], for example, the *Daily Times* Newspaper published an article on how senators of the Second Republic lobbied for contracts from the executive branch of the government. The senate invited the editor to disclose the source of his information. He went to court seeking a declaration that such demands constituted a violation of his constitutional rights of freedom of expression. The High Court of Lagos State held that to force a person who disseminates information through the medium of the newspaper to disclose the source of information given in confidence was indeed an interference with the freedom of expression granted by Section 36 of the constitution then in force. The Court of Appeal, without reversing the decision of the High Court, stated however that, there is nothing in Section 36 which confers any express or implied right on a pressman not to disclose the source of information if he is required to do so.
>
> In *Innocent Adukwu & Ors. vs. Federal House of Representatives*, an article entitled *"*Fraud – Legislators Claim Salaries and Allowances for Fictitious Staff*"* appeared in one of the issues of *Sunday Punch* Newspaper. The editor and some journalists of that paper were summoned by a committee of the House of Representatives to give evidence on the information contained in that issue. They applied to the court complaining that the action of the house amounted to an interference with their rights under section 36 of the 1979 Constitution. On the issue of disclosure of sources of information by a journalist, Balogun J, had this to say:
>
> "…I think, that newspapers are agents so to speak of the public to collect information which it is in the public interest to make known, and to feed the public of it. In support of this constitutional right of press freedom the newspaper cannot be required to disclose its sources of information except in grave or exceptional circumstances, neither by means of discovery before trial nor by questions or cross-examination at the trial nor by means of subpoenas from courts or summons by a legislative investigating body. The reason is because if newsmen were compelled to disclose their sources of information which it is not in the public

> interest to make known, Charlatans would not be exposed, unfairness would go un-remedied. Misdeeds and serious faults in the corridors of power and elsewhere would never be made known to the public…the freedom of the press…cannot be hampered or restricted…save within the permissible exceptions built in under the constitution" [(1982) 3 N.C.L.R. 394].
>
> The Lagos State High Court in *Oyegbami v. Attorney-General of the Federation & Ors*, applied the same theory as in the other two cases. It was again stated that a newspaper editor or journalist cannot be guilty of contempt of court for refusing to disclose the source of information, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice, national security, public safety, public order, public morality, welfare of persons or for the purpose of prevention of disorder or crime."

It is worthy of note however that the law only protects journalists and give them privilege (sometimes) from revealing their sources, information retrieved from those sources and unpublished materials (in situations that are not grave and exceptional). The law does not whatsoever grant this privilege or exception to non-journalists and pressmen.

A journalist is "someone who gathers news for a news medium" (Pember, 2003/04). A journalist, according to a three-judge panel from the U.S. Circuit Court of Appeals is a person:

- who is engaged in investigative reporting
- who is gathering news
  who possesses the intent at the beginning of the news-gathering process to disseminate this news to the public.

Now this presupposes that individuals working with non-conventional news organisations may not be regarded as journalists. Are staffs of soft-sell media journalists? The question may require a juristic response.

Smith (1978) says that "The refusal to reveal sources is not a matter of heroics: it is part of the job which, in many instances puts the journalist between two entrenched factions. A journalist's responsibility is to the law: his duty is to his source. If he dislikes the consequence of this, he should consider a less onerous profession."

Majority of journalists will not quit the profession because of this challenge but a good number of them will not want to go to jail either.

That is why journalists and pressmen in general must learn how to relate with sources who demand confidentiality.

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.

SELF-ASSESSMENT EXERCISE 2

Will a promise of confidentiality made to a source be valid, if it is oral and/or unrecorded?

4.0 CONCLUSION

The protection of news sources or whistle-blowers is an ethical issue that every professional journalist and media practitioner must take seriously as news and information, according to Pember "are the lifeblood of the press and the news sources are the wells from which that lifeblood springs." Therefore, corruption, ineptitude, inequities and violations of law will not be exposed if news sources, fearing for their safety and livelihood refuse to reveal such information if their anonymity cannot be guaranteed.

5.0 SUMMARY

We have learnt that protection of news sources is an ethical issue for journalists and the media must ensure the confidentiality of their news sources if they will continue to gain access to information that will help them perform their function of informing and acting as a watchdog and agents of change in the society.

The judiciary, government agencies and the legislature have the authority to demand journalists to reveal their sources and information gathered from the source, whether published or unpublished.
There is no legislation that protects journalists from revealing their sources, but they can appeal against it if they can prove that the information can be gotten from another source, the information is not critical to the determination of any case and the state does not have a compelling and overriding interest in the case.

6.0 TUTOR-MARKED ASSIGNMENT

Defend the need for the media to protect the anonymity of their news sources.

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UNIT 4 CONTEMPT OF COURT AND PARLIAMENT

CONTENTS

1.0 INTRODUCTION

The law protects legislative houses and grants their members privileges during the performance of their duties so that they can effectively debate and participate in proceedings that will enhance the development of the country. In the same way, the society has to uphold the integrity of the courts if the integrity and trust in the judiciary as the harbinger of justice is to be maintained.

To ensure this, the law on contempt is instituted to enhance the capacity of the legislature and the judiciary to ensure authority in their institutions. The aim of this unit is to explain in detail the contempt of court and parliament and its implications for media practice and practitioners.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- define contempt of court and parliament
- analyse the laws on contempt of court and parliament
- explain how the media can run afoul of contempt of court and parliament.

3.0 MAIN CONTENT

3.1 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 institutionalised 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.

SELF-ASSESSMENT EXERCISE 1

Considering the origin of the law of contempt, is it still relevant or required in the 21st century?

3.2 Laws on Contempt of Court in Nigeria

The laws of contempt of court in Nigeria are in Acts of Parliament, Criminal Code, Penal Code and the Constitution.

Starting with the most elaborate, Section 133 of the Criminal Code provides as follows:

"Any person who:

(1) Within the premises in which any judiciary proceeding is being had or taken, or within the precincts of the same, shows disrespect, in speech or manner, to or with reference to such proceeding, or any person before whom such proceeding is being had or taken
(2) Having been called upon to give evidence in a judiciary proceeding, fails to attend or, having attended, refuses to be sworn or make an affirmation, or, having been sworn or affirmed, refuses without lawful excuse to answer a question, or to produce a document or prevaricates, or remains in the room in which such proceeding is being had or taken, after the witnesses have been ordered to leave such a room
(3) Causes an obstruction or disturbance in the course of a judicial proceeding; or
(4) While a judiciary proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or
(5) Publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private

(6) Attempts wrongfully to interfere with or influence a witness in a judicial proceeding, either before or after he has given evidence, in connection with such evidence
(7) Dismisses a servant because he has given evidence on behalf of a certain party to a judicial proceeding
(8) Retakes possession of land from any person who has recently obtained permission by writ of court
(9) Commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken, is guilty of a simple offence, and liable to imprisonment for three months."

This law presupposes therefore, that any person who is charged under Section 133 of the Criminal Code "must be tried by a magistrate or judge or other judicial officer other than the one against whom the offence is committed, since it is one of the fundamental principle of natural justice that a man cannot be a judge in his own case" (Adaramaja, 1969).

Section 6 of the Criminal Code provides that:

"Nothing in this Act or in the Code shall affect the authority of courts of record to punish a person summarily for the offence commonly known as contempt of court; but so that a person cannot be so punished and also punished under the provisions of the Code for the same act or omission."

From section 6 therefore, it is evident that a judge, after observing a conduct and having the conviction that the conduct is a contempt of court can, there and then, punish the contemnor for contempt of court. No formal charge need be made and no trial conducted.

Adaramaja (ibid) posits that "Why the courts have always chosen the latter procedure does not seem to be farfetched. In the first place, the offence carries a maximum punishment of three months' imprisonment. It is doubtless that an act or omission constituting the offence may be so grievous or serious that a much greater punishment is necessary to purge it or make it a deterrent to prospective contemnors of court. In the latter procedure there is no limit to the punishment that can be inflicted. Secondly, the punishment under this latter procedure is summary in the sense that no charge is formally laid and no witnesses are called to prove the offence. Sometimes the offender is summoned before the court against whom the contempt is committed and, after having been told the gist of the offence, he is there and then punished without a trial. At other times, if the contempt is committed in *facie curiae* (that is in the face of the court or within the court precincts), the offender is there and then

punished. These are two great advantages and they save the expense and time involved in a formal trial."

Critics have condemned the summary judgment of contempt, saying that it is against the laws of natural justice, noting that since to punish a person summarily implies that a court can punish a person for contempt of itself without charging before another court for trial and therefore it is a breach of fundamental principle of justice that a person cannot be a judge in his own case.

Pember (2003/04) adds that "The most onerous application of contempt power occurs when it is summarily applied. When a judge uses a summary contempt power, the jurist acts as a prosecutor ("I accuse you of …"), jury ("Guilty as charged") and judge (I sentence you to…"). This power is actually reserved for those occasions when the judge has actual firsthand knowledge of the contemptuous act; for example, if the defendant misbehaves in the courtroom or if the reporter refuses to answer questions relating to the identity of a source. When the summary power is applied, the accused has few of the rights normally associated with due process of law. There is no jury trial, no right to call witnesses. The accuser and the judge are one and the same."

Other critics have argued further that summary contempt power allows a judge to sentence an individual for an offence which may not be expressly written in law as it is left to the judge to determine what act(s) amount to contempt of itself and what punishment is due for it. They cite Section 22(10) of the constitution which provides that: "No person shall be convicted of a criminal offence unless that offence is prescribed in a written law'. Unfortunately, their argument is thwarted by a proviso to s.22 (10) of the constitution which expressly saves the abolition of unwritten and undefined criminal offence of contempt of court. It is as follows: 'Provided that nothing in this subsection shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty thereof is not so prescribed."

Another provision on contempt of court is Section 155 of the Northern States Penal Code which provides as follows:

"Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of a judicial proceeding shall be punished with imprisonment for a term which may extend up to six months or with a fine which may extend to £20 or with both."

It will be noticed that the wording of Section 155 of the Northern States Penal Code is so wide and all-embracing that the press can always be charged with contempt of court in almost the same circumstances as it can be charged under the Criminal Code (Adaramaja, 1969).

Section 39 (3) of the 1999 Constitution also provides a legislation for contempt of court. It says:

"Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society: (a) for …maintaining the authority and independence of courts …"

Different situations and conduct can result in contempt problems for the press. According to Section 133:

"Any person who:

(4) While a judiciary proceeding is pending, makes use of any speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or (5) Publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private; or (9) Commits any other act of intentional disrespect to any judicial proceeding, or to any person before whom such proceeding is being had or taken, is guilty of a simple offence, and liable to imprisonment for three months."

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.

SELF-ASSESSMENT EXERCISE 2

Is summary contempt power a violation of the fundamental human rights of citizens?

3.3 Forms of Contempt of Court

There are different classifications of contempt based on different criteria. "Varieties of contempt are recognised through the common law, and efforts have been unsatisfactory: there are frequently disagreements among courts about what kinds of behaviour constitute what kinds of contempt" (Pember, 2003/04). This unit will not be authorising any particular form or joining in the debate. Rather, it will adopt the civil and criminal contempt classification applied by Osinbajo and Fogam (1991).

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).

Direct criminal contempt

Direct contempt is that which occurs in the presence of the presiding judge (*in facie curiae* – in the face of the court) and may be dealt with summarily: the judge notifies the offending party that he or she has acted in a manner which disrupts the tribunal and prejudices the administration of justice. After giving the person the opportunity to respond, the judge may impose the sanction immediately.

Acts that constitute direct criminal contempt will include but not limited to: refusal to give evidence in court, taking photographs inside the courtroom, actions which interrupt or disturb court proceedings like noise, protests and actions that disrespect or insult the judge or other officers of the court present in the court.

The main feature of direct criminal contempt, that is, *in facie curiae* – in the face of the court is that the act occurs in the presence of the judge. The judge has firsthand knowledge of the contemptuous act and he/she can there and then summarily punish the contemnor for the act committed.

Judges wield power to summarily punish for contempt and they can use this power at any time. An interesting example occurred on April 4, 2012 when a Magistrate attached to the Lagos High Court, Ikeja, ordered the arrest of the journalists waiting to cover the judgment of a coroner inquiring into the cause of death arising from the August 15, 2010 ghastly accidents along the Otedola bridge end of the Lagos/Ibadan Expressway.

At the orders of Magistrate Oshoniyi, the journalists were arrested for noise making. The journalists were then taken to Area F Police Command in Ikeja and their mobile phones and cameras seized.
Channels Television's Judiciary Correspondent, Shola Soyele reported that trouble started when a female police prosecutor in mufti simply identified as Rose and attached to one Magistrate A. A. Oshoniyi of the Lagos State Judiciary accosted the journalists, raised her voice and shouted on them to vacate the court premises while they gathered for proceedings to commence on the inquest.

