The American Actress, the English Duchess, and the Privacy Litigation

By Amber Melville-Brown

First Brexit, Now Megzit...

In a move more resonant with players of the TV show "Survival" than with members of the British royal family, the Duke and Duchess of Sussex—Prince Harry and Meghan Markle, the Duchess of Sussex—blindsided senior royals with a unilateral announcement that they intended to "*carve out a progressive new role*"[1] within the royal family, and by the surprise launch of their own independent website. The relatively sparsely populated www.sussexroyal.com—including a personal statement about their recently launched media litigation, reference to the Royal Rota media system that they are rejecting, and to the Information Commissioner's Office public interest test under the Freedom of Information Act—suggests strongly that it is the couple's tense relationship with the media that has led them to seek a new "working model" in 2020.

Indeed, if this announcement was intended to foster a new and better relationship with the press, it backfired. Further, if the move to Canada —in part at least—to seek a "more peaceful life," as Harry offered up to the public, then that too may have backfired. Upon the announcement of resignation, both media and public backlashes ensued. While Meghan returned to Canada—leaving the papers to be able to recycle the rather tired "Brexit" into a much more fun "Megzit"—it left the Duke of Sussex to enter negotiations and to seek a compromise with "The Firm."

In this fast-moving story developments will inevitably ensue in the short time frame between "file" and "publish" of this article. However, Harry and Meghan appear to have come out of the deal talks with less than they had hoped for in terms of professional roles and responsibilities, and less than they anticipated in terms of privacy protection and that desired "peaceful life."[2]

As this article went to press, developments came thick and fast. For example, the couple surprisingly swapped the calm of Canada for the glitz of Los Angeles. Whereas privacy might have been in shorter supply than Harry and Meghan would have hoped for in the Great White North, it is surely rarely on the menu in the City of Angels.

However, a move to California was not an ultimate severing of links for Harry with his homeland. Indeed, he was due to return to Blighty in April 2020 to attend the London Marathon, as patron of the London Marathon Charitable Trust. Yet even royals have been affected by the 2020 COVID-19 coronavirus; and Harry's plans for a trip back to the motherland were dashed with the event postponed amid the COVID-19 coronavirus pandemic, even ironically as his father HRH Prince Charles himself actually succumbed and tested positive for the virus.

The couple's new social media sites also suffered a blow; the new relationship carved out in negotiations between the royal family and the couple as they venture out on their own saw them having to abandon use of the "Sussex Royal" brand with which they heralded the new them, before the ink on the new branding was really even dry.

Then, and again with an ironic family twist given it was made on the eve of his Grandmother Her Majesty The Queen's birthday, Harry and Meghan made a spectacular—some believe spectacularly foolish—move. They communicated to the British tabloid press that they would no longer… err, communicate with the British tabloid press. The very public attack on the newspapers confirmed that henceforth, "there will be no corroboration and zero engagement." It seeks to protect the couple from criticism, going on that: "This policy is not about avoiding criticism. It's not about shutting down public conversation or censoring accurate reporting. Media have every right to report on and indeed have an opinion on the Duke and Duchess of Sussex. But it can't be based on a lie."

Truth or lies aside, by penning this line, it is inevitable that the couple have drawn a line in the sand. While it may not be about avoiding criticism, from the tabloid quarters for sure, but more widely also, criticism is what their actions have yielded.

The timing for this breakup letter perhaps explains this move—it was sent at the beginning of the week that Meghan's privacy claim against Associated Newspapers Limited, the publishers of the *Mail* and the *Mail on Sunday*, kicked off. The physical doors of the splendid Royal Courts of Justice on The Strand, London, may be closed amid the coronavirus pandemic, but the wonders of modern technology allowed the presiding judge, Mr. Justice Warby, himself a specialist media judge and barrister before that, to hear the case remotely at a virtual hearing,

reportedly with Meghan and Harry listening in from Los Angeles.

This virtual hearing was an application (motion) by the newspaper to strike out two elements of the plaintiff's claim, one of "dishonesty" by the newspaper in its alleged editing of Meghan's letter to her father, the subject matter of her claim, and second purported reliance for her claim in aggravated damages, on a number of other articles by the newspaper alleged to indicate an agenda against her. Both elements of the motion were defended as irrelevant.

Judgment was handily handed down on the day that the presses rolled for this article. It found the newspaper in the driving seat, while the Duchess of Sussex—according to some commentators—was left with a legal action akin to "a train ploughing into a petrol tanker on a level crossing... a complete disaster."[3] Mr. Justice Warby confirmed the win for the defendant in his judgment, recording that: "I have struck out all the passages attacked in the application notice. Some of the allegations are struck out as irrelevant to the purpose for which they are pleaded. Some are struck out on the further or alternative ground that they are inadequately detailed. I have also acted so as to confine the case to what is reasonably necessary and proportionate for the purpose of doing justice between these parties."[4]

Perhaps understandably, given the media's hounding of his mother Princess Diana, and the paparazzi's perceived role in her death, Harry's hatred of the press and in particular the tabloids seems to have sat festering as a poisonous weight in his stomach over the intervening years. His view of its attitude and treatment of his wife has seemingly turned that poison into a hatred that has bubbled up and exploded, first with his and his wife's separate litigation against various representatives of the British tabloid press, and now in the establishing of new battle lines with the media.

