

### 3.8 Module 24 Media Law

#### 3.8.1 Headline information about the module

<b>Module title</b>	Media Law
<b>Module NFQ level (only if an NFQ level can be demonstrated)</b>	8
<b>Module number/reference</b>	Module 24
<b>Parent programme(s) the plural arises if there are embedded programmes to be validated.</b>	LLB (Hons)
<b>Stage of parent programme</b>	Stage 3
<b>Semester (semester1/semester2 if applicable)</b>	Semester 1 or Semester 2
<b>Module credit units (FET/HET/ECTS)</b>	ECTS
<b>Module credit number of units</b>	5
<b>List the teaching and learning modes</b>	Full Time, Part Time
<b>Entry requirements (statement of knowledge, skill and competence)</b>	Successful completion of Stages 1 and 2 of the programme
<b>Pre-requisite module titles</b>	None
<b>Co-requisite module titles</b>	None
<b>Is this a capstone module? (Yes or No)</b>	No
<b>Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)</b>	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
<b>Maximum number of learners per centre (or instance of the module)</b>	60
<b>Duration of the module</b>	One semester, 12 weeks
<b>Average (over the duration of the module) of the contact hours per week</b>	2
<b>Module-specific physical resources and support required per centre (or instance of the module)</b>	Lecture room with internet access and digital projector.

Analysis of required learning effort										
Effort while in contact with staff										
Classroom and demonstrations		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
24	1:60						101			125
Allocation of marks (within the module)										
					Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total	
Percentage contribution					30			70	100%	

### 3.8.2 Module aims and objectives

Media Law enables learners to critically analyse the myriad of laws and principles relating to broadcasting and publishing activities in Ireland. The module also encompasses an international perspective. Learners examine freedom of expression, the regulation of the press and broadcasting media, as well as the regulation of the media in the digital age. The module offers learners the opportunity to examine and explore in a specialized format important components of media activity in Ireland, including the inter-relationship between the media and political and religious activity. The module further encompasses issues of ongoing contemporary concern, including the impact of social media, pluralism in the media and competition. The module also enables learners to critically analyse in detail the variety of legal formats used to limit media freedom and freedom of expression, including defamation law and privacy. This module builds upon prior learning in other modules and learners employ advanced research and written communication skills both to critically analyse the theoretical and philosophical underpinning of the law as well as to apply it to hypothetical, factual scenarios.

### **3.8.3 Minimum intended module learning outcomes**

On successful completion of this module, learners will be able to:

- (i) Apply detailed knowledge of the principles and rules of Media Law to identify, critically analyse and find solutions to media law problems.
- (ii) Explain where the principles of Media Law fit in a philosophical, social, political and commercial context;
- (iii) Critically analyse the challenges posed to traditional Media Law concepts by the development of new media environment;
- (iv) Exercise critical judgment and self-directed learning skills pertaining to the analysis of Media Law issues;
- (v) Research, interpret and apply the various legal rules and principles of Media Law.

### **3.8.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs**

Traditionally, the need for specialized knowledge of media law was restricted to a number of traditional activities in the broadcasting and print media. The development and proliferation of modern media platforms over the past 10 years, particularly online, has affected many aspects of society from political campaigning to commercial advertising. As the importance of having a firm foundation in the laws regulating and affecting these activities has increased, this module affords learners an opportunity to explore in a more specialized format the many competing rights and interests related to media activity in Ireland and internationally.

This module serves to directly underpin programme learning outcomes 2, 3, 4, 5, 6, 10.

### **3.8.5 Information provided to learners about the module**

Learners will receive the following resources and materials in advance of commencement including:

- Learner Handbook;
- Module descriptor;
- Module learning outcomes;
- Assessment strategy;
- Reading materials;
- Class Notes (on a weekly basis).

Additionally, this material will be made available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

### **3.8.6 Module content, organisation and structure**

This module is delivered in the form of twelve 2 hour lectures, and where learner participation is actively encouraged.

The module is divided into the following topics:

- Media rights
  - Freedom of Expression (Article 10 ECHR)
- Limitations of rights (1) – Defamation
- Limitations of rights (2) – Privacy
- Limitations of rights (3) – Public morality
  - Incitement to Hatred; Religious Advertising; Taste and Decency Rules.
- Limitations of rights (4) – Administration of Justice
  - Principle of Open Justice; Privilege; Contempt of Court.
- Limitations of rights (5) – Media and politics
  - Impartiality; Political Advertising.
- Regulation of broadcasting and press
  - AVMS Directive; Broadcasting Act 2009.
  - Press Council/Ombudsman/Code of Practice.
- Regulation of media structures – competition, ownership and pluralism
- Regulating the new media environment
  - Liability of ISPs; Defamation and Privacy on Twitter, Facebook etc.