According to him, attempts by the journalists to explain their mission fell on deaf ears and in the course of the exchange of words, Magistrate Oshoniyi came out of her chambers and without trying to find the cause of the noise immediately ordered the arrest of the journalists.

The journalists beaten include Wale Busari of Silverbird Television, Wahab Abdullahi of *Vanguard* Newspapers, Akintunde Akinwale of

Thisday Newspapers and Channels Television's cameraman Polynous Odedeyi. Those arrested are journalists from the *Nigerian Compass, Thisday, Leadership, Vanguard, PM News, Nigerian Tribune*, and *Moment* Newspapers.

The matter was later resolved. The essence of citing this incident is not to debate its legality or otherwise. Rather, it is to show the extent of the power of a judge to deal with individuals and/or the media for contempt committed in the face of the court.

Osinbajo and Fogam (1991) cites the case of *Ex Parte Sturm* [152 Md. 114, 136 A. 312, 51 A.L.R. 356 (1972)]. "The court ordered the surrender of the photographic plates of a photographer and ordered that no picture of a suspect be taken. William Strum a photographer with the *Baltimore News* nevertheless secretly took several pictures of the suspect. The pictures appeared in two newspapers *viz* the *Baltimore News* and *Baltimore American*. Contempt proceedings were instituted against the Managing Editor of both newspapers and the photographer. They were adjudged in contempt of court for violation of its orders about photographing the suspect."

Indirect criminal contempt

Indirect criminal contempt involves acts or publications that (occur *ex facie curiae* – outside the face of the court) but which nonetheless tend to interfere with the course of justice or impede the judge or court officials from performing their duties or litigants from the opportunity of getting justice or a fair trial.

Acts and words (spoken or written) that tend to interfere with the proceedings of the court and/or the administration of justice done outside the face of the court fall under indirect criminal contempt.

Different acts can impede proceedings or interfere with the proper administration of justice. The list is endless. However, any action that is calculated at coercing witnesses or preventing them from giving evidence in court, or communicating with a judge on a case outside of court proceedings or impedes other judiciary staff in the performance of their duties are forms of indirect contempt.

In *Oluyemi Adekoya v. L. K. Jakande* (as cited by Chief Gani Fawehinmi, *The Law of Contempt in Nigeria* (Case Book) pg. 40 in Osinbajo and Fogam (1991), "the plaintiff instituted an action against the defendant and two others on their own behalf and on behalf of all the members of the Newspapers Proprietors Association of Nigeria (NPAN). Whilst the matter was still pending, L. K. Jakande wrote a

letter to all newspaper executives requesting them to blacklist and refuse adverts from plaintiff's advertising agency if he (the plaintiff) did not withdraw the case against the NPAN. The relevant paragraph of the letter read as follows:

> "Should the AAPN fail to fulfill this part of its agreement, council would regard it as an evidence that AAPN was unable to control its members and if by 9th May, the pending matter was not withdrawn or alternatively, if the AAPN did not expel the offending member, all members of the NPAN would be advised to blacklist the agency concerned and refuse advertisement of any type from the agency.
>
> The third paragraph of the letter concluded by saying that:
>
> "…no member of the association should receive any advertisement from Olu Adekoya Press Agency either on credit or cash basis or any terms."
>
> These paragraphs according to the court were calculated to inhibit Mr. Olu Adekoya, a suitor from availing himself of his constitutional right of having his legal right determined by the court. The letters were calculated to have the effect of interfering with one of the parties to the action. This constituted a contempt of court for which the defendant was found guilty. The court then ordered the defendant contemnor:
>
> (a) To withdraw the offending letter from all those to whom it was circulated,
> (b) Direct all members of his association and others to whom the letter was circulated to receive any advertisement from Olu Adekoya for any determined consideration, and
> (c) Publish a suitably worded apology to the court."

Publications on the court/judge, judicial proceedings, and litigants to a case can be contemptuous. Journalists and newsmen generally have to be very careful about their write-ups in order not to run afoul of the law. Different kinds of publications can be contemptuous. According to Osinbajo and Fogam (1991), "Three important species of contempt which can easily be perpetuated in writing are:

i. Publication of false and inaccurate report of court proceedings.
ii. Publications which discredits the court or judge.
iii. Publications likely to prejudice the fair trial or conduct of criminal or civil proceedings."

False and inaccurate report of court proceedings

It is mandatory for the media to ensure it reports judicial proceedings and indeed all matter fairly, truthfully and accurately. It is indeed more obligatory for the judiciary to make certain that its proceedings are not inappropriately reported. Hence, any journalist or media organisation that makes an unreal or fictitious or unbalanced report of a proceeding may be charged for contempt of court.

In *Dr. Ola Oni v. Attorney-General of the Federation and four others: (Re contempt Committed by: (1) Edward Aderinokun; (2) Ayodeji Adekunle).* (as cited by Chief Gani Fawehinmi, *The Law of Contempt in Nigeria* in Osinbajo and Fogam (1991), "The *Daily Express* newspaper of 29th June 1971 in a front page article under the bold headlines "Battle: Government Loses Round one", stated that the Chief Justice of Lagos while hearing a motion remarked that the Federal Executive Council had no statutory powers over the Price Control Board. In fact this was one of the main issues to be decided in the substantive suit fixed for a later date. The headline and the article gave the impression that a ruling, order or decision had already been given in the matter as a result of which the government had lost round one. The court found this to be fallacious and a complete misrepresentation of the proceedings of the court. Such, according to the court, could only have "gained birth in the fertile imagination of an ignorant, cheap, publicity seeking and unintelligent reporter".

Publications which discredit the court or judge

The power of contempt is also used to protect and/or enforce the authority of courts and the integrity of judges. If contempt power is not used for these purposes, the society may lose confidence in the judiciary; its institutions, personnel and judgments and if this happens, there will be chaos in the society.

Therefore, any publication that unscrupulously criticises the judiciary and courts, casts aspersions on the integrity of judges or alleges that judge(s) are partial can be adjudged to be contemptuous.

Osinbajo and Fogam (1991) cite some cases which are very good examples of publications that discredit the court, judge or judiciary in general. Four of the cases are presented below:

One is the case of *R. v. Gray* [(1990) 2 Q.B. 36; (1900-3) All E.R. 54], for example, the editor of the *Birmingham Daily Argus* newspaper described a judge as "The impudent little man in horsehair, a microcosm of conceit and empty-headedness." He went further to comment that "no

newspaper can exist upon its merits, a condition from which the bench, happily for Mr. Justice Darling is exempt. Mr. Justice Darling would do well to master the duties of his own profession before undertaking the regulation of another." The court had no difficulty in finding this to be a scurrilous abuse of a judge in his capacity as a judge and the editor guilty of contempt.

The second is the case of *Deduwa v. The State* [(1975) 1 ANLR (Pt. 1) pg. 1.], the appellants who are parties to a civil action, before Atake J. (as he then was) wrote a letter to the registrar of the High Court asking him to bring to the attention of his Lordship, their fears about his ability to try the case without bias, having regards to the fact that the appellants were Urhobos and their opponents were Itsekiris, the same tribe to which his Lordship belonged. They were also concerned about the fact that since their opponents were the Itsekiri Communal Land Trustees, and the learned judge was a beneficiary, it would be difficult for them to be fairly treated. The learned judge convicted the appellants. Although the conviction was squashed on appeal on the grounds that the learned judge did not comply with the constitutional provisions on fair hearing by the procedure adopted in trying and convicting the accused persons, the court nevertheless observed that the letter was grossly contemptuous of the court.

Third is that of *Atake v. President of the Federation of Nigeria* [1982 11 S.C. 153], Senator Atake asked for the transfer of a case which he had instituted against the President. He suggested in his request that the judge was unlikely to do justice in the proceedings, since he had received a gratification or favour from the President in the form of a national honour sometime during the proceedings. He withdrew the statement when asked to do so by the court. Ruling was delivered in favour of the President. He filed an appeal. In an affidavit in support of the notice for leave to appeal, he set out three proposed grounds of appeal, one of which repeated the imputation of bias against the judge. On his refusal to withdraw the repeated imputation when requested to do so by the trial judge, he was committed to prison for contempt. He appealed. The Court of Appeal held that "every insult offered to a judge in the exercise of the duties of his office is contempt and is even a (more) grievous contempt, whereas here the object is to taint the source of justice."

The fourth and the last that will be cited is that of a case, in 1928 [R. v. New Stateman (Editor) 1928 44 T.L.R. 301] in which Dr. Marie Stopes, a birth control advocate lost a libel action which arose out of the refusal of a newspaper, *Daily Telegraph* to publish her advertisement advocating birth control. Commenting on the trial, the editor of another newspaper, *The New Statesman*, suggested that Dr. Marie Stopes could

not have expected a fair hearing before Justice Avory who was a Roman Catholic. This comment implied partiality and the editor was found guilty of contempt.

Going through these cases may give the impression that it is forbidden to criticise judges, courts or the judiciary in any form. This may be wrong as many have argued that the conduct of judges and decisions of courts are legitimate matters of public concern which the media has a right to report and comment on. The only issue to it is that the comment must be fair and the criticism constructive.

In *Ambard v. A.G. of Trinidad & Tobago* [(1936) A.C. 322 at pg. 355], Lord Atkin commented in favour of the freedom to criticise the Bench when he said:

"But where the authority and position of an individual judge or the due administration of justice are concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way, the wrong-headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful even though outspoken comments of common men."

From the foregoing therefore, the media can criticise the Bench (judiciary/judges) but the criticism has to be free from malice and fair. It must not allege misconduct, partiality or unfairness to the court or any judge and it must be in the interest of the public.

Publications likely to interfere with the cause of justice

The law of contempt is also used to protect litigants and defendants who look to the judiciary for justice. If the media or private individuals (using any other medium) are allowed to publish whatsoever they desire about a proceeding, especially such that can interfere with the course of justice, the populace will lose confidence in their ability to seek justice from the court.

According to Osinbajo and Fogam (1991), "from the media point of view, publications which can be punished under this class of contempt may be grouped into two namely: publications intended or likely to

prejudice a fair trial; and publications that prejudge issues in a pending trial".

i. Publications intended or likely to prejudice a fair trial

The role of the media in every free state is to inform and educate. They thus have a responsibility to ensure that the public are aware of important issues that are of common interest and concern. Nonetheless, the media has to ensure that they refrain from publishing articles that may hinder the court in its duty of ensuring fair and impartial judicial proceedings; be it before, during and after.

Consequently, publications referring to an accused as if he has been convicted, or a publication highlighting the evil characters of an accused that make it obvious that he most likely committed the offence, or publications that reveal the personality and/or photograph of a suspect whose identity is still in doubt are all likely to prejudice a fair trial.

"Suffice it to simply say that during a trial, nothing should be published that could do any of the parties harm in the eyes of a judge or the public. There is no hard and fast rule or exhaustive category of publications that might have this effect" (ibid).

A few cases will be cited in this regard from Osinbajo and Fogam (ibid). "In *R. v. Bolam* (93 Solicitors Journal 220) the *Daily Mirror* after the arrest of John George Haigh on a murder charge ran a front-page story describing him as "Vampire" and describing other murders which he had committed. Though he was not named in the publication, there was little doubt as to the fact that it was referring to Haigh "the man in custody". Silvester Bolam, the newspaper's editor was jailed for three months and the newspaper fined £10,000 for contempt."

"In 1976, [*R. v Evening Standard Co. Ltd., ex parte Attorney General* (1976) The Times, 3 November] the London *Evening Standard* published a front-page photograph of Mr. Peter Hain, on the day he was to take part in an identification parade at a police station. He had been charged with a bank robbery of which he was subsequently acquitted. The newspaper was fined £1,000 for contempt. Delivering judgment, Chief Justice Lord Widgery pointed out that an identity parade was the only method available for deciding whether a witness could identify a suspect. He went to say:

> "In order that the identity parade should be worth the ground it stood on, it must be totally fair and none of the witnesses approaching the line should be given any kind of indication that one particular individual should be preferred to another

> as the choice of suspect. In the present case, the witnesses could easily have gone to the identification parade with copies of *Evening Standard* sticking out of their pockets. That did not happen but might have happened. The court must have that very much in mind."

This class of contempt that is (publications that are likely to interfere with a fair trial) can occur as long as the case is sub-judice. A case is sub-judice from the time an arrest is made up to the time the appeal is heard (if the need arises). In short, a case remains sub-judice until the case is ended.

"The Director and Deputy Director of Military Intelligence and State Security Service respectively were charged with conspiracy to murder and the murder of Dele Giwa (a journalist). The information was squashed by an order of Longe J. The first appellant was present in court during the proceedings and thereafter commented to the press that:

> "What happened in court on Monday and yesterday could be likened to a drama Sketch by the Alawada Group."