This latest defeat for Meghan will do nothing to improve relationships between the parties, with commentators suggesting that the couple should settle the action. Of course, Meghan and Harry may both remain confident that they will ultimately win their actions, and be unwilling to settle their claims even if the newspapers were willing to throw in the towel. Yet why should the defendants do that? With the litigation fire in its belly, the first legal win its back pocket, a sexy story to plaster over its front pages for a readership looking for something other than Covid-19 news, and the ensuing revenue, it is hard to see the newspaper coming quickly to the settlement table.

Out of Britain, but into British Columbia

If standing down as a senior royal, giving up royal titles, and moving to Canada were efforts to achieve a peaceful life away from the prying eyes of the media, the couple have been sorely disappointed. None of these efforts—and neither their move to glamour-town, West Coast America—will make them any less interesting to the public, given its demand for insights into the monarchy and all its machinations, or of any less public interest concerning as it does the immediate future of the British royal family. The young family will continue to be a valuable commodity to the media organizations that serve those dual interests, irrespective of where they reside.

Despite their move to Los Angeles, it is worth considering why they chose Canada as a potential safe haven. The degree of protection they considered might be afforded them in British Columbia remains unclear. Privacy laws in Canada are more protective than they are in the U.S., but less developed than those of England and Wales. What Canada does offer, however, is seemingly a different attitude. If the scoop-chasing, tenacious, and intrusive tabloids are the "feral beast" of the press world, and the American newspapers are the investigative newshounds, then the Canadian press may be the well-bred, better behaved service dogs of the nation.

Canada then, with what may be seen as one of the world's most polite press, will not have had to address its legal mind as much as its British cousin to curbing the wilder excesses of the media, where those excesses are fewer. Yet with the couple's albeit short-lived move to Canadian shores encouraging the arrival of some foreign paparazzi tourists armed with long lenses, seeking to collect photo trophies to send to the publishing houses back home in Blighty, that might significantly have changed the Canadian ways.

Whether the couple—no strangers to the camera and to public life—will find privacy succor on any foreign shore seems unlikely. However, little Archie may be a different story. When the author JK Rowling took action in England over the unauthorized publication of photos of her toddler son in a pushchair on the streets of Edinburgh,[5] the Court of Appeal held in 2008 that: "The law should indeed protect children from intrusive media attention," and that "If a child of parents who are not in the public eye could reasonably expect not to have photographs of him published in the media, so too should the child of a famous parent."

Most modern legal systems will seek to protect the vulnerable. Canada is no different and had the couple stayed there, the British Columbia courts faced with persistent paparazzi pursuit of the couple and their child on Canadian soil, Archie might have been the couple's secret weapon to garner some degree of privacy protection. That might go California too, at least with regard to photographs taken on California soil, but published by the couple's tabloid foe. In 2014, the children of British singer Paul Weller—who were 16 and 10 months old at the time of the publications—received damages in an action brought in the courts of England and Wales, for the unauthorized publication of photographs of them on a shopping trip in Santa Monica.

This article will discuss the differences between media litigation in the U.S. and the U.K. against the backdrop of the legal action brought by the Duke and Duchess of Sussex. First, what is this new media relationship all about?

The Royal Rota System

We need now to leave aside the relationship between the couple and the tabloid press. For this is, at least according to the couple, no relationship. It is over. It was, as far as they are concerned, not a good relationship. And like many a disgruntled former partner, they have written the tabloids a "Dear John" letter, and are moving on. However, that does not mean that they eschew all future relationships with any media. Far from it. The new media relationship that the couple is seeking to embrace rejects not only of late, the terrible tabloids, but even before that a system with which the royal family has more or less amicably enjoyed for more than 40 years. The News Media Association explains that "due to space restrictions and security, it is rarely possible to allow all media who wish to cover a royal engagement equal access to the event."[6] Accordingly, the Rota system allows media organizations access to these events "on the understanding that they will share all material obtained, with other members of their sector who request it."[7] However, according to Harry and Meghan's website, while those media outlets—*The Daily Express*, *The Daily Mail*, *The Daily Mirror*, *The Evening Standard*, *The Telegraph*, *The Times*, and *The Sun*— "are regarded internationally as credible sources of both work of members of The Royal Family as well as of their private lives,"[8] that is a "misconception" allowing for coverage by other outlets around the world "amplifying frequent misreporting."[9]

The Duke and Duchess of Sussex, it seems, want to take back control of their relationship with the media. By refusing forthwith to participate in the Rota system, they will choose to whom they release news of their professional and private lives, and that of their son Archie. Embracing social media via their own website and Instagram accounts—easier to control than an independent news organization—they hope presumably to position themselves more fairly and accurately, or certainly to their own media agenda. However, by adopting this stance, they have thrown down the gauntlet to the British tabloid press that they wish to exclude. In their announcement that they will not engage with the tabloids, they have slapped that guantlet across the faces of those widely read and powerful newspapers.

Independence Day

In their new desired life of financial independence, living between North America and the United Kingdom, it is unlikely in the extreme that the tabloids will do them anymore favors, or afford them any more privacy than they did when they were within the fold. Just days after Harry joined his wife in Canada, their lawyers sent letters to British news outlets warning that action would be taken if they buy or publish photos of them taken under circumstances described as harassment. After moving to Los Angeles, further letters were sent seeking to cut the papers off from the source of potential news stories. Yet if the old adage is true that one should keep one's friends close and one's enemies closer, by casting these media organizations out into the cold in this way the Duke and Duchess of Sussex will inevitably have made even more of an enemy of the mainstream media than it was before.