### **3.8.7 Module teaching and learning (including formative assessment) strategy**

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Media Law at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical media law disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

### **3.8.8 Work-based learning and practice-placement**

Media Law is a class-based module and does not require work-based learning and practice placement.

### **3.8.9 E-learning**

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners also receive access to Lynda.com as a resource for reference.

### **3.8.10 Module physical resource requirements**

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

### **3.8.11 Reading lists and other information resources**

#### **Primary Reading:**

*O'Neill, A. & Carolan, E. (2019) Media Law in Ireland, Dublin: Bloomsbury*  
*McCullough, E. & Cox, N. (2014) Defamation: Law and Practice, Dublin: Clarus Press*  
*Komorek, E. (2013) Media pluralism and European law. London: Kluwer*  
*McGonagle, M. (2014) Media Law. Dublin: Round Hall*  
*Robertson, G. & Nicol, A.G.L. (2008) Media Law. London: Penguin Books*

#### **Secondary Reading:**

*Barendt, E. (2007) Freedom of Speech. Oxford: OUP*  
*Clark, R. & Smyth, S. (2010) Intellectual Property Law in Ireland. Dublin: Tottel*  
*Clayton, R., Tomlinson, H. (2001) Privacy and freedom of expression. Oxford: OUP*  
*De Londras, F., Kelly, C. (2010) European Convention on Human Rights Act: operation, impact and analysis. Dublin: Round Hall*  
*Delany, H., Carolan, E. (2008) (with a contribution on French privacy law by Clíodhna Murphy) The right to privacy: a doctrinal and comparative analysis. Dublin: Round Hall*  
*Harris, D. et al. (2009) Law of the European Convention on Human Rights. Oxford: OUP*  
*Tweed, P. (2012) Privacy and Libel Law: the clash with Press Freedom. Haywards Heath: Bloomsbury*  
*Wacks, R. (2013) Privacy and Media Freedom. Oxford: OUP*

Winston, B. (2005) *Messages: free expression, media and the west from Gutenberg to Google*. London: Routledge

### 3.8.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

### 3.8.13 Module summative assessment strategy

Theoretical knowledge will be assessed by a summative end of year examination (100%).

The examination will consist of both essay and problem style questions.

Essay style questions will place emphasis on the demonstration of understanding pertaining to Media Law. Problem Style questions will enable learners to apply the principles of Media Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1.	Examination	i - v	70%

### 3.8.14 Sample assessment materials

**Sample Examination**  
**Answer any three of the following questions.**  
**All questions carry equal marks.**

#### Question 1

Jack is a football player in the League of Ireland. He is married with two children, and has given interviews to "Hi!" magazine in the past, with his family. He recently invited a girl he met on Tinder, to his house, while his wife was away. They engaged in sexual intercourse. Unbeknownst to him, the girl was filming the encounter, and has sold the story to "The Daily Rag" newspaper.

Jack desperately wants to stop the story being published, and seeks your advice. Refer in your answer to the relevant law.

#### Sample Answer 1

*Jack can seek injunctive relief for breach of privacy, pursuant to Art. 8 ECHR (via ECHR Act 2003), and under Art. 40.3 of the Constitution (McGee, Norris)*

*In analyzing whether his right has been breached, the Court will consider whether he had a reasonable expectation of privacy. Factors to consider include: -*

- private information (sexual) *Mosley v News Group*
- location of infringement (family home) *Holden v Express Newspapers*
- photographs/videos *Mosley v News Group*, *Campbell v MGN*
- means of interference (secret filming) *Cogley v RTE*, *Herrity*
- public figure, *Mosely v News Group*, *Rio Ferdinand*
- previously sought publicity *Hickey v Independent Star*
- relationship between the parties, *Mosley v News Group*, *Theakson v MGN*

*The newspaper may argue that there was consent to the publication based on previous publicity seeking, and that the publication is in the public interest in highlighting immoral behaviour*

*In seeking injunctive relief, Jack will have to satisfy the Campus Oil test*

- The existence of a serious question to be tried
- The inadequacy of damages
- The balance of convenience lies in favour of the grant of the injunction

## **Question 2**

Citing relevant legislation and case-law analyse the main differences between the specific regulation of broadcasting and press in Ireland.