The second appellant, (*Punch* Newspapers) were alleged to have published the statement in the *Punch*. Consequently, both appellants were charged with contempt of court contrary to section 133(a) of the Criminal Code of Lagos State. The appellants argued that the statement was made after the conclusion of proceedings. The Court of Appeal disagreed on the grounds that proceedings remain sub-judice until the period within which parties may appeal has expired."

ii. Publications that prejudges issues in a pending trial

Publications that fall under this heading are those that predict what the judgment will or ought to be. Such publications are held to be contemptuous due to the fact that they may affect the actual outcome of the judgment or bring about dissatisfaction with the court and/or its judgments.

The judiciary will vehemently hold such publications in contempt because it is important that when individuals take cases to the court, the court be allowed to handle such cases without interference or obstruction from the media or any other individual or institution.

Therefore, the media must avoid the publications of articles that suggest what the judgment ought to be or is likely to be based on evidences presented before the court or their own investigative journalism.

SELF-ASSESSMENT EXERCISE 3

If a publication discredits the personality or integrity of a judge in his personal capacity and not in his official capacity as a judge, which of the following offences can the judge sue for?

a) Contempt
b) Defamation.

Explain the reason(s) for your choice.

3.4 Defenses against Charge of Contempt of Court

It is rather uncommon to have discussions on defenses against charges of contempt. This is because contempt can be punished summarily (by a judge, after observing a conduct and having the conviction that the conduct is a contempt of court can, there and then, punish the contemnor for contempt of court. No formal charge need be made and no trial conducted). In this situation, the accused will not likely have any opportunity to defend his action, so there can be no appeal.

However, when there is a formal charge for contempt (according to section 133 of the Criminal Code), an accused will likely have the opportunity to defend himself since there will be a trial in another court by another judge, separate from the one who is charging. In this situation, a person or body corporate accused of contempt of court may present the following defenses against the charge (as the situation demands).

However, Adaramaja (1969) posits that "There is a general right of appeal against summary punishment for contempt of court in all the customary courts of the States because the relevant section of the appropriate Customary Courts Law of each of the States gives a general right of appeal to any party aggrieved by the 'decision or order' of a customary court without specifying how that decision or order might have arisen."

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

Innocent publication can be a defense against contempt if a writer or publisher can show that reasonable care was taken and he had no cause to suspect or believe that proceedings are active on the matter that was published. The burden of proof is on the writer or publisher as he or she has to prove that he made all necessary efforts to verify from the police, court or lawyers of the accused to determine this. If there is insufficient evidence that effort was made to find out if the case was active or if negligence is perceived on the part of the writer or publisher, this defence will be quashed. This defence is rather painstaking. "However, the defence may be of assistance to a media company in circumstances where the person was arrested or the warrant was issued just as the presses were rolling or the programme was broadcast" (Dowson-Collins, 2002).

Fair and accurate contemporary reports can be a defence when a writer or publisher can prove that the report or article being held in contempt of court is, according to Section 4(1) of the Contempt of Court Act 1981 a "fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith".

According to Dowson-Collins (2002), the elements of the defence are that the report must:

- Be fair and accurate
- Relate to proceedings held in public (in other words that the public are freely entitled to attend)
- Be published 'contemporaneously' (in other words during or as soon as practical after the hearing)
- Be published in good faith (in other words honestly and without ulterior motive).

Discussion of public affairs

Section 5 of the Contempt of Court Act 1981 provides that "…a publication made as, or as part of, discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion".

The rule exists to ensure that discussions of issues of public interest are not prevented out of fear of falling afoul of the law of contempt.

SELF-ASSESSMENT EXERCISE 4

What opportunities are there for a journalist or news medium which is charged with contempt of court to defend the publication?

3.5 Understanding Contempt of Parliament

Contempt of parliament is any act or words that disrupt or impede the proper working of either House or disrupt, intimidate or wrongly influence MPs in discharge of their duty (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).

The essence of contempt as it relates to parliament is to ensure that Members have the freedom and the protection to carry out their legislative duties without any form of impediment or obstruction from private individuals and/or the media.

Therefore, any action which directly interferes with parliamentary proceedings or publication which impede the proper working of the parliament can be charged for contempt of parliament.

According to Cassels and Handler (2002), it is worthy of note, that numerous examples of MPs who have used the absolute privilege afforded them to 'punish the un-punishable' or make allegations which, if said in public outside the chamber of the House of Commons, would probably result in an action for defamation. The spies Kim Philby and Anthony Blunt were exposed by being named in the House of Commons. The MP Geoffrey Dickens named suspected sex offenders on a number of occasions in the House of Commons. However, the media should take care when reporting such accusations. The publication of fair and accurate accounts of parliamentary debates and extracts from parliamentary papers is protected only by qualified privilege. The media can report a potentially defamatory statement made during proceedings in parliament as long as the report is fair and accurate. However, if the claimant can show that the report was made maliciously; qualified privilege will be no defence.

SELF-ASSESSMENT EXERCISE 5

Why should the Members of Parliament enjoy absolute privilege based on their utterances made on the floor of the legislative house or in any of its committees?

3.6 Categories of Contempt of Parliament

In Nigeria, the Legislative Houses (Powers and Privileges) Act regulates the powers and privileges of the Legislative Houses. The most recent of which is the Legislative Houses and Privileges Act 1990.

Different actions may be committed which may constitute contempt of parliament. According to Cassels and Handler (op.cit), "Conduct that disrupts proceedings, for example, shouting and throwing things from the strangers' gallery, is punishable as contempt."

As regards offences which may be committed by the press which may constitute contempt of parliament, Adegbite (1969) says "Two broad categories of such offences may be mentioned:

i. Offences relating to admittance to the Chamber or precincts of a House;
ii. Offences which arise directly from the publication of reports of parliamentary proceedings."

According to Adegbite (ibid), the first category involves:

1. Entering the house without due permission, or where a permission duly given before has been revoked.
2. Assaulting or willfully obstructing a member or an official of the house in the conduct of his business.
3. Refusing to obey the order of the house or that lawfully made by an official of the house.
4. Disrespectful conduct in the precincts of the house.
5. As strangers, sitting and voting in the house.

Again, Adegbite (ibid) highlights and explains the offences in the second category which seem to affect the press more. According to him, they are:

1 Irregular printing of law and reports: It is an offence to print a copy of any enactment, or of any report, paper, minutes or proceedings of the House, and to hold out any document as having been printed by the Government Printer or by or under the

authority of the House or any of its committees, when in fact the document has not been so printed.

2 Publication of prohibited report: The publication of any matter which the house or its committee has expressly prohibited is an offence. So is the willful publication of any report of any debate or proceedings of the house or committee conducted behind closed doors. It is relevant to point out that, as a rule, members of the public are not allowed to watch the proceedings of standing and select committees of the house. Members of the press are not therefore, normally permitted to pretend to report such proceedings. It is otherwise in the case of committee of the whole house where the committee is presided over by a chairman rather than the president of the house or the speaker as such.

3 Misrepresentation of proceedings: The law punishes the publication of any matter containing a gross, willful or scandalous misrepresentation of the proceedings of a house or of the speech of any member. There has as yet been no prosecution in Nigeria in respect of this offence…The suppression of speeches of particular Members where others are given prominence has been held to constitute a misrepresentation of proceedings. So is the publication, under the colour of a report of a member's speech, of a gross libel on the character and conduct of another member.

4 Defamation of the house or its committees: It is an offence to publish any statement which falsely or scandalously defames a house or any of its committees. Again, we are obliged to turn to the British Parliament for an illustration of this offence.

In 1947 there appeared an article in the *World Press News* alleging that some MPs were in the habit of selling to newspapers secret information which had come into their possession through parliamentary party meetings. All the representatives of the newspapers involved needed to do was to buy drinks for the MP informers. On investigation, it was found that the offending article was written by an MP who was one of those secretly selling the information to the press. He was expelled from the House of Commons, while the publisher was reprimanded by the House for breach of privilege.

Another interesting incident occurred in 1956 when petrol rationing was in force following the Suez crisis. An article appeared in the *Sunday Express* written by Mr. John Junor speculating that the operation of rationing would favour the politicians to whom would be issued 'prodigious supplementary allowances'. The article then warned: 'If politicians are more interested in privileges for themselves than in fair shares for all, let it simply be made plain that the public do not propose to tolerate it.' The House of Commons ruled that this was a serious

contempt of the House, notwithstanding that the writer referred to politicians generally and not specifically to MPs.

5 Publications reflecting on character of officers of the house: A publication reflecting on the character of the President of the House or the chairman of a committee of the House in the conduct of his official duty constitutes an offence. These are leading officers of the house; it is, therefore, fitting and necessary that they should be singled out for protection. Moreover, sometimes, they have to give rulings which may not always be popular."

Okoye also comments on the various ways by which a journalist can show disrespect for parliament. According to him, they are:

a) Misrepresentation of parliamentary proceedings
b) Scandalous publications about parliamentarians
c) Refusal to honour the invitation of the parliament
d) Refusal to correct misrepresentation about parliament or its leaders, etc. (2008)

Refusal to mention the name of a source of a story or criticisms of a member of parliament in his official capacity as a legislator can also be contemptuous of parliament.

SELF-ASSESSMENT EXERCISE 6

Analyse the actions and publications that may be contemptuous of parliament.

3.7 Contempt of Parliament: Jurisdiction and Penalty

When a member of parliament, an individual or the press undertakes an action or publishes an article that undermines the integrity and/or hinder the performance of duty of the House, its leader or a chairman of committee or a member of parliament in his capacity as a legislature, the action or publication is considered contemptuous of Parliament and is due for reprimand or punishment.

However, who or which institution is entitled to punish a contemnor who acts in a way that may hinder the house or its members from the discharge of its functions or publishes materials that places the house or its members in bad light or misrepresent proceedings on the Floor of the House or any other matter that may hamper the performance of legislative duties in the country or any of its states. The issue will be

addressed based on who commits the offence. The offence of contempt can be committed by two categories of individuals:

i. A member of parliament
ii. Private individuals or the press

Our focus is on the second category because it is the one that concerned the media practitioners is those committed by the journalists or media outfits.

Private individuals or the press: When a private individual commits an act or publishes a document that is contemptuous of the legislature, the person or journalist can be punished in the following ways:

a) Reprimand by the president from the bar of the house
b) Request for an apology from the individual to the house
c) An order for the withdrawal of the publication or an order for a correction of the misrepresentation
d) Referral of the trial of contempt to a court

The first three reprimands are clear enough. The last is what will be explained below.

Parliament can impose punishments on non-members but the punishments are minor and cannot be in form of imprisonment or fine. If the parliament believes that the contempt requires a punishment of imprisonment or fine, it has to refer the case to court.

The House of Representative or Senate can refer a case of contempt of itself to a court. To do this, the house will request the Attorney-General to refer the alleged offence to the High Court. The Attorney-General's application must be accompanied by a supporting affidavit. The court would examine the papers and make a preliminary ruling stating whether there is a *prima facie* case against the alleged offender. If so, the latter is then summoned to appear before the court to show the reason why he should not be convicted of the offence for which he has been arraigned.

Okoye (2008), notes that, "Parliament can, and indeed, has issued warrants for the arrest of persons who were summoned by parliament but failed or refused to show up. Parliament can also withdraw the accreditation of any journalist who disrespects it. But it has been the custom of parliament to exercise utmost caution in such matters so as to avoid unnecessary altercations with the media, since both institutions are partners in progress."

SELF-ASSESSMENT EXERCISE 7

Cite any other case in which the parliament in Nigeria has punished for contempt of itself.

4.0 CONCLUSION

The court and parliament are two great important institutions in the country that must be protected if law, order, sanity and decorum are to be maintained in the society. It is not therefore surprising that every state has put in place, through laws, mechanisms to ensure that individuals and state officials do not abuse these institutions, thereby preventing, hindering or obstructing justice administration or legal proceedings in the state.

The law of contempt does not exist to place the judiciary or the legislature above the law. Rather, it subsists to ensure confidence in the institutions while ensuring that citizens can comment on their conduct without malice or prejudice.

5.0 SUMMARY

Contempt of court is any act that interferes with the course of justice or cause justice to miscarry or degrades the personality of a judge in his official capacity or hinders court officials in the performance of their responsibilities. There are direct and indirect contempt of court. And a court can punish summarily for contempt of itself and it can also (in case of criminal contempt) direct the case to another court. The press is likely to fall into contempt by refusing to give the name of a source, publishing articles on matters that are sub judice or writing maliciously negative comments about the personality of the judge in his official capacity amongst others. Fair comment, innocent publication and others are some of the few defenses against a charge of contempt.