Their independent actions may also have found them foes nearer to home. If the British monarchy is run like a military operation, the soldier and his actress wife have broken ranks. While Her Majesty The Queen has been characteristically dignified, albeit uncharacteristically personal in her statements about the rift, reports that their initial unilateral announcement infuriated her are not surprising. A note on the couple's website that they intended to continue "to honour our duty to The Queen"[10] could be cold comfort in the face of such apparent insubordination.

It is hard not to draw comparisons with the Duke of Sussex's great-great-uncle Edward VIII who wrenched himself away from the royal family by his decision to wed his American divorcee wife and abdicated the British throne. Here, Harry seeks to walk the line between love and duty, honoring both his wife and The Queen; living a financially independent life while still using his royal title to undertake important charitable work; and embracing a new relationship with new media, while leaving behind certain sections of a press distasteful to him and the Duchess of Sussex.

Some will admire them for this stance. Those who do not will no doubt include the mainstream media. The couple's actions may have been intended as a regal lesson, but it is not one that the press is willing to take. Royal Rota or not, engagement by Meghan and Harry or not, they will continue to report on the activities of the Duke and the Duchess of Sussex, and the soldier and the actress, from without the palace walls and wherever they chose to hang their tiaras.

The legal action commenced by Harry and Meghan late last year against the tabloids was an early indication that the English prince and his American wife were quite prepared to take on the media with unexpected ferocity. Yet as this article sets out, history is in fact peppered with examples of regal legal action by way of precedent upon which the couple may be able to rely.

Two Countries—One Language—Two Legal Systems

England and America are famously two countries divided by a common language. We are also two countries divided by different media laws, different burdens of proof, different attitudes to the media, and different approaches to holding it to task via legal process.

Indeed, to a media lawyer having spent the first 20 years practicing on the British side of the Atlantic, the law practiced by media attorneys on the American side of the Pond seems to be a little like the world seen by Alice in Lewis Carroll's 19th century novel, *Through the Looking-Glass and What Alice Found There*, "just the same as our[s] ... only things go the other way."[11]

The Duke and the Duchess of Sussex—Keeping It Private

The differences between the two systems may well be evidenced by recent media and legal activities by members of the British royal family of late, including its own version of Alice, Meghan. Over here in the U.S., she is the African American actress best known for playing the body-hugging-suit-clad aspiring attorney in the legal drama, "Suits." Over there in the U.K.—at least until she returned to Canada recently—she is the tiara-wearing Duchess of Sussex, wife of Harry, and mother to the sixth in line to the British throne. These differences in circumstances and jurisdiction may explain what appears to be a change in approach to the media over a matter of a few small years.

As a former actress in the United States, Meghan appeared to love the camera, earning her living from and happily posing for it at numerous celebrity events. Despite the media attention that her role as an actress and celebrity attracted, it is less likely that she would have thought twice before reaching for her lawyer over the publication of any damaging commentary or for any perceived invasion of privacy in the United States. However, as a current Duchess, she clearly has little love for the British tabloid media, is unhappy with the manner in which it refers to, reports on and treats her, and is so unhappy in fact, that she has sought recourse in the courts of England and Wales by bringing legal proceedings against sections of the British tabloid press for privacy invasion.[12]

It is certainly not just the Duchess of Sussex who is less than impressed with the press. Harry has staunchly and defensively stood by her side, castigating certain sections of the press for its campaign of harassment against her. He has also issued legal proceedings in the High Court of England and Wales over his own alleged privacy invasion as a result of phone hacking.[13] However, there appears to be a historical and jurisdictional difference here as well. While in the U.S., some years ago, privacy was something which bachelor Harry allowed to take a back seat as he revealed all in a Las Vegas hotel room during a game of strip billiards with his pals. Recorded on a third party's phone, these otherwise private moments were later all over the papers without complaint.[14] That differed in turn from the stance taken by his brother Prince William and his wife, over the publication by French magazine *Closer*, of unauthorized photographs of Catherine, the Duchess of Cambridge, topless while on holiday—which did result in a complaint and in successful legal action.[15]

Yet it is not just standing up to the press via regal legal action that brought attention in 2019. Sitting down with the media also had tongues wagging. Her Majesty Queen Elizabeth II annually faces the cameras in her Christmas address. Otherwise, it is unusual for members of the royal family to sit down with reporters for a face to face interview. However, like his sister-in-law Princess Diana before him, His Royal Highness Prince Andrew took the unusual step of giving a televised interview[16] to the media to seek to dispel the negative media attention surrounding vehemently disputed allegations made in connection with his association with the disgraced Jeffrey Epstein. This spectacularly misfired, with the Prince himself, being "fired" from public duties.[17]

There is much to be said for calling the press to account when it behaves irresponsibly, and engaging with reporters to tell one's story can be the right approach, on proper advice to do so. In taking either action, a fair balance can sometimes be achieved between the respective rights at play, reputation and privacy on the one hand, and free speech on the other; and a fuller, more accurate picture be painted for the public. As—being fair to the media, and if one wants fair play, one must be fair oneself—the media does not generally want to act unlawfully by publishing false and defamatory allegations, or private information without justification. However, taking either course of action in either jurisdiction is not for the faint-hearted, and certainly not to be undertaken without careful consideration, and on advice.