Discuss the reasons for different treatment of the two types of media.

### **Sample Answer 2**

- *Reasons for special treatment of broadcasting*
- *Spectrum scarcity' rationale*
- *'Economic scarcity' rationale*
- *The immediate and accessible nature *Murphy v Ireland**
- *Uniquely accessible to children*
- *Expectation of impartiality*
- *AVMS directive*
- *Broadcasting Act 2009*
- *In general – press sector is subject to significantly less regulation than broadcasting*
- *No Press Act (equivalent to Broadcasting Act)*
- *no licensing requirements; no impartiality requirements; no limitations on religious or political advertising; much less limitations on commercial advertising)*
- *Subject to general rules on defamation privacy, public morality, contempt of court etc.*
- *Other than that – predominantly self-regulation via Press Council and Press Ombudsman*

### Question 3

Laura is a strong believer in social justice, and was dismayed to hear her local TD, Barry Bollard, on the news, advocating that lone parent's allowance should be abolished. Laura attended a restaurant opening that she knew Mr. Bollard would be at, and stood on the pavement outside. As he left the premises, she shouted "*Selfish b\*\*\*\*\*d Bollard, stealing from the poor!!*". Mr. Bollard complained to the Gardai, and Laura was arrested, charged and convicted of an offence under Section 6 of the Public Order Act, which prohibits "threatening, abusive and insulting behaviour" in a public place.

Laura feels that she should not have been criminally convicted for criticizing a politician, and seeks your advice. Refer in your answer to the relevant law.

#### **Sample Answer 3**

- *Laura may appeal decision on basis of potential interference with freedom of expression, Art. 40.1.6 of Constitution, and Art.10 ECHR*
- *Pursuant to ECHR Act 2003, Irish courts must take account of ECHR decisions on Art 10.*
- *Once appeals exhausted in Irish Courts, she has six months to appeal to ECHR*
- *Structure of analysis of Art. 10 cases: -*
- *1. Interference with FoE? (criminal conviction)*
- *2. Prescribed by law? (Public Order Act)*
- *3. Legitimate aim? (to protect public order)*
- *4. Necessary in a democratic society (proportionate)? + (margin of appreciation)*
- *Most of the Court's analysis – BALANCING ACT • Necessary? – less than "indispensable"; more than "admissible", "useful", "desirable" (Olsson v. Sweden (1988) 11 EHRR 259)*
- *"Margin of appreciation" • Depends on type of speech – hierarchical approach – Political speech – very narrow margin of appreciation*
- *Sunday Times v. United Kingdom (1979) – Jersild v. Denmark (1995) • Media expression on political matters – Lingens v. Austria (1986) – Oberschlick v. Austria (No.1 and 2) (1991, 1997)*

### Question 4

#### **Answer both (a) and (b)**

- (a) Briefly outline the four forms of censorship of the media in the name of decency or morals in Irish law.
- (b) Citing relevant legislation and case-law, discuss in more detail two of these four forms.

#### **Sample Answer 4**

- (a) *Law on blasphemy – criminal offence*
- (b) *Prohibition of incitement to hatred – criminal offence*
- (c) *Ban on religious advertising in broadcasting*
- (d) *Taste and decency rules (obscenity or indecent matter) – criminal offence*
- (e) *Blasphemy - Constitution, Article 40.6.1(i): "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law" • Defamation Act, 1961, S. 13 – penalties for printing or*



*publishing blasphemous libel; powers of search and seizure, but no definition • The only attempt at prosecution before Defamation Act 2009: Corway v Independent Newspapers (1999)*

*(f) Prohibition on Incitement to Hatred- Incitement to hatred Act 1989, – DPP v Kissane - Broadcasting Act 2009, Press Code of Conduct – Kevin Myer’s Article on Africa*

*(g) Ban on religious advertising in broadcasting - From complete to selective ban: – S. 20(4) Broadcasting Act 1960 + S.10(3) Radio and Television Act 1988 – S. 65 Broadcasting Act 2001 – S.41(1) Broadcasting Act 2009 - the complete ban under S. 20(4) Broadcasting Act 1960 + S.10(3) Radio and Television Act 1988 ruled to be: • Constitutional by the Supreme Court in Murphy v IRTC (1999) AND • Necessary in a democratic society by the ECHR in Murphy v Ireland (2004)*

*(h) Taste and decency rules - Article 40.6.1(i): The publication or utterance of indecent matter is an offence which shall be punishable in accordance with law – Common law offence of outraging public decency R v Gibson and Sylveire (1991)*

### **Question 5**

*The Griffith Times* are being sued by businesswoman Liz Lane, following the publication of an article entitled “Liz Likes Her Drink”. The headline is accompanied by a photograph of Ms. Lane in a restaurant slumped over a bottle of wine. The editor advises you that the headline was not intended to infer that Ms. Lane was intoxicated, or that she is an alcoholic. It simply referred to her enjoying the taste and experience of consuming fine wine.