Contempt of parliament are acts or publications (whether by a member of parliament) or other individuals that obstructs members of parliament or the house from the performance of its legislative duties. Contempt of parliament, like contempt of court can also be committed either in the face of the parliament or outside. In most instances, the parliament punishes directly for contempt of itself.

6.0 TUTOR-MARKED ASSIGNMENT

Justify the need for laws of contempt in a democratic society.

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UNIT 5 REPORTS OF PARLIAMENTARY AND JUDICIAL PROCEEDINGS

CONTENTS

1.0 INTRODUCTION

The media have to report the proceedings in the courts and parliament for public consumption for obvious reasons; the administration of justice is a matter of legitimate public concern and it is in the interest of the entire society that proceedings in the court and parliament be fairly and adequately reported in order to avoid rumours and miscarriage of justice.

However, the media has run afoul of the law and committed contempt of parliament in its reportage of these proceedings. It is therefore obvious that to prevent this problem, the media have to follow certain rules and procedures that will guarantee freedom of expression and at the same time, ensure the integrity of the bench and House.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- differentiate between accurate and inaccurate reporting of parliamentary proceeding
- enumerate restrictions on reporting parliamentary proceedings
- explain rules and procedures guiding reporting of judicial proceedings.

3.0 MAIN CONTENT

3.1 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:

i. Complete freedom of speech or 'absolute privilege', which protects debates and official proceedings in the House of Commons and the House of Lords.
ii. 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).

In reporting proceedings from parliamentary proceedings, reporters and the media must, according to Adegbite (1969) as presented in the previous unit avoid the following:

1. "Irregular printing of law and reports: It is an offence to print a copy of any enactment, or of any report, paper, minutes or proceedings of the house, and to hold out any document as having been printed by the Government Printer or by or under the authority of the house or any of its committees, when in fact the document has not been so printed.
2. Publication of prohibited report: The publication of any matter which the house or its committee has expressly prohibited is an offence. So is the willful publication of any report of any debate or proceedings of the House or committee conducted behind closed doors. It is relevant to point out that, as a rule, members of the public are not allowed to watch the proceedings of standing and select committees of the house. Members of the press are not therefore, normally permitted to pretend to report such proceedings. It is otherwise in the case of committee of the whole house where the committee is presided over by a chairman rather than the president of the house or the speaker as such.
3. Misrepresentation of proceedings: The law punishes the publication of any matter containing a gross, willful or scandalous misrepresentation of the proceedings of a house or of the speech of any member. There has as yet been no prosecution in Nigeria in respect of this offence. The suppression of speeches of particular members where others are given prominence has been held to constitute a misrepresentation of proceedings. So is the publication, under the colour of a report of a member's speech, of a gross libel on the character and conduct of another member.
4. Defamation of the house or its committees: It is an offence to publish any statement which falsely or scandalously defames a house or any of its committees. Again, we are obliged to turn to the British Parliament for an illustration of this offence.

In 1947 there appeared an article in the *World Press News* alleging that some MPs were in the habit of selling to newspapers secret information which had come into their possession through parliamentary party meetings. All the representatives of the newspapers involved needed to do was to buy drinks for the MP informers. On investigation, it was found that the offending article was written by an MP who was one of those secretly selling the information to the press. He was expelled from the House of Commons, while the publisher was reprimanded by the house for breach of privilege.

Another interesting incident occurred in 1956 when petrol rationing was in force following the Suez crisis. An article appeared in the *Sunday Express* written by Mr. John Junor speculating that the operation of rationing would favour the politicians to whom would be issued

'prodigious supplementary allowances'. The article then warned: 'If politicians are more interested in privileges for themselves than in fair shares for all, let it simply be made plain that the public do not propose to tolerate it.' The House of Commons ruled that this was a serious contempt of the house, notwithstanding that the writer referred to politicians generally and not specifically to MPs.

5. Publications reflecting on character of officers of the house: A publication reflecting on the character of the President of the House or the chairman of a committee of the house in the conduct of his official duty constitutes an offence. These are leading officers of the house; it is, therefore, fitting and necessary that they should be singled out for protection. Moreover, sometimes, they have to give rulings which may not always be popular.

Any journalist or media organisation that publishes any article that is reflective of the errors above may be charged with contempt of parliament.

SELF-ASSESSMENT EXERCISE 1

Does the absolute privilege that members of parliament enjoy place them above the laws of the land? Explain in detail.

3.2 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.

3.2.1 Closed Proceedings

The Nigerian Constitution requires that the proceedings of a court or any other tribunal performing judicial functions shall be held in public. The privilege of reporting such proceedings for the benefit of a wider public derives from this requirement (Adegbite, 1969).

Lord Halsbury in *Scott v. Scott* (1913) was quoted in Colston (2002) to have said "…publicity is the very sole of justice…and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial."

And Lord Diplock in *AG v. Leveller Magazine* also gives reasons why open justice is important. He said:

"As a general rule, the English system of administering justice does require that it be done in public. If the way that courts behave cannot be hidden from the public ear and eye, this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. The application of this principle of open justice has two aspects: as respects proceedings in the court itself, it requires that they should be held in open court to which the press and public are admitted and that, in criminal cases at any rate, all evidence communicated to the court is communicated publicly. As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court, the principle require that nothing should be done to discourage this."

Despite the merits of having court proceedings in the public, there are some circumstances that require that judicial proceedings be held in private for security and other reasons for the public good. The courts have the authority to exclude persons other than parties to it, including the media.

Part 39.2(3) of Britain's Civil Procedure Rules sets out when a hearing, or part of it, may be held in private. It says "A hearing, or any part of it, may be in private if:

a) Publicity would defeat the object of the hearing
b) It involves matters relating to national security
c) It involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality
d) A private hearing is necessary to protect any child or patient
e) It is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing
f) It involves un-contentious matters arising in the administration of trusts or in the administration of a dead person's estate
g) The court considers this necessary in the interest of justice."

On matters of national security, the court may sit in private in part or fully to safeguard the country's defence and territorial integrity. That is why court-martials sit in private fully or in part because the information that may come out may be useful to the enemy. Even civilian courts may hold proceedings in private if the case touches on official secrets or intelligence reports. Courts have sat in private in instances where secret agents under cover were required to give evidence in court.

Courts have also sat in private in instances where certain witnesses or the evidence(s) that either the prosecution or the defence may present is likely to affect public morality and decency.

For instance, on July 22, 2011, Anders Behring Breivik, a 32-year-old Norwegian right-wing extremist, planted a car bomb in front of the office of Prime Minister Jens Stoltenberg and other government buildings. The explosion killed eight people and injured at least 209 people, 12 of them seriously. Less than two hours later at a summer camp on the island of Utøya at a camp organised by the AUF, the youth division of the ruling Norwegian Labour Party (AP) Breivik dressed in a homemade police uniform and showing false identification gained access to the island and subsequently opened fire at the participants, killing 69 of them and injuring at least 110, 55 of them seriously. One died two days later in hospital, becoming the 69th victim. Among the dead were personal friends of Prime Minister Jens Stoltenberg and the stepbrother of Norway's crown princess Mette-Marit.

In court proceedings that started on April 16, 2012, Breivik admitted to having carried out the actions he was accused of, but denied criminal guilt and claimed the defence of necessity (*jus necessitatis*), saying that he was waging war against those who allowed immigration and the subsequent Islamisation of Europe.

When his trial started, 170 media organisations were accredited to cover the proceedings but they were not allowed to cover his defence in order not to give the accused a platform to disseminate his pervasive views.
In matters relating to children and under-aged, the proceedings or part of it may be held in private if these children are billed to give evidence or act as witnesses, especially in cases involving decency and morality. In certain instances, children may even be the accused. It is left to the discretion of the judge to either hold the proceedings in public or in private.

The bench may also hold proceedings in private if it involves the private or financial lives of the litigants. Cases like fraud, divorce, trade secrets and others.

Adegbite (1969) adds that “A minister of any of the governments in the federation can move the court to sit in private if it is felt that certain matters which would be raised before the court ought not, in the interests of the state, come to the knowledge of the public. Such a certificate is conclusive and the court has no discretion in the matter.”

Now when proceedings are held in private, it means the media are not permitted in the court room but it does not mean that they cannot report or comment on what happened. To report on closed proceedings, the media will have to rely on interviewing outside the courtroom those who were present during the proceedings. The media is only checked from reporting happenings in closed proceedings if the report or comments

will jeopardise the administration of justice or if the court has made an order restricting reporting on the case.

It has also been argued that publications or reports from closed proceedings will not be entitled to the qualified privilege that protects a fair and accurate report of proceedings in open courts.

According to Adegbite (ibid), "Section 133 of the Nigerian Criminal Code treats as contempt of court the publication of any evidence taken in a judicial proceeding which has been directed to be held in private. The other view is that the reason for holding a proceeding in camera determines the fate of subsequent publication of the proceeding. If the reason is that publicity would destroy the subject-matter of the suit, then publication must be withheld. It follows also that, if a portion of a proceeding is being kept secret from the public, only that portion would be forbidden from publication. Even if the entire proceeding is held in camera, the actual judgment may be published. This is the basis of the decision in *Allbutt v. General Council of Medical Education*, where the publication of a report of the decision of a domestic tribunal held in private was held legitimate, since there is a public interest in knowing the outcome of such a tribunal."

SELF-ASSESSMENT EXERCISE 2

Cite an instance in Nigeria in which legal proceedings in a case have been held in private and the reason(s) stated by the court for taking the decision.

3.2.2 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.

Section 4(2) Britain's Contempt of Court act 1981 provides that:

"The court may, where it appears necessary for avoiding a substantial risk of prejudice in those proceedings or any other proceedings, pending or imminent, order that the publication of any report of the proceedings or any part of the proceedings be postponed for such period as the court thinks necessary for that purpose."

Spilsbury (2000) notes the following about the section:

- "The court must order postponement. A judicial request will not suffice.
- The risk of prejudice must be to the proceedings in question or to other proceedings which are imminent or pending. The same uncertainty as to the meaning of 'imminent' bedevils the application of this section as it does the application of the common law of intentional contempt. What is clear is that the risk must be to some specific proceedings rather than in the interest of the administration of justice generally.
- The risk of prejudice must be substantial… the risk must not be remote.
- The order is for postponement of a report of the whole or any part of the proceedings. It is not an open-ended postponement. The period of delay must be as long as the court thinks necessary for avoiding the substantial risk of prejudice.
- The order must be necessary."

Any individual journalist or media organisation who publishes the reports of a proceeding despite a court order restricting same may be charged for contempt of court.

3.2.3 Other Reporting Restrictions

There are other numerous restrictions on the reporting of judicial proceedings. They cannot all be exhausted but some of the most common ones are presented below:

a) Committal hearings or proceedings

A committal hearing is a proceeding in which a magistrates' court decides if there is enough evidence for the case to go to trial. Committal proceedings do not form part of the trial.

According to Spilsbury (ibid), "such reports are limited to the provision of general information – typically the names of the parties (if not prevented by other reporting restrictions), the charges and the decision of the bench to commit."

"It is felt by some that if reports of committal proceedings are available to the public, the accused runs the risk of his case being prejudiced before the trial because of the one-sided nature of the report. For, more often than not, only the case of the prosecution is heard at length during the preliminary examination…The prejudice is even more formidable when it is recalled that the prosecution is not obliged to repeat at the trial

the evidence adduced by them at the preliminary stage. Thus, the accused would not be able to convert such evidence, however damnatory. On the other hand, there is a view that any matter discussed in the open court should not be kept from the wider public who depend on the press to keep them informed of what goes on in the courts of justice" (Adegbite, 1969).

"The Tucker Committee on Proceedings before Examining Justices, which considered this problem as it affected England, suggested in their report published in 1958, that only a restricted report of committal proceedings should be published" (ibid).

Section 8(1) of England's Magistrates' Court Act 1980 governs reporting restrictions at committal hearings. Like the Tucker Committee on Proceedings before Examining Justices, it provides that only the following details may be published:

i. The identity of the court and the names of the examining justices.
ii. The names, addresses and occupations of the parties and witnesses, and the ages of the accused and witnesses.
iii. The offence or offences, or a summary of them.
iv. The names of counsel or solicitors engaged in the proceedings.
v. Any decision of the court to commit the accused, or any of the accused, for trial, and any decision of the court on the disposal of the case if any accused is committed.
vi. The charges on which the accused is committed or summary of them, and the court to which the accused was committed.
vii. If there is any adjournment, the date and place of the next hearing.
viii. Any arrangements regarding bail – for example, the amount of any surety.
ix. Whether legal aid was granted.