Unifying both systems on both sides of the Transatlantic looking-glass reporters and publishers work as the eyes and ears of the public, watching courtroom proceedings, listening to sources, and then reporting back on important societal issues, including news, politics, religion, the arts, and so on. As they do so, their work often bumps up alongside the legal rights of others, sometimes contravening those rights. The media laws of England and Wales have been criticized for being oppressive and draconian—largely it may be said, by a press whose wilder excesses the laws are there to prevent. Those laws are utilized by claimants wishing to regain control, or at least some balance, in the telling of the story or the protection of their privacy. Meanwhile, the American system may be said to provide some of the greatest protection for free speech in the world, of which the First Amendment attorneys are proud, but which may not provide as many avenues for redress by those with justifiable grievances. Calling the press out via litigation in the U.S. is a risky sport engaged in less readily than in the U.K., largely because in the U.S., the First Amendment[18] gives the American media a head-start in the race to the litigation finishing line.

First Things First—the First Amendment

The Brits have a vague idea anecdotally of what Americans are taught from an early age, that the First Amendment was born in the aftermath of the revolution as America wrenched herself free from distrusted, distant British rule, creating the federal system and its Constitution. "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ."[19] echo the voices of the Founding Fathers down the centuries, those voices being variously harkened to throughout history as the U.S. Supreme Court has defended free speech. However, while as Justice Black conceded in his 1971 opinion in the Pentagon Papers case that the First Amendment is not "absolute,"[20] the American press has sought to ensure that it is as protective as it can be to enable it to fulfill its essential role in serving the public.

To be clear—the press in the United Kingdom is no lap dog. Familiarly known as the bloodhound and watchdog of society, it roots out bad behavior and barks it out from the rooftops (or the red tops, a nickname for the English tabloids due to their front page red banners) to the world at large, thereby saving the public from hypocrisy, criminality, and corruption, and thus securing democracy. Even without a First Amendment to protect it, the British press does not simply roll over like a scolded puppy at any threats to sue, but will robustly defend its reporting in the face of litigation. Of course, some press activity is bad enough to merit a severe reprimand and justify that reporter, editor, newspaper being in the doghouse with judges and the public alike. Harry's statement in announcing his wife's litigation[21]—referring to sections of the press as conducting a campaign of harassment, perpetrating lie upon lie, and unjustly vilifying his wife as some sort of pantomime villain—certainly seeks public approval and public approbation of the press.

Privacy v. Privacy

The Duchess of Sussex's legal claim against the British tabloid newspaper, the *Mail on Sunday*, arises out of the unauthorized publication of a private letter written and sent by her to her father. Hard on those litigation heels, the Duke of Sussex is bringing a claim against the tabloids, the *Mirror* and *The Sun* over alleged phone hacking. Both claims are brought in privacy, more formally referred to as claims for misuse of private information.

Belying the phrase "the apple doesn't fall far from the tree," the American branches of privacy law fell from the branches of the traditional English variety of breach of confidence—also the mother of modern English privacy law. However, here, it has not really taken root in the same way.

The traditional English Breach of Confidence law encompasses and protects an array of relationships of trust and is used extensively in the courts of England and Wales to protect against and provide remedy for, disclosures and threatened disclosures of information communicated in circumstances importing an obligation of confidence. In other words, where a party knew or ought to have known that the information disclosed to it was confidential and not to be disclosed, that party may be restrained from any unauthorized, onward disclosures, and be ordered to pay damages for any disclosures that have taken place. The newer tort of misuse of private information is the offspring of breach of confidence sired out of the Human Rights Act,[22] which incorporated the European Convention of Human Rights[23] into English law. It equally protects information in respect of which the claimant has a reasonable expectation of privacy, irrespective of any existing relationship of trust between the parties.

Meanwhile, the American variety of privacy protection fits snugly within categories of Public Disclosure of Private Facts, False Light, Commercial Exploitation of Likeness, Intrusion Upon Seclusion, and a limited Breach of Confidentiality—as well as specific codified, and usually more restrictive, varieties in a number of American states. Springing to life more than 100 years ago, privacy began to grow under the tender hands of Justices Warren and Brandeis, and their now famous *Harvard Law Review* article from 1890, "The Right to Privacy."[24] It germinated as a result of the authors' horror at the way in which "[t]he press is overstepping in every direction the obvious bounds of propriety and of decency." Justices Warren and Brandeis would surely turn in their graves in seeing some of what now passes for journalism—sensationalist reporting that is very far removed indeed from the somewhat tame reporting of dinner parties and weddings that they found sufficiently intrusive and prurient to warrant their privacy treatise.

To Sue or Not to Sue

Having one's privacy invaded, as so many across both continents in reality do, does not necessarily mean that legally one has a claim in privacy invasion, or a claim that should sensibly and may successfully, be pursued. Meghan is a celebrity—and even if she and the Duke of Sussex have "resigned" from their senior roles, is now a member of the British royal family. While celebrities and stars of the screen, stage, and stadium are not usually backwards in coming forward when their reputations are falsely traduced, or their privacy unfairly invaded, even in England, litigating against the media is not a game that royal family members like to play too often. Rather, the royal family has traditionally refrained from sullying its hands with legal action or drawing more negative attention by having its laundry—dirty or otherwise—washed in the public arena of open court. While the royal family has not rushed to the steps of the English Royal Courts of Justice to litigate when their regal rights have been infringed, legal recourse is not completely ignored.

In 2006, His Royal Highness the Prince of Wales controversially but successfully sued the *Mail on Sunday* over the unauthorized publication of extracts from his diaries produced during the handover of Hong Kong from the United Kingdom to China.[25] His diary, entitled "The Great Chinese Takeaway"—in which he referred to the Chinese dignitaries as "appalling old waxworks," had along with other diaries, been given to fewer than 100 people in his staff, friends, and contacts "in confidence." This dynamite diary, however, was published by one recipient in a book which was then serialized in the *Mail on Sunday*.