The article also expresses concern that “Ms. Lane exercises excessive control and influence over the Irish media. One wonders why she is trying to silence us, and what it is she has to hide.” The editor stands over this comment, and feels that it is about time someone spoke out against Ms. Lane’s censorship of newspapers.

Also reported is the statement made by TD, John Murphy, in the Dail, where he claimed that “Liz Lane is evading tax”.

Advise the Griffith Times on Ms. Lane’s claim, and any defenses that they may have under the Defamation Act 2009, with reference to case law where relevant.

### **Sample Answer 5**

*· In order to succeed in an action for defamation, Ms. Lane must prove that the Griffith Times published a defamatory statement, which identified him, and that they do not have a defence.*

*· There is no issue as to whether the statements were published, and whether they identified the Plaintiff.*

*· In order for a statement to be defamatory, it must injure his reputation in the eyes of reasonable members of society (S.2 Defamation Act 2009)*

*· Innuendo may still be defamatory*

*· It is a defence for a statement to be true (S.16 2009 Act,)*

*· It is a defence for a statement to be an honest opinion, so long as it is a comment, in the public interest, fair and honest (S.20 2009 Act, O’Brien)*

*· It is a defence for a statement to be a fair and reasonable publication on matters of public interest (S.26 of 2009 Act, Reynolds v Times, Hunter v Duckworth)*

- It is a defence for a statement to be an accurate report of a comment made by a TD in the Dail (S.17 2009 Act)
- It is open to the Griffith Times to print an apology, under S.24 of the 2009 Act

### Question 6

#### Answer both (a) and (b)

*“The time, it is to be hoped, is gone by when any defence would be necessary of the ‘liberty of the press’ as one of the securities against corrupt or tyrannical government”.*

(John Stuart Mill, *On Liberty*, 1859)

- Critically discuss the theory of freedom of expression the above statement originates from.
- Compare this theory to the other theories of freedom of expression indicating which theory, in your view, best explains the need to protect freedom of expression of the media, using case law and appropriate academic commentary where applicable.

#### Sample Answer 6

*(a) “Pursuit of truth” (J.S. Mill)*

*(b) British philosopher J.S. Mill – essay “On Liberty” (1869)*

*(c) Free circulation of ideas and opinions makes it more likely that “truth” will be revealed*

*(d) Even false speech must be allowed It forces the ones who have correct/true views to defend their position; compels a rethinking of accepted opinions*

*(e) Suppression of free speech prevents reaching the most rational judgment and discovery of “true” ideas*

*(f) Criticism:*

*(g) Overly optimistic – assumes positive outcome (discovery of truth)*

*(h) False ideas may have receptive audience*

*(i) Long-term benefit outweighs short-term damage? (eg. the idea of National*

*(j) Socialism – Nazism)*

*(k) Under inclusive – what about speech that does not aim at pursuit of truth (artistic, emotional)?*

*(l) Marketplace of Ideas Abrams v US (1919) – dissenting judgment of Justice Oliver Wendall Holmes; “(...) when men have realized that time has upset many fighting faiths, they may come to believe ... that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market”*

*(m) This economic metaphor of freedom of speech has been cited by courts in several jurisdictions, including Ireland (High Court in Holland v Governor of Portlaoise Prison)*

*(n) Criticism • Pessimistic – truth cannot be discovered; whatever idea wins the competition is the current truth (Nazism?)*

*(o) Access to the market is limited – media control the access (media concentration problematic)*

*(p) Central for Democracy - Free speech needs protection, because it is central to democratic process*

- (q) By keeping citizens informed, it facilitates participatory democracy*
- (r) Criticism • Under inclusive – what about speech that lacks political dimension - that does not inform, but eg. entertains (art)?*
- (s) ECHR: Art contributes to the exchange of ideas and opinions essential for a democratic society (Müller v. Switzerland, 1988)*
- (t) Deontological theory - Speech as an act of self-fulfilment*
- (u) Human right – facilitates personal development*
- (v) Focuses on the speaker (instrumental theories – the audience)*
- (w) Covers: – Artistic, creative expression – Expression by young children, mentally ill*