According to Colston (2002), "The reasons given by the police for opposing bail, the magistrates' reasons for refusing bail and the defendant's previous convictions cannot be reported…section 8 of the Magistrates' Court Act 1980 places restrictions only on reports of the actual proceedings. It would not be a breach of section 8 to publish, for example, the fact that the defendant was driven to court by his wife in the family car, or that large crowds assembled outside the courthouse to witness his arrival. The media should not report, however, information that carries a risk of serious prejudice to any trial, such as any admissions of guilt or previous convictions".

There are however exceptions to the rule. Colston (ibid:) says "full reporting of committal proceedings is permitted:

i. If the magistrates decide not to commit the accused for trial at the crown court and dismiss the charges
ii. After the accused is tried, or
iii. If the court lifts the restrictions (even then the media should be cautious of about the nature and scope of the information they report to avoid being in contempt of court).

b) Matters which are sub judice

A matter is sub judice as long as the proceeding in which it is in issue subsists. Even when a case is already decided, comment thereon is forbidden until the time within which an appeal must be lodged has expired, or while the appeal, though duly begun, has not been disposed of. reference to the executive for pardon or the consideration of an application for commutation of a death sentence by the Advisory Committee on the Prerogative of Mercy, does not form part of a proceeding; therefore comment may be legitimately made at that stage of the case. On the other hand, comment between the decision of a court-martial and its confirmation by a confirming authority is not allowed because confirmation forms part of a court-martial proceeding (Adegbite, 1969).

c) Reports of quasi-judicial tribunals

A court is an institution that the government sets up to settle disputes through a legal process. The definitive section of the Defamation Act defines 'court' as meaning 'in relation to any claim, the court or arbitrator as the case may be, by or before whom the claims falls to be determined, and in all other cases, any court of competent jurisdiction'.
Therefore, "all manner of courts are thus covered, irrespective of their grade. The determining factor would appear to be the nature of the proceedings, whether it is judicial or not, rather than the dignity of the court members. It follows that the reports of the proceedings of customary courts are privileged, as are those of a registrar in bankruptcy, a coroner, or even a judge in chambers. Reports of proceedings of commissions of inquiry fall within the same category…The reports of proceedings of domestic tribunals, like the Legal Practitioners' Disciplinary Tribunal, the Nigerian Medical Council, and the Surveyors' Disciplinary Committee, would thus be privileged if published" (Adegbite, ibid).

d) Restriction on publication of names of parties

A court may place some restrictions on the reporting or publication of names of some parties to a proceeding in an open court. To do this, the court must ensure that the name it intends to withhold from being

reported in the media has not been made known to the public audience sitting in court.

Cases that may warrant such restriction are blackmail cases, fraud cases and cases under the Official Secrets Act. This is usually done to encourage victims of blackmail and fraud to report the crime.

To effect the restriction, the court must made a formal order (in writing), stating what the restriction is, its scope, the time in which it will cease to take effect and why the order has been made. Not until this is done can the media be held in contempt for disobeying.

"In *R v Socialist Worker* (1975), the judge in a blackmail case directed that the victims should be referred to as Mr. X and Mr. Y. A subsequent article written by Paul Foot in the *Socialist Worker* headed 'Y. Oh Lord, Oh Why?' named the two men. Both Mr. Foot and the magazine were successfully prosecuted for contempt of court" (Colston, 2002).

e) Restriction on publication of information relating to children/young persons

In order to protect the sensitive nature of children and their future, judges sometimes order restriction on the publication that will identify children involved in cases before them either as the claimant, defendant or witness.

The decision to order restriction is discretionary and not compulsory. Usually, the restrictions are usually on the name, address, school, picture (moving or still) or any other information that may lead to an easy identification of the child(ren) involved in the proceeding.

In the case of young offenders below the age of 18 who are involved in criminal charges, the proceedings is usually closed to the general public but open to the representatives of the media. It is the responsibility of the media to report the case but NOT the identities of the young people involved in the proceedings.

Details like name, address, school, picture, identification of witnesses or any other detail that may lead to easy identification of all or any of the juveniles to the proceedings may be published.

f) Restrictions concerning sexual offences and indecency

There are restrictions on the publication of information that will identify the victim of a sexual offence from the moment the complaint is filled. Unless the victim, who is expected to be an adult decides to wave

her/his anonymity, the media is prevented from publishes details like name, home address, school or work address, pictures or any other material or information that may lead to the identification of the victim. There are also instances where the accused may request that the restriction be waived by a court in order to encourage witnesses to come forward. It is in the discretion of the court to take an appropriate decision in this instance.

There are debates and controversies on why sexual offence victims should be kept anonymous. Many critics, including some women activists have even argued that rape victims, especially women need to be bold and face the world, insisting that they are not 'damaged goods' because they have been raped. However, unless a victim of rape wants to be identified, the media has a responsibility to keep the identity of the individual secret.

3.2.4 Report on Proceedings of International Courts

In Nigeria, there is qualified privilege for fair and accurate reports of proceedings of courts of Commonwealth countries and international courts like the International Court of Justice, Permanent Court of Arbitration in The Hague, Commissions of Mediation, Conciliation and Arbitration between States are covered.

The decision on whether there is qualified privilege for reports of judicial proceedings in foreign courts is unclear. However, Adegbite (1969) presents instances of foreign proceedings that may be of interest to the Nigerian public:

1. Cases heard by the Supreme Court of the United States on a point of general common law.
2. Foreign proceedings having special relation to national affairs. Thus what a Togolese court did to the crew of the aircraft caught in January 1968 in Lome with thousands of Nigerian currency notes would be of legitimate interest to the Nigerian newspaper-reading public.
3. A report of foreign judicial proceedings may have intrinsic world-wide importance; for example, the trial in a Belgian court of the manufacturers of thalidomide pills would be of world-wide interest.

For instance, a former two-time Governor of Delta State in Nigeria and chieftain of the Peoples Democratic Party (PDP), James Ibori, was jailed for 13 years by a United Kingdom (UK) court sitting in Southwark, London in April 2012 for allegations of money laundering and multiple

frauds. The trial was widely covered by the Nigerian media and feasted on by the media audiences because of its obvious peculiarities.

3.2.5 Fair and Accurate Report of Proceedings

To ensure that media owners and their reporters do not commit contempt of court in their efforts at reporting judicial proceedings, the following guidelines, as presented by Adegbite (1969) are as follows:

1. A counsel should not be reported to have said in court what he did not say.
2. The object should always be to pronounce impartial reports; in this regard, statements of counsel on both sides must be given equal prominence.
3. While it is pertinent to publish abridged reports, care should be taken to ensure that no evidence is suppressed to the prejudice of one of the parties.
4. It is unsafe to assume the outcome of a particular case. The law does not sanction 'trial by newspapers'. Hence, a newspaper report which states that the accused 'is likely to meet the legal punishment of his villainy', has been held to be an unfair report.
5. Judgments must be accurately inserted. The summing up of a judge, or his judgment alone, may be published without including the evidence adduced in the case, and the privilege would still attach.
6. The proceedings of a long trial lasting several days may be published day by day, except when the court has forbidden such daily reports until the whole trial has been completed.
7. Once a trial is over, the news value in the proceeding recedes. If, long after the trial, a newspaper chooses to report a particular portion of the proceedings, and the publication injures one of the parties, such partial publication may be regarded as evidence of malice.
8. Documents read out in open court may be published as well as accurate statements of the contents of such documents. The privilege does not, however, extend to newspaper publication of the contents of pleadings, affidavits, and similar documents which are not tendered in open court.
9. The report must not go beyond the actual proceedings in court. Extraneous defamatory observations or comments would not be protected. Neither would defamatory headlines even if the main report is fair and accurate.
10. It is an offence to take photographs, or make portraits or sketches of persons in open court. A further point may be made with regard to photographs. It is unsafe to publish the photograph of

an accused person, or that of a mere suspect who has not yet been charged."

It is important to note that a reporter should only go into a court or parliament with tape recorders, camera and other recording equipment only with permission and due authorisation.

SELF-ASSESSMENT EXERCISE 3

Can the details of a proceeding held in private be published by the press? Justify your position.

4.0 CONCLUSION

It is obvious from the foregoing that reporting judiciary and parliamentary proceedings is not a tedious or an onerous task, it only requires that media practitioners follow the guidelines and rules put in place by the law to maintain the integrity of the institutions while performing its duties of informing the public.

To avoid committing contempt of court or parliament, reporters must follow guidelines and rules, and they must not flout court orders regarding reporting restrictions and court orders.

5.0 SUMMARY

In this unit, we learnt about the guidelines for reporting parliamentary and judicial proceedings.

We also learnt about closed-proceedings, postponement of reporting proceedings and reporting restrictions.

6.0 TUTOR-MARKED ASSIGNMENT

Mention common errors and mistakes reporters make in recent times in their coverage of parliamentary and judicial proceedings.

7.0 REFERENCES/FURTHER READING

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MODULE 5 ETHICAL PRINCIPLES OF MASS MEDIA REGULATION

UNIT 1 ETHICAL APPROACHES, THEORIES AND MORAL REASONING

CONTENTS

1.0 INTRODUCTION

When confronted with situations that require more than one moral rule, individuals and journalists alike have enormous challenges deciding what to do. It is easy to make a decision between a right and wrong alternative but it is very challenging to come to a decision when faced with two moral decisions.

The purpose of this unit is to briefly present ethical theories and perspectives, and models with which journalists can undertake moral reasoning in taking real life decisions.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- state philosophical principles in making ethical decisions
- enumerate some ethical theories
- highlight models of moral reasoning.

3.0 MAIN CONTENT

3.1 Philosophical Principles and Traditions

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.

SELF-ASSESSMENT EXERCISE 1

In your opinion, which of the philosophies should the media apply in taking news gathering and publishing decision? Justify your position.

3.2 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

According to **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 favourable 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 analyse the benefits and harms to everyone (including themselves) affected by the decision and then choose the course of action that result in the most favourable 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 (ibid).

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 (ibid).

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).

SELF-ASSESSMENT EXERCISE 2

Would you argue that the media is justified in using teleological (consequence-based) theories in making editorial judgments?

3.3 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.

3.3.1 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.

According to Bowles and Borden (2004), the Potter Box helps dissect a situation requiring an ethical response by introducing four dimensions of analysis: definition, values, principles and loyalties. To make a decision, we move through each dimension-from defining the situation to considering values to appealing to an ethical principle to choosing loyalties- eventually reasoning our way toward a solution.

The Potter Box in figure 3.1 can be used to analyse the dimensions of an ethical problem for journalists. The first step is defining the situation. It is followed by outlining the possible values at work and determining the relevant moral principles to apply. The next step is choosing loyalties. After the four-stage analysis, the final step is to make an ethical decision about whether to publish.

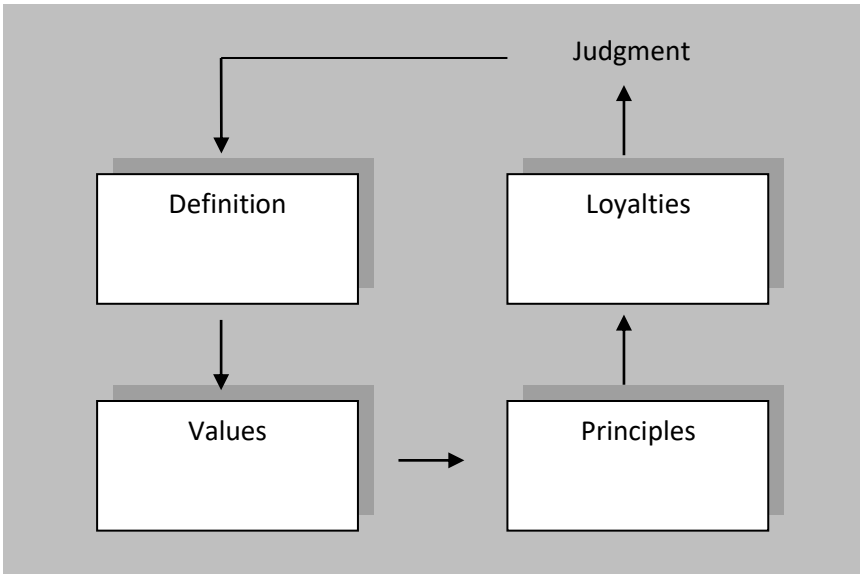

Fig. 3.1: The Porter Box

Source: Bowles and Borden (2004)

A typical example of how this model will work is presented below:

A magistrate court in Lagos is trying a 57-year-old man for the rape of his neighbour's daughter, a five-year-old girl. Your reporter covered the committal proceeding and has the name, details and pictures of the girl and the accused. He wants the News Editor to publish her details (e.g. name, age, address, school, but not photograph) to convince readers that the story is genuine.