While there are no set definitions of what is private or confidential, domestic English and European caselaw has established that it can include the notable categories of health, medical, sexual and relationship information, while Article 8 of the European Convention on Human Rights[26] guarantees the right to respect for one's private life, home and, notably in the cases of the Prince and the Duchess, correspondence.

As any lawyer worth his or her salt on either side of the salty sea knows, just because a cause of action exists does not, of course, mean that it will necessarily succeed. Regularly set against the right to privacy under European law in the red corner, is the Article 10 right to free speech[27] in the blue corner. A claim for privacy invasion or breach of confidence for one side of the bout is often met with counterblows of public interest, or public domain.

The defendant publisher in Prince Charles's case came out fighting, arguing that publishing the diaries was justified in the public interest in showing the Prince as improperly meddling in political affairs. This argument did not, however, succeed. The court found that the diaries were private, not public, political offerings, and that they were given to their few recipients under the auspices of confidence. It found little merit in the argument that a public interest justified the disregard of the confidential relationship between author and recipients. According to the judge, Mr. Justice Blackburne, "the contribution that the ... journal makes to any public debate . . . is at best minimal."[28] Further, their public domain blow failed to land. The limited extent to which the diaries had been exposed to their recipients did not amount to their having been put sufficiently in the public domain such that there was nothing confidential left to protect.

As a result, Prince Charles won his action; he retained the confidentiality in his other, unpublished diaries; and importantly, he was able to avoid the unattractive proposition of being laid bare in giving evidence in open court. While proceedings can be anonymized, that is not the norm and hearings are usually conducted in public, potentially generating significant media interest and publicity where the case concerns a matter of public interest, or is simply interesting to the public. A family spat over the publication of a private letter where the parties include royal family members, let alone a celebrity actress, is bound to generate media interest. Whether the Duchess will be as fortunate as her royal predecessor in avoiding the requirement of open court evidence remains to be seen, as does whether any public interest or public domain argument for the Duchess will fly.

Public Domain and Public Interest

Arguments have been made in the media—and will be made in the litigation—that Meghan may herself be ultimately behind the exposure of the private letter in dispute, wanting the public to know that she had not turned her back on her dad, and that she had therefore communicated to a discreet number of friends that she had sent the letter to her father in the first place. Those friends in turn, it is argued, disclosed that fact and even the tone and some of the content of the letter to some in the media to dispel the myth that she is a cruel daughter unwilling to engage with her estranged father.

So far so complicated. In an additional twist, her dad, it is said, spoke about and disclosed the letter to the media in the U.S. in order to add some context to the story that her camp wanted out about her. This was not a "Dear Daddy olive branch" at all, he wanted the world to know—and the only way to show this to be the case was to disclose the letter.

Back in the U.K., the newspaper will seek to argue both that there is a public interest justification in the publication, and that there is a public domain argument to be made.

In the first case, arguments will be made that there is a public interest in the letter's publication to prevent the public from being misled as to Meghan's true relationship with, and communications to, her Pa. Will they succeed? Not necessarily. A claim in privacy invasion may be defended on the grounds that the disclosure contributes to a debate of general interest, and is thus in the public interest. Yet while the *relationship* between the Duchess of Sussex and her father has been widely written about and might be considered public interest fayre, whether her *feelings* towards her father and her private communication of them to him amounts to a contribution to a debate of general interest and a matter for public consumption is something the court will have to deliberate.

Yet if such arguably private information is already in the public domain, surely then it is no longer private? In a misuse of private information case under English law the privacy bubble may not necessarily be burst simply because information, or some of it, has been put into the public domain. As the English Supreme Court accepted in *PJS*,[29] harm can continue to be caused by each new privacy infringement and thus, relief may still be granted. According to the Supreme Court, "a claim for misuse of private information can and often will survive when

information is in the public domain."[30] In other words, if the privacy cat is to some extent out of the bag by reason that it has in whole or in part been placed into the public domain, it is not necessarily impossible for the court to shove the privacy kitty-cat back in.

Public or Private

While being a duchess or a celebrity may impact the decision to bring proceedings, does such a status also impact any case that is actually brought? In America, undoubtedly. Far be it for a Brit to expound upon the seminal 1964 case of *New York Times v. Sullivan.*,[31] but it is noteworthy in this context for having effectively extended warm and protective arms around the representatives of the media and given greater latitude for publications when it comes to public figures, which assuredly Harry, Duke of Sussex, and Meghan—actress, Duchess of Sussex, mother to a potential future heir to the British throne, take your pick—would be considered to be.

Before this case, American law followed a similar path to that of its English heritage. However, in 1964, everything changed, the Supreme Court establishing that a public official could only succeed in a libel action where he or she could prove—and the burden is on the public official to do so—that what was published was knowingly false or that the publication had reckless disregard as to whether or not it was true. Why should a person in the public eye—who might have more than most to fear and suffer from false accusations—have in fact, to suffer them? According to the Court in *Sullivan*, "public men, are, as it were, public property."[32] There the plaintiff's very notoriety, the status which allowed him successfully to argue that he was identified by the article, was his defamation-suit demise. "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'[33]—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."[34] With that, the actual malice standard was born, allowing the media to continue on its path of doing what the First Amendment was enacted to do, to hold Government accountable to the people.