The reporter believes the public should be informed of the evil, the person who committed it and on whom it was committed. The News Editor however believes that the story can be reported with only the age of the victim and that of the defendant so that the public is not given information about the man in such full details as will make it easy to identify who the girl is. As the Editor, the final decision rests with you. 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.
- The Reporter has identified these values as benefits of publishing the details of the girl and her assailant in the story:
- It is an important event the public ought to be aware of.

- The public need have the details of the girl so they can protect children her age, thereby correcting the erroneous impression that children that age cannot be victims.

The News Editor has identified these values as benefits of not publishing the details of the girl and her assailant in the story:

- The story may affect the girl if anyone can refer it to her in the future.
- It is an ethical value not to publish the details of rape victims, especially children. Children involved in criminal proceedings should be protected.
- The story can still be published without the full details of the girl.
- The newspaper's unwritten policy is to protect minors in all situations.
- Step 3: Appeal to moral principles to justify your decision.
- You can use the utilitarian principle which advocates "The greatest good for the greatest number" by agreeing that the society needs to be aware that such evil can occur and be enlightened on the possibilities of preventing it by giving them the full details of the victim.
- At the same time, you can apply 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).

The reporter might argue that the ultimate loyalty is to the society and the readers who the newspaper owe an obligation to inform and educate on such menace as rape occurring to children from trusted individuals.

The News Editor might argue that the loyalty is to the newspaper's policy and to the victim and her family who will likely be traumatised by the publication of a story that gives their full identification to the entire public.

After reasoning through the four dimensions of the Potter Box which are definition, values, principles and loyalty, you can therefore take a decision using the reasoning process while bringing your personal ethics and values to bear.

Bowles and Borden (ibid) however note that "Unfortunately, reporters and editors do not often use such methods to make moral judgments. They either react instinctively, hoping that they will make the right decision and that the negative consequences will not be too overpowering, or they try to find answers in a professional code of ethics."

3.3.2 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 organisations make ethical decisions and deal with ethical issues.

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. For the sake of simplicity, I will refer to this as the SAD formula. There are, of course, other models available, but the SAD formula seems particularly adaptable to the needs of the moral reasoning neophyte (ibid).

It is obvious that this model is similar to Potter Box and Day (2006) himself agrees that his model is based, in part, on ideas advanced by Ralph B. Potter in "*The Logic of Moral Argument*," in Paul Deats' *Toward a Discipline of Social Ethics*.

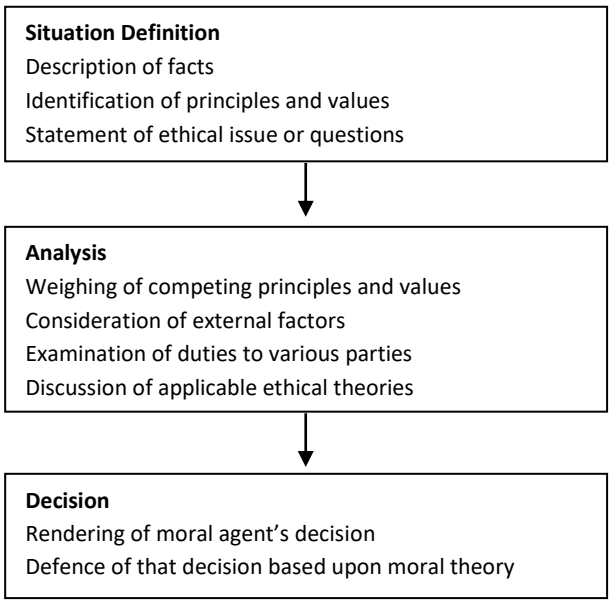

Fig. 3.2: **The SAD Formula**
Source: Louis Day (2006)

From the foregoing therefore, it is apparent that there are different or numerous models of moral reasoning but they all focused on helping the journalist and/or the media organisation appreciate the situation, analyse it using ethical theories and principles and then finally make a decision based on the systematic process.

SELF-ASSESSMENT EXERCISE 3

Your newspaper's most creative investigative and interpretative reporter submits a most compelling story about a former Senate President who had been diagnosed with full blown AIDS. As the editor of the newspaper, using any of the models of moral reasoning presented above, decide whether to publish or drop the story.

4.0 CONCLUSION

There are no absolutely right or wrong answers or decisions where ethics is concerned, as different decisions can be justified using different ethical theories or principles.

The most important thing therefore is for media professional to take the decision that will have the lesser negative impact on the society and one that will bring the greatest good to the greatest number.

5.0 SUMMARY

In this unit, we discussed three ethical principles which are Immanuel Kant's absolutist view, John Stuart Mill's principle of utility and Aristotle's golden mean.

We also discussed ethical theories that derived from these principles and they are: Deontological (duty-based) theories, Teleological (consequence-based) theories and virtue theories.

And two models of moral reasoning (using the ethical principles and theories) in making decisions are discussed and they are the Potter Box and the SAD Formula.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the ethical implications of the following scenarios:

a. A newspaper's publication of the photograph of a university undergraduate that was raped by her colleagues.

b. A newspaper's publication of the manifest of a crashed plane before the families of the victims is all officially notified by the airline.

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UNIT 2 ETHICAL ISSUES IN THE NIGERIAN MASS MEDIA

CONTENTS

1.0 INTRODUCTION

The profession of journalism is an important but delicate one as articles or publications by the media can cause war, chaos or anarchy in the society. This is why the profession has to be regulated by a system of ethics to guide the activities and operations of its practitioners.

This unit will therefore explain the cardinal ethical principles in journalism, the code of ethics for Nigerian journalists and the ethical problems confronting the media in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- highlight the ethical principles in journalism
- state the code of ethics for Nigerian journalists
- enumerate ethical problems in Nigerian journalism.

3.0 MAIN CONTENT

3.1 Ethical Principles in Journalism

The ethical principles in journalism are the fundamental codes that guide journalism practice the world over. They are the pillars on which the profession of journalism is built; without their application to the news gathering and production process, the profession will lose its integrity.

There are numerous ethical principles but the following are some of the core universally acknowledged ethical principles of media practice:

1. Truth
2. Objectivity
3. Fairness
4. Accuracy

Truth: Truth is fact, the reality told as it is. It is the avoidance of deception, dishonesty and lying in any or every form.

The commitment to truth is perhaps the most ancient and revered ethical principle of human civilisation. Despite our constant temptation to lie and use deception in our self-interest, the idea of truth as a positive value is well entrenched in moral and legal philosophy (Day, 2006).

Day (2006) discusses the standards of journalistic truth. He presents the following standards for ensuring truth. They are:

First, the reporting of a story must be accurate. The facts must be verified; that is, they should be based on solid evidence. If there is some doubt or dispute about the facts, it should be revealed to the audience. This is a threshold requirement, because inaccurate, unsubstantiated, or uncorroborated information can undermine the credibility of any journalistic enterprise.

A second requirement for journalistic truth is that, in addition to being accurate, a truthful story should promote understanding. Time and space limitations preclude providing a comprehensive understanding of any situation. The goal should be to provide an account that is essentially complete. A story should contain as much relevant information as is available and essential to afford the average reader or reviewer at least an understanding of the facts and the context of the facts.

The third criterion for a truthful article is that it be fair and balanced. These twin concepts involve, first, the avoidance of any discernible bias. In addition to avoiding bias, fairness and balance require that journalist accord recognition to those views that enhance the understanding of the issue. Every effort should be made to represent them fairly and in proportion to their significance to the issue.

Another issue about truth in journalistic practice is the use of deception in news gathering and reporting. Some moralists argue that it is wrong to use deception in news gathering and reporting but some media practitioners have argued that they may sometimes have to use deception to unravel a greater truth for the benefits of the society. They therefore use hidden cameras and recorders, act as undercover participants in criminal situations and other forms of deception to gather information for publication.

According to Kovach and Rosenstiel (2001), a three-step test should be applied for employing deceptive news-gathering techniques. They are:

1. The information must be sufficiently vital to the public interest to justify deception.
2. Journalists should not engage in masquerade unless there is no other way to get the story.
3. Journalists should reveal to their audience whenever they mislead sources to get information, and explain their reasons for doing so, including why the story justifies the deception and why this was the only way to get the facts.

Meanwhile, there are some truths that the media is not expected to publish. Un-publishable truths are truths that are not in the interest of the public or truths that can compromise national security and integrity.

According to Okoye (2008), "Un-publishable truths are truths that are not of public interest. For example, the fact that this writer ate bread with sardine this morning is his private affair and not of public interest. If the writer is a newsman, he would not have to "inflict" the information on the readers since it is of no use to them. Another example of un-publishable truth is truth that undermines national security or national cohesion or truth that may be considered blasphemous by any religious group."

Objectivity: Objectivity means the absence of subjectivity, bias, prejudice or partisanship. Media audiences expect utmost objectivity while some media analysts have asserted that absolute objectivity is not possible.

Frost (2007) defines the antonyms of objectivity or related terms thus:
"**Bias:** Means the deliberate slanting of a story to favour one side of the argument rather than another on the grounds of the personal choice of the writer.

Balance: Is the idea that the journalist can and should present equally two sides of an argument.

Comment: Is an explanatory remark or criticism. 'Comment' in journalistic terms can range from an expert opinion of a correspondent to the unwarranted insertion of unsupported views.

Objectivity: Is the most contentious description. That which is objective cannot and should not contain that which is subjective. This is often

taken to mean that a journalist should not allow his or her feelings and beliefs intrude into the article.

Neutral or impartial: Taking neither side. This does not exclude subjectivity but necessitates that the journalist stands aloof from any decision-making.

Prejudice: A preconceived opinion. This differs from bias in that bias may slant a story without there being a preconceived idea. Prejudice is more likely to determine what information is gathered for a story while bias is more likely to determine how it is written and used.

Fairness: The idea that the journalist gives all sides of the argument a fair hearing."

Individuals see events through their viewpoints like the lens of a camera. And their background, orientation, religion, race, nationality, philosophies and personality shape these viewpoints. So, even when they try to objectively gather information and report such information as accurately as possible, their viewpoints are (indirectly) subjectively influencing the news gathering and news reporting process. So, can a reporter be really objective? How objective can objective reporting be?
It has been argued that there cannot be complete objectivity but media practitioners must strive to be as objective as possible. Some factors have been identified as likely impediments to objectivity. According to Okoye (2008), "Objectivity can be hindered by any of the following factors:

(i) Limited space
(ii) Laziness on the part of the reporter
(iii) Lack of openness on the part of one party to a controversy
(iv) Conflict of interest
(v) Advertiser pressure
(vi) Government pressure

Fairness

Fairness presupposes that all parties to a story or event are given equal and fair hearing (through adequate reporting), information about all the angles to a story is reported and all the sides to an argument or controversy are presented.

The Washington Post's Code of Ethics as cited in Okoye (ibid] says concerning fairness:

i. No story is fair it if omits facts of major importance or significance. Fairness includes completeness.
ii. No story is fair if it includes essentially irrelevant information at the expense of significant facts. Fairness includes relevance.
iii. No story is fair if it consciously or unconsciously misleads or even deceives the reader. Fairness includes honesty-leveling with the reader.
iv. No story is fair if reporters hide their biases or emotions behind such subtly pejorative words as "refused", "despite", "quietly", "admit", and "massive." Fairness requires straightforwardness.

Accuracy

Accuracy is the truthfulness, correctness, exactness or precision in the information that media practitioners provide for their audience. Media audiences must be able to trust whatever information they are getting from the media and for the media not to lose the trust of its audience, they must go the extra-mile in checking the correctness of information derived from sources and interviewees.

Crediting information to sources is one way of ensuring accuracy. Getting exact figures in cases that require statistics like population reportage, accidents and similar event is important. If the exact figure is unknown, approximations can be made using the lowest possible figure or a clear statement stating that the exact figure is unknown should be made.

Care should also be taken to ensure that names, addresses, positions, locations, age and other related information are accurate and correctly spelt.

It is better to drop a story when in doubt than to publish and later issue a retraction or apology.

SELF-ASSESSMENT EXERCISE 1

Cite a story published in any local medium in which any of the ethical principles discussed above are neglected.

3.2 Code of Ethics for Nigerian Journalists

In every country, there are codes of ethics that regulate the practice of professions. The journalism or media profession is not an exception and there is a code of ethics that controls the practice of journalism in the country.

There have been four codes of conduct in Nigeria, but the latest is the one adopted in Ilorin in 1998 (Momoh, 2002).

The Code is popularly referred to as the Ilorin Declaration. It was jointly ratified by the Nigerian Union of Journalist, the Newspaper Proprietors Association of Nigeria, the Nigerian Guild of Editors and the Nigerian Press Council.

SELF-ASSESSMENT EXERCISE 2

Interview a reporter and editor with the intent to find out to what extent they abide by the code of ethics.

3.3 Ethical Problems in Nigerian Journalism

Despite the existence of a nationally accepted code of ethics in Nigeria, there are still challenges of ethical violations in the country's media industry. Some of these ethical problems are so entrenched in the industry that many fear that they may not be easily expunged.

Okoye (2008) reveals that "freebies, conflict of interest, misrepresentation, brown envelope syndrome and cartel journalism" are some of the glaring ethical problems inherent in journalism in Nigeria.

The reality is that there is no exhaustive list of all the unethical issues that the Nigerian media is challenged with. 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.

Freebies: Freebies are various assorted gifts given to reporters or editorial staff of media organisations 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, jotters to Christmas or Sallah hampers, laptops to external hard drives or other equipment will, without doubt sway the reporter to the side of the individual or organisations giving the gifts.

However, it has been observed that reporters and/or editors in Nigeria look forward to or sometimes even demand for these gifts and this is no doubt an ethical issue.

Junkets, brown envelopes, and paying for news: Junkets are free or highly subsidised transport, travel or accommodation tickets. At times, transport (luxurious buses and airlines) give subsidised or free travel tickets to reporters covering the transport or aviation beats. Hotels too

also sometimes give free or subsidised tickets for accommodation to tourism reporters.

These forms of junkets will automatically affect balance and objective writings from such reporters that benefit from them. They will unconsciously launder the image of such organisations, water down bad events or kill such stories altogether.

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.

Organisations and individuals justify the giving of brown envelopes to reporters with different reasons. Some say they empathise with reporters who will have to use their personal money to transport themselves to their various beats while others say they are merely subsidising or facilitating the movement of reporters to and from their beats while others call it a public relations strategy.

The reality is that more media organisations in Nigeria are becoming financially responsible and making prompt payment of salaries and beat transport allowances (B.T.As) but the brown envelope syndrome has come to say and it will be very difficult to weed out.

Paying for news is another ethical challenge. It either comes in form of 'Let Them Pay' in which organisations 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.

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. It will be irrelevant to say that many a news will be totally killed while others will be modified.

Handling stories that affect loyal advertisers of specific medium is also another challenge. It is not uncommon to find that newspapers have challenges writing exposes and critical stories about companies that patronise them well in terms of advertisements.

In fact, it has been said that newspapers avoid strong criticism of politicians so that they do not stop their allies from advertising in their papers. A good example in point is that of *234Next* newspapers, a Nigerian newspaper run by a Pulitzer Prize-winning journalist that stopped appearing on the newsstands in September 2011 after 2½ years of muckraking and sometimes controversial coverage of issues in the country. Dele Olojede, a former foreign editor for New York's *Newsday* said the newspaper's crusading political stance also hurt advertising sales, as the salutatory advertisements heaping praise on politicians and the country's elite that fill other publications never made it into its editions. *Next*, which began publishing its print edition in January 2009 continued to publish stories on its website after the print edition was stopped for financial reasons.

Carter journalism: Almost every beat in Nigeria has a beat association comprising all the journalists covering such beats. The beat associations are now so powerful that they collect money from the organisations working in those beats for onward distribution to their members. They write stories and send to the e-mail addresses of all journalists covering those beats and they have the power to influence what stories to be written or 'killed' by their members.

Sycophancy and ethnocentrism: The last, but certainly not the least, ethical issue that will be discussed is sycophancy, which involves journalists turning themselves to praise singers, idolising politicians and the powerful in the society in their writings, while neglecting social issues that need to be addressed.

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

SELF-ASSESSMENT EXERCISE 3

Interview a media organisation on what it is doing to curtail ethical misdemeanours among its staff.

4.0 CONCLUSION

Every profession has its ethical challenges and media profession is no exception. That is why there are codes of conduct professional associations and other regulatory mechanisms to check the excesses of those who might be interested in exploiting the system.

5.0 SUMMARY

In this unit, we examined the cardinal principles of ethics, which are Truth, objectivity, fairness and accuracy. We also highlighted the code of ethics for Nigerian journalists and the ethical issues that are bedeviling journalism practice in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

Go through a national newspaper for a month and identify three stories you feel are ethically wrong (due to any of the reasons that have been identified above).

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UNIT 3 REGULATORY INSTITUTIONS IN THE NIGERIAN MASS MEDIA

CONTENTS

1.0 INTRODUCTION

Regulation is an inevitable part of ensuring standards in everyday modern life. Without regulation of much of the rest of society with which we come into contact on a regular basis, life would become more dangerous and more uncomfortable. The media cannot be exempted from the need for regulation to ensure acceptable standards and so any debate about media regulation concerns the amount of regulation and how it should be enforced.

There are a number of issues to be considered by media regulation. First are the social and economic issues. Society needs to decide what controls, if any, it should place on the ownership of newspapers or broadcast stations. It also needs to consider whether there are any social limitations and how these should be enforced. Then the concept of content regulation needs to be considered. Should newspapers and broadcast stations have their content controlled or limited in some way? (Frost, 2007).

This unit will focus on the various available ethical mechanisms for the regulation of the mass media in Nigeria.

2.0 OBJECTIVES

At the end of this unit, you should be able to:

- list media laws in Nigeria
- enumerate statutory bodies set up to regulate the media in Nigeria

- highlight professional bodies and codes the media have established to guard their activities
- explain non-media mechanisms that the society employ to curtail the media.

3.0 MAIN CONTENT

3.1 Laws

In Nigeria, there is a plethora of media laws that have been promulgated to regulate the media. Media professionals have criticised a good number of these laws as antithetical to the progress and freedom of the media but these laws exist nonetheless.

Most of the laws that still affect the operations of the media in Nigeria the most have been explained and discussed in detail in the previous units. However, the laws that affect the media in Nigeria will still be presented.

Momoh (2002) highlights all the laws that have been enacted to regulate the media in Nigeria from 1917 to 1999 under four categories. The list will be presented below:

A As at Independence in 1960

1. The Newspaper Act, 1917
2. Printing Presses Registration Act, 1933
3. The Criminal Code Act and schedules thereto in so far as it deals with:
    - Sedition: Sections 50 and 51 (ss 416 & 417 of Penal Code)
    - Injurious Falsehood: Section 59 (sec 418 PC)
    - Criminal Defamation: ss 373-379 (ss 391-392 PC)
    - Power to prohibit importation of publications: Sec 58
    - Seditious publication against foreign head of state: sec 60
    - Contempt of Court: sec 6 Criminal Code Act & Sec 133

B Between 1960 and the Coup d'etat of 1966

1) Children and Young Persons (Harmful Publications) Act, 1961
2) Defamation Act 1961
3) Emergency Powers Act 1961
4) Seditious Meeting Act 1961
5) Obscene Publications Act 1961
6) Official Secrets Act 1962
7) Newspaper (Amendment) Act 1964

C Between 1966 and 1979

1) Circulation of Newspaper Decree No. 2, 1966
2) The Defamatory and Offensive Publications Decree No 44, 1966
3) Newspaper (Prohibition of Circulation) Decree No 17, 1967
4) Public Officers (Protection Against False Accusation) Decree No 11, 1976
5) News Agency of Nigeria Decree No 19, 1976
6) Nigerian Television Authority Decree No. 24, 1977
7) Newspaper (Prohibition of Circulation) (Validation) Decree No 12, 1978
8) Nigerian Press Council Decree No. 31, 1978
9) Federal Radio Corporation of Nigeria Decree No. 8, 1979
10) Daily Times of Nigeria (Transfer of Certain Shares) Decree No. 101, 1979
11) Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals etc) Decree No. 115, 1979

D From 1979 to Return of the Military in Dec. 1983 and Beyond

1) Constitution (Suspension and Modification) Decree No 1, 1984
2) State Security (Detention of Persons) Decree No. 2, 1984
3) Public Officers (Protection Against False Accusation) Decree No 4, 1984
4) The Federal Military Government (Supremacy and Enforcement of Powers) Decree No 13, 1984
5) Nigerian Media Council Decree No 59, 1989
6) Nigerian Press Council Decree No 85, 1992
7) National Broadcasting Commission Decree No 38, 1992
8) Treason & Treasonable Offences Decree No 29, 1993
9) Offensive Publications (Proscription) Decree No 35, 1993
10) Newspapers etc (Suspension & Modification) Decree No 48, 1993
11) Newspaper Decree No 45, 1993
12) The Constitution (Suspension & Modification) Decree No 107, 1993.
13) State Security (Detention of Persons) (Amendment) (No 2) Decree 14, 1994
14) Nigerian Press Council (Amendment) Decree No 60, 1999

SELF-ASSESSMENT EXERCISE 1

Comment on the laws enacted to regulate the media between 1960 and 1966. How relevant and significant are they to the fourth estate of the realm?

3.2 Statutory Bodies

There are statutory bodies set up to regulate the media, whether by the media themselves which is the ideal or sometimes by the government. They are known as different names in different jurisdictions. In Nigeria, we have a press council while such statutory bodies are known as News Council in some parts of Europe and America.

"News councils, arguably the most democratic of regulatory devices, are another breed of "watchdog" designed to foster a dialogue between the media and their various publics. These councils, which are usually composed of a cross section of the community and the media, are designed to investigate complaints against the media, investigate complaints against the media, investigate the charges, and then publish their findings" (Day, 2006).

Press Councils are self-regulatory bodies for journalism practice, as the initiatives for setting them up must come from the professionals or media themselves. Ideally, press councils should be run entirely by the practitioners, but there are those established by the government, like the Nigerian Press Council (NPC). But the essence of a press council is to handle extra-legal matters involving individual journalists and the media (Okoye, 1998).

3.2.1 Nigerian Press Council

The need for a statutory body to regulate the activities of the Nigerian press and protect its members was recognised towards the end of the last millennium. Various attempts were made before what we now have as the Nigerian Press Council was later established.

According to the council, formal efforts towards its establishment commenced with "the setting up of a commission named the Ekineh Commission. The commission which was set up after a distinguished Nigerian attorney by the General Yakubu Gowon government was to study the future of the Nigerian media. It however did not make its findings public and so it was an exercise in futility. Further attempt was made through the establishment of the Nigerian Media Council Decree No 59 of 1988 but was aborted largely because journalists were a bit apprehensive of the seemingly totalitarian powers conferred on the council. The current statute, the Nigerian Press Council Act No. 85 is more or less a consensus Act arising from hard bargaining between government and the Nigerian Press Organisation (NPO), an umbrella body for the major stakeholders in the industry. These stakeholders include the Nigeria Union of Journalists (NUJ); the Nigerian Guild of

Editors (NGE); and the Newspapers Proprietors' Association of Nigeria (NPAN)."

Nigerian Press Council is an agency under the Federal Ministry of Information. It was established by the Nigerian Press Council Act No. 85 of 1992 as amended in Nigerian Press Council Act No. 60 of 1999 to promote high professional standards for the Nigeria Press. Its vision is to create a culture of ethical press in Nigeria driven through research and documentation of contemporary press development; training and workshop for journalists; accreditation of programmes in tertiary institutions; enquiring into complaint about the press and monitoring the activities of the press.

The council serves as buffer between the media, government and the public by ensuring the maintenance of the highest ethical and professional standards in the media. It is mutually beneficial to the public as well as journalist themselves.

Essentially, press councils are forums for airing of complaints against the news media. The council is not a law court, it considers complaints against news media and journalists, concerning the messages they publish besides their behaviour with regard to the people they encounter in covering the news.

The complaints that people make about news publications and broadcasts usually pertain to ethical standards such as truth, accuracy, fairness, balance and decency, or issues such as bias, objectivity and sensationalism.

The Nigerian Press Council thus has the following goals and objectives: to promote professionalism and encourage the highest standards in journalism; safe-guard freedom of the press; protect rights and privileges of journalists; protect the public from excesses of journalists through adjudication; renders the cheapest and fastest complaints resolution mechanism between the media and the public among others.

The Nigerian Press Council's Board comprises a chairman and 18 other members drawn from the Nigeria Union of Journalists; Nigerian Guild of Editors; Newspaper Proprietors' Association of Nigeria; the Broadcasting Organisation of Nigeria (BON); News Agency of Nigeria (NAN); the Federal Ministry of Information and Communications (FMIC); Journalism Training Institutions and the general public (ibid).
The mandates of the Nigerian Press Council as set out in section 3 of its act include the following:

- Enquire into complaints about the press and the conduct of any person or organisation towards the press.
- Monitor the activities of the press with a view to ensuring compliance with the code of professional and ethical conduct of the Nigeria Union of Journalists.
- Receive application from, and documenting the print media and monitoring their performance to ensure that owners and publishers comply with the terms of their mission statement and objectives in liaison with the Newspaper Proprietors Association of Nigeria.
- Research into contemporary press development and engage in updating press documentation.
- Review developments likely to restrict the flow of information and advice on measures aimed at remedying such developments.
- Ensure the protection of the rights and privileges of journalists in the lawful performance of their duties.
- Foster the achievement and maintenance of high professional standards by the Nigerian press.