The later cases of *Gertz v. Welch*[35] and *Philadelphia v. Hepps*[36] established that while private persons should not be burdened by the "actual malice" standard, but by a lesser, negligence standard, both must "bear the burden of showing falsity, as well as the defendant's fault before recovering damages."[37] In England, there is no such actual malice standard for defamation cases, and celebrated claimants in privacy cases start from the same position as anyone else, needing to show that they have a reasonable expectation of privacy in respect of the information at issue.

While American law formally draws a distinction between those who availed themselves of the public and the limelight and those who had stayed beneath the media radar, under the English system persons seeking reputation redress or privacy protection can face greater obstacles in practical terms than private person litigators. While the starting point for all claimants may be the same, defendants will often argue that a public interest justification for the particular publication is merited as a result of the public figure status of the claimant as the defendant newspaper—albeit unsuccessfully—argued in the Prince Charles diary case. Broader shoulders are generally required, for example, of politicians when it comes to reporting on matters that attracts criticism. Similarly, those in the public eye are often hoist with their own publicity petard where they have spoken out publicly about a matter—vegetarianism, drug use, or family values, for example, only to be "caught out" in a hypocrisy argument when they are found eating a burger, smoking a joint or having an affair. That information—true or false, arguably private or not—may, if responsibly researched and published, attract a public interest defense.

An equally seminal case to *Sullivan* appeared before the European Court of Human Rights in 2004.[38] It evidenced that one can be both public figure and private person, if not at the same time, then certainly within the same human being. The Duchess of Sussex's current case brings into sharp focus, 15 years after Princess Caroline's case, the boundary between private and public, professional personas and private individuals.

The case brought by Princess Caroline of Monaco drew a distinction between the activities of "Princess Caroline the princess," fulfilling her formal official duties, and "Caroline the woman," fulfilling a private role as individual, mother, and wife. Photographs of her out and about with her children, skiing or shopping did not, the court said, contribute to a debate of general interest, and did not amount to public interest justified fodder for the press to regurgitate to the public without the subject's consent.

In England, the newspaper industry is self-regulated, and according to the industry's preferred self-regulator, the Independent Press Standards Organization (IPSO),[39] "public interest" includes, but is not confined to, detecting or exposing crime or serious impropriety, protecting the public from being misled, and there is a public interest in freedom of expression itself. When it comes to Meghan, there may be plenty of story lines about this royal soap-opera family member to keep the press and the public thirsty for more—divorced, American, African American, daughter of a broken marriage, and having the audacity of being bold, beautiful, and black. That does not, however, necessarily make aspects of her private life, her home or her correspondence, fit for public consumption. Simply because her actions and attributes are enough to make the public interested in her, does not necessarily

mean that there is a public interest in the publication of her private letters. In the Duchess of Sussex's litigation, the court will likely be asked to consider whether the letters of controversy were penned not by "Meghan the Duchess," in which case greater weight may be given to a public interest defense, but by "Meghan the daughter," garnering greater privacy protection.

Prior Restraint—A Four Letter Word

A significant difference between the American and the English systems is the availability of the prior restraint remedy in media cases, and the possibility thereby of keeping the private cat in the bag in the first place. While reports of the vitality of the injunction in England has, as Mark Twain might have said, been greatly exaggerated, prior restraint is still a possibility in England and Wales for the right facts, against a media defendant. In the U.S., uttering the words "prior restraint" anywhere near a First Amendment lawyer is akin to speaking a four-letter word. In the U.S., an injunction preventing the publication of material by a newspaper is considered to be a direct governmental restriction on free speech and unconstitutional. The Supreme Court in *Near v. Minnesota*[40] found a Minnesota act enabling the authorities to close down "malicious, scandalous and defamatory newspapers"[41] to be "an infringement of the liberty of the press."[42] "Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press."[43] Forty years later, the Supreme Court found in the Pentagon Papers case that the presumption against prior restraint could only be overcome in "exceptional circumstances."[44]

Reputation in England, of course, is just as important as it is in the U.S. "Who steals my purse steals trash; 'tis something, nothing," says Shakespeare's Othello. "'Twas mine, 'tis his, and has been slave to thousands: But he that filches from me my good name robs me of that which not enriches him and makes me poor indeed."[45] Our reputations worldwide are perhaps even more valuable today—in a busy and competitive market place, and where libel can be published with the click of a mouse or the tap on a keyboard. As Benjamin Franklin said, "Glass, china and reputation are easily cracked and never well-mended."[46] That would suggest that the pre-publication injunction should be available to stop the reputation rot before it starts. Yet neither side of the looking-glass is enamored by that prospect. American law does not permit a defamation plaintiff to seek to prevent reputational harm by way of a pre-publication injunction; and in a seemingly rare commonality between the two countries, English libel claimants too—save in the most exceptional cases—are confined to seeking redress post publication.

On the other hand, injunctive relief is an available remedy in actions for privacy invasion in the courts of England and Wales. The view is that unlike in defamation cases where a reputation can arguably be restored by a public judgment and a public award of damages, in privacy cases once the private genie is out of the bottle there is no getting it back in.

That said, it is generally the case that the English courts will not grant relief where to do so would effectively be requiring them to play the role of King Canute.[47] This was evidenced by the failed attempt to maintain an injunction by the former FIA chief Max Mosley, after a video clip of the private information at issue had been viewed on the defendant newspaper's website more than a million times.[48]

A case that caused some considerable consternation, however—not to mention commentary and column inches—was that in the United Kingdom in *PJS v. News Group Newspapers Ltd* in 2016.[49] Here, the Supreme Court grappled with the issues faced by privacy injunctions in the modern technological world, where digital information refuses to respect territorial and jurisdictional boundaries. The court ultimately upheld a privacy injunction preventing disclosure of the identity of parties said to have engaged in certain sexual activity outside their relationship, notwithstanding rumor around the identity of the complaining parties had been widely published outside the Supreme Court's jurisdiction, including in America. The Court found that the reasonable expectation of privacy had not been outweighed by the newspaper's argument of "public interest," based on an argument that a false image of family life had been portrayed by the applicants, sufficient to justify the exposure of the information at issue.[50] Given the extent to which the matter had been talked about, and the extent to which the alleged identity of the individuals concerned had been mooted and rumored and reported upon elsewhere, it is not surprising that the newspaper felt confident in its appeal. Yet the Supreme Court upheld the injunction.[51]

Realistically, to do otherwise might have been akin to the turkey voting for Christmas—after all, had the Court decided the other way, it would likely have been criticized for condoning that pressure from the press, foreign publications, and some social media sites should weigh more in the balance than their own properly considered judicial view balancing the right to privacy, against the right to free speech. If that is the case, then arguably they would be out of a job and might as well leave decisions that should otherwise be decided by the judiciary to the popular vote.

Alright Copyright

One area where prior restraint may be tolerated in the U.S. is in copyright law where preliminary injunctions are expressly authorized in the U.S. Copyright Act[52] by way of remedy. The applicant must show the likelihood of success on the merits, and of irreparable harm in the absence of the injunction, that equity tips the balance in its favor, and that it is in the public interest.

Back in England, a distinct legal claim in the Duchess of Sussex's case is that in copyright infringement. Whether copyright has been infringed under English law[53] is a qualitative, not quantitative test, the court considering whether a substantial part of the copyrighted material has been reproduced without consent. Interestingly, in Meghan's case the newspaper could have been damned both if it argued substantial publication and if it did not. An argument that it reproduced only part of the letter in its article—which is maintained by the newspaper—could be seen to add credence to the complaint by the Duke of Sussex in his public statement that the newspaper was deliberately selective in its quoting—indeed, publishing in an "intentionally destructive manner"[54]—in order to fit its intended negative narrative about his wife. An acceptance that the letter was reproduced in its entirety without the copyright owner's consent however, would leave little scope for any defense to a copyright claim. Adopting a creative approach, the newspaper argues that the letter does not even rise to the quality of original copyrighted work; rather, purely an admonishment of her father rehearsing pre-existing facts, it is not an original literary work.

Copyright precedent close to home for Harry's wife can be seen echoing in controversy decades ago over private letters belonging to Harry's mother. Princess Diana had written to Major James Hewitt—whom she had later admitted, she had adored—which letters were reportedly later stolen from him and ultimately when offered for sale to a newspaper, sent by the newspaper to the estate of the by then deceased Princess Diana. Yet who owned the copyright in the letters, and thus the right to publish them?[55]

The actual, tangible paper on which letters are written becomes the property of the recipient on receipt. However, the copyright in the words belongs to the author. In Princess Diana's case, the copyright in her letter to the Major remained hers and, on her death, that of her estate, whether they were in the physical possession of the recipient, the newspaper or any other third party. If the letter is copyrighted material, then Meghan owns the copyright in her letter to her father—albeit that her dad may hold the physical manifestation of his daughter's expressed emotions. Thus, it is she who should call the shots on any publication.

Hacked Off Harry

Hot on the heels of the Duchess of Sussex's privacy claim came news that her husband the Duke of Sussex was also taking on the tabloids *The Sun* and the *Daily Mirror* for invasion of his own privacy, via phone-hacking.[56] Readers may recall that shock and outrage ensued at the news that reporters for the *News of the World* had repeatedly and systematically tapped the cell phones of intended subjects of articles, and used the private and confidential information that they thereby obtained to stand up stories and publish exposes.[57] Indeed, the royal family was first enmeshed in this scandal at its very inception after publication by the now defunct *News of the World* of information about a strain on Prince William's knee, said to be obtained via phone hacking.[58]

That Harry is now bringing a claim eight years after the scandal brought down the newspaper may suggest that he is looking for a way firmly and publicly to support his wife in her horror at tabloid behavior, and certainly that he is quite prepared for them to fight the media on two fronts. He wants to send a clear and convincing message that this is a new royal couple with whom the media should not mess.

Approaches to the Media

Meghan is an animal lover and canine supporter; she is less of a friend of the British media hound, and no supporter of the bullying tabloid press. Is this an enemy on which the couple are safe to take? The Duke and Duchess of Sussex may in their dual litigation have cornered the "feral beast," as English Prime Minister Tony Blair famously called the media on leaving Downing Street.[59] Yet the press can be a dangerous enemy with which to engage. It was perhaps for that reason that while bemoaning his wife's suffering during a 'ruthless campaign' of bullying to which he had been a 'silent witness', the Duke of Sussex did not condemn the media outright, but also referred to responsible journalism as a "cornerstone of democracy"[60] while taking time shortly thereafter, to engage more amiably with the media on a tour of Africa. The couple have shown their distaste for the tabloids by showing them the door to their future lives, and casting them into the darkness of "life outside Harry and Megan world."