The council is therefore, statutorily expected to monitor the activities of the media. Essentially, this is performed through content analysis to ensure that the code of professional and ethical conduct is strictly adhered to.

The council also reviews media laws, policies and programmes or developments perceived as hostile to the press in its performance and advise on possible remedy.

The protection of the rights and privileges of Nigerian journalists is an integral component of the press council's functions.

Since its establishment, the Nigerian Press Council has adjudicated in a lot of ethical disputes and/or complaints against the Nigerian press, promoted the promulgation of legislations and efforts towards ensuring freedom of expression and the press and protected the rights of media establishments and practitioners in the country.

SELF-ASSESSMENT EXERCISE 2

How effective can you say the Nigerian Press Council has been in the performance of its responsibilities?

3.3 Professional Associations and Codes

Apart from the law and statutory organisations like news councils, professional associations and/or codes are another form of regulatory mechanism that media professionals themselves have put in place to control ethical concerns among themselves.

Professional associations and codes are numerous and on different levels. Some are national based while others are regional and international. Others are interest or ideological based. Examples of ideological based media associations existing in the United States of America for instance include the National Centre on Disability and Journalism and the National Lesbian and Gay Journalists Association.

For the mass media in Nigeria, national media associations in the country include:

- The Nigerian Union of Journalist (NUJ)
- The Nigerian Guild of Editors (NGE)
- The Newspaper Proprietors Association of Nigeria (NPAN)
- The Nigerian Institute of Public Relations (NIPR)
- The Advertising Practitioners Council of Nigeria (APCON)

All these associations determine the standard for admitting members and they set and sometimes conduct examinations for those who intend to join. Apart from that, they register those who qualify to become members (whether by the association's examination or other means like professional or academic qualifications from recognised institutions). After registration, members are also encouraged to participate in seminars and trainings to upgrade their level in the associations. In addition, they regulate the actions or professional practice of those members using established codes of conduct or ethics and sanction erring members and they also collect dues from members to sponsor their activities and programmes.

Regional associations and codes guide the practice of media practitioners in different regions or on different continents around the world. Okunna (2005) in Okoye (1998) lists some of the available regional codes the world over. They are:

i. The Inter-American Press Association adopted in 1926.
ii. The Declaration of Duties and Rights for Journalists, adopted by six journalists' union of the European community in 1971.
iii. The code of Arab journalists prepared under the auspices of the Arab league.

iv. The Charter of the West African Journalists Association (WAJA) which was adopted in 1986.

International principles of professional ethics came into being, according to Okoye (1998) in 1983 under the auspices of UNESCO. The signatories include the following regional bodies:

i. International Federation of Journalists (IFJ)
ii. International Catholic Union of the Press (ICUP)
iii. Latin American Federation of Journalists (FELAP)
iv. Latin American federation of Press Workers (FELATRAP)
v. Federation of Arab Journalists (FAJ)
vi. Union of African Journalists (UAJ)
vii. Confederation of Asian Journalists (CAJ)

SELF-ASSESSMENT EXERCISE 3

How do you think the profession of journalism would have fared without codes of ethics and professional associations? What impact do you think national media associations and codes have in the practice of mass communication in Nigeria?

3.4 Media Review Publications and Programmes

The media, apart from regulation through professional media associations and codes have also peer reviewed and corrected the errors, mistakes and blunders of their colleagues in different media organisations through media review programmes or publications.

In Nigeria, *Media Review*, published by Diamond Publication, and edited by Lanre Idowu, has been doing a good job of critiquing ethical conducts in the media. For example in 2006, the issue of "wrap around" adverts, whereby some newspapers devoted four cover pages for adverts for mouth-watering fees, was exhaustively addressed by *Media Review*, with the verdict that such a practice was unethical. Unfortunately, the practice still goes on (Okoye, 2008).

SELF-ASSESSMENT EXERCISE 4

Does a media organisation have the right to condemn the practices and/or broadcast or publications of another media organisation? What words or actions should be avoided when doing so?

3.5 Non-Media Mechanisms

Societies worldwide have not left the regulation of the media in the hands of the government and media industries alone. They have also organised and designed ways by which they monitor and regulate the practice of mass communication in their communities as private individuals and their communities are most affected by the impact of media publications and practices.

There are different non-media mechanisms employed by different communities in reacting, responding, correcting and limiting the activities of media news gathering and reporting practices and publications. Some of them are:

- Letters to the Editor
- Request for apology and/or retraction
- Rejoinder or Right of Reply
- Boycott
- Media monitors and/or critics
- Surveys and polls

Letters to the Editor

A letter to the editor (sometimes abbreviated **LTTE** or **LTE**) is a letter sent to a publication about issues of concern from its readers. Usually, letters are intended for publication. In many publications, letters to the editor may be sent either through conventional mail or electronic mail. Letters to the editor are most frequently associated with newspapers and newsmagazines. However, they are sometimes published in other periodicals (such as entertainment and technical magazines), and radio and television stations. In the latter instance, letters are sometimes read on the air (usually, on a news broadcast or on talk radio).

In Nigeria, readers sometimes writes letters to the editors of newspapers to complain or make requests about issues that are of concern to them but not related to publications or articles previously written by the paper. For instance, students seeking the release of their results by JAMB or WAEC or residents appealing to PHCN to give them power supply in their area.

When the editors of media organisations receive letters from their readers complaining about the contents of their publication or broadcast, they serve as a caution and check on their activities and their operations. To the extent, LTEs constitute a mechanism used by the society to check the media. When the society bombards the mails of a media organisation

with complaints on an issue, the organisation will call itself to order and avoid such mistakes in the future.

Request for apology and/or retraction

Sometimes, individuals are not comfortable with just expressing their discontent about a news article with just a letter to the editor. They sometimes demand for a published or broadcast apology by the media organisation and/or a retraction of the story, headline or content from the pages of the publication. Individuals demand for a retraction and/or apology when false or misleading information are published about them.

This is done by writing a letter to the editor of the media organisation, referring to the title or headline of the news content, the page or programme on which it was published or broadcast and stating in clear terms their grievances with the content and evidence to prove same. Then, they either demand a published/broadcast apology only or in addition to the apology; request that a retraction be published by the media organisation, withdrawing its earlier publication.

Media organisations who are socially responsible and wish to avoid legal suits apologise and publish retractions when it is clear that they have made mistakes and wronged the organisation or individual concerned.

Rejoinder or right of reply

Individuals or organisations who are aggrieved with a news content or publication sometimes write a rejoinder explaining their side of the story or stating the position they believe is the right position for members of the public to consider.

The rejoinder is then sent to the media organisation which published the initial story to publish. There is a right of reply and media organisations are necessitated to publish such rejoinders. It is not expected that the individual or the organisation will pay for the publication but some do in order to ensure that their rejoinders are published. Others take the rejoinder to another media organisation and pay for it to be published there.

Boycott

Individuals, organisations or groups may call for or place a boycott, proscription or embargo on the purchase of a newspaper or magazine or disclaim any medium that is perceived to be against or unjust to their cause.

Before this stance can be taken, some of the other mechanisms explained above would have been exploited without success. Media organisations are aware of this possible action and they therefore exercise caution in handling grievances from individuals, organisations or groups.

Media monitors and/or critics

Media monitors and/or critics are individuals or organisations who monitor and critique the contents or broadcasts of media organisation. They sometimes publish their observations for the consumption of the media and the general public and they also make recommendations for the correction, prevention or eradication of such errors or mistakes in the future.

According to Okoye (2008), the following are examples of media monitors:

- Media Watch
- Media Alert
- Media Forum
- Media Ombudsman
- Centre for Media and Public Affairs
- Columbia Journalism Review
- Project for Excellence in Journalism
- Media Channel.Org
- Media Tenor
- Media Centre Research Centre
- News Watch Centre for Integration and Improvement
- Slip Up.Com
- The Tyndall Report

Surveys and polls

Independent research outfits and academic institutions regularly conduct surveys and polls about media institutions. The studies centre on some or all of the following, sometimes in a single study or different study. Some of those index used in determining the credibility of media organisations, especially the print media include; the rate of distribution, editorial value, quality of news, objectivity, balance, integrity and other indices of good journalism practices.

Media organisations are aware of these studies and they strive to get good ratings as organisations and advertising agencies use such ratings.

They therefore strive to apply best practices to their profession so as not to tarnish their mage. Thus, polls and surveys are other equally good mechanisms of curtailing the excesses of the media.

SELF-ASSESSMENT EXERCISE 5

Cite any instance in Nigeria that an individual, organisation or group has used any of the mechanisms discussed above to express a grievance, correct the media or curtail their actions.

4.0 CONCLUSION

The media is the watchdog of the society. It is also obvious that the society is the watchdog of the watchdog. Thus, the media has the freedom to perform its responsibilities but the freedom is not absolute as it is closely monitored and checked by the law, professional associations and codes, statutory bodies, media review programmes and publications and other non-media mechanisms.

5.0 SUMMARY

In this unit, we have looked at the non-legal regulatory mechanisms available in curtailing the media. We discussed statutory bodies like the Nigerian Press Council and professional association and codes like the NUJ, NGE, NIPR, APCON and others.

We equally discussed the impact of media review publications and programmes and other non-media mechanisms like letters to the editor, request for apology or retraction, rejoinder, boycott, media monitors and polls and how they help the media in keeping with the best professional practices.

6.0 TUTOR-MARKED ASSIGNMENT

Go to the office or archive of the Nigerian Press Council and report on any ethical complaint case the council has adjudicated on in the last five years.

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http://en.wikipedia.org/wiki/Letter_to_the_editor

APPENDIX

1. **Editorial independence**: Decisions concerning the content of news should be the responsibility of a professional journalist.
2. **Accuracy and fairness**:
   i. The public has a right to know. Factual, accurate, balanced and fair reporting is the ultimate objective of good journalism and the basis of earning public trust and confidence.
   ii. A journalist should refrain from publishing inaccurate and misleading information. Where such information has been inadvertently published, prompt correction should be made. A journalist must hold the right of reply as a cardinal rule of practice.
   iii. In the course of his duties a journalist should strive to separate facts from conjecture and comment.
3. **Privacy**: As a general rule, a journalist should respect the privacy of individuals and their families unless it affects public interest.
   A. Information on the private life of an individual or his family should only be published if it infringes on public interest.
   B. Publishing of such information about an individual as mentioned above should be deemed justifiable only if it is directed at:
      i. Exposing crime or serious misdemeanour
      ii. Exposing anti-social conduct
      iii. Protecting public health, morality and safety
      iv. Preventing the public from being misled by some statement or action of the individual concerned.
4. **Privilege/Disclosure:**
   i. A journalist should observe the universally accepted principle of confidentiality and should not disclose the source of information obtained in confidence.
   ii. A journalist should not reach an agreement with a source of information as "off-the-record" or as "background information".
5. **Decency:**
   i. A journalist should dress and comport himself in a manner that conforms to public taste.
   ii. A journalist should refrain from using offensive, abusive or vulgar language.
   iii. A journalist should not present lurid details, either in words or picture, of violence, sexual acts, abhorrent or horrid scenes.

iv. In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion.

v. Unless it is in the furtherance of the public's right to know, a journalist should generally avoid identifying relatives or friends of persons convicted or accused of crime.

6. Discrimination:

A journalist should refrain from making pejorative reference to a person's ethnic group, religion, sex, or to any physical or mental illness or handicap.

7. Reward and gratification:

i. A journalist should neither solicit nor accept bribe, gratification or patronage to suppress or publish information.

ii. To demand payment for the publication of news is inimical to the notion of news as a fair, accurate, unbiased and factual report of an event.

8. Violence: A journalist should not present or report acts of violence, armed robberies, terrorist activities or vulgar display of wealth in a manner that glorifies such acts in the eyes of the public.

9. Children and minors: A journalist should not identify, either by name or picture, or interview children under the age of 16 who are involved in cases concerning sexual offences, crimes and rituals or witchcraft either as victims, witnesses or defendants.

10. Access to information: A journalist should strive to employ open and honest means in the gathering of information. Exceptional methods may be only when the public interest is at stake.

11. Public interest: A journalist should strive to enhance national unity and public good.

12. Social Responsibility: A journalist should promote universal principles of human rights, democracy, justice, peace and international understanding.

13. Plagiarism: A journalist should not copy, wholesale or in part, other people's work without attribution and/or consent.

14. Copyright:

i. Where a journalist reproduces a work, be it in print, broadcast, art work or design, proper acknowledgement should be accorded the author.

ii. A journalist should abide by all rules of copyright, established by national and international laws and conventions.

Press freedom and responsibility: A journalist should strive at all times to enhance press freedom and responsibility.