On this side of the Atlantic, President Trump is no friend of the traditional media at all, preferring to engage with the public via the modern medium of Twitter rather than through the microphone or the lens of reporters asking "nasty" questions, the alleged perpetrators of "fake news." In the final stages of his electioneering when he was the then Republican Party nominee, Donald Trump was vocal in his distaste for his country's defamation laws. Demanding the removal of the online version of a *New York Times* article that was "reckless, defamatory and constitutes libel per se,"[61] his lawyers threatened that absent this step they would be left "with no option but to pursue all available actions and remedies."[62] The problem for Trump as a public figure was that "all available actions and remedies" would not really have got him very far. Now that he is President Trump, he is no more enamored of the press than he ever was; becoming rather fiery and furious over the publication of Michael Wolff's *Fire and Fury: Inside the Trump White House*,[63] he announced that his administration would take a "strong look" at libel laws.[64] By this he might mean that while reporters look with envious eyes across the Pond at U.S. media laws, the President might be looking right back with his own eyes full of envy at more plaintiff-friendly laws across the ocean.

Approaching the Media

With the televising of the Queen's coronation in Britain in 1953[65]—to which the monarch was initially reluctant to agree—the royal family began its dangerous dance with the press and broadcasters, extracting itself from its largely hitherto splendid isolation from media. This has been a dance with the devil; at times an elegant waltz with neither side putting a foot out of step and both partners getting something out of the encounter—positive public relations for the family and public appeal and revenue for the publisher; at other times, there has been a disastrous slip and trip, resulting in privacy invasion and reputational damage.

One can hardly operate in today's modern world without some access to the media. Engagement can be hostile, passive, or deliberate. None are ideal—and those lacking in experience, the ill-advised and those un-trained in the rules of engagement will likely exit from any such encounter with at best, their fingers burned. Princess Diana fared well in her interview with the BBC[66] over her relationship breakdown, albeit that some may have considered her decision to go public to be reckless, dangerous, or somewhat unfitting for a royal. The decision by his Royal Highness Prince Andrew to give an interview over his former friendship with Jeffrey Epstein, and to counter the allegations—robustly denied—by a young American woman, also televised on a BBC Panorama program, did not meet with such success. Presumably undertaken to set the record straight, it seemingly has done nothing of the sort. Rather it has given additional oxygen of publicity to the fire of rumor and speculation already blazing.

Would the traditional stiff-upper lip, some good old British reserve, and the more regal, distant approach exhibited by Her Majesty The Queen throughout her reign have been preferable? The media is—generally—not there to catch us all out but to report the facts and educate—and entertain—the public. However, deciding to get on the dance floor with a reporter in this somewhat dangerous dance is a decision best made after careful consideration and on proper advice.

In her interview with the BBC, Princess Diana publicly and explosively referred to the breakup of her marriage to Prince Charles: "Well, there were three of us in this marriage…" Well, there are three of us in any media story: the subject of the expose, the media organization that wishes to do the exposing, and the public who, to some extent or another, wishes to see the exposure. The manner in which on both sides of the Atlantic we consume the news and allow our media organizations to hunt and gather it for us differ. The most significant difference at the root of it all is the First Amendment. Marking Wikileaks' one year anniversary in 2014, Wikipedia founder Jimmy Wales referred to the First Amendment as: "One of the big differences between the US and the UK"[67] and called for a U.S.-style First Amendment in Britain, lauding it for its protection of whistleblowers.

"It seems very pretty,"[68] said Lewis Carroll's Alice in *Through The Looking-Glass*, when she had read the rather confusing poem, the Jabberwocky, "but it's rather hard to understand!"[69] Those practicing media law on the English side of the Pond might find the First Amendment rather hard to understand. Whereas, those on the American side, will assuredly find it "very pretty."

Endnotes

1. Included in a personal post on the Sussex Royal website, (January 20, 2020), https://sussexroyal.com/about/.
2. Guy, J. and Foster, M. (2020) '*Read Prince Harry's full speech after royal split*', CNN (January 20, 2020), https://edition.cnn.com/2020/01/20/uk/transcript-prince-harry-speech-intl-gbr/index.html.
3. Robinson, M. (2020). *'This is a like a train ploughing into a petrol tanker. A complete disaster': Legal experts say judge's decision to dismiss major parts of Meghan Markle's letter case against* Mail *on Sunday is a "humiliation."* The Daily Mail. [online] https://www.dailymail.co.uk/news/article-8276929/Meghan-Markle-suffers-massive-setback-judge-tosses-multiple-claims-against-Mail-Sunday.html.
4. *Sussex v. Associated Newspapers Ltd.* [2020] EWHC 1058 (Ch).
5. *Murray v. Big Pictures Ltd* [2008] EWCA Civ 446.
6. Content from the News Media Association, http://www.newsmediauk.org/Industry-Services/Royal-Rota.
7. *Id.*
8. Included in the media statement on the Sussex Royal website, https://sussexroyal.com/media/.
9. *Id.*
10. Included in a personal post on the Sussex Royal website (January 20, 2020), https://sussexroyal.com/about/.
11. Lewis Carroll, Through the Looking Glass, and What Alice Found There (1871) 1.11.
12. Reported by numerous sources, including an official Statement by His Royal Highness Prince Harry, Duke of Sussex (October 1, 2019), https://sussexofficial.uk/.
13. *Duke of Sussex v. News Group Newspapers Limited Duke of Sussex v. MGN Limited* As reported by Byline Investigates, https://www.bylineinvestigates.com/murdoch/2019/10/4/world-exclusive-now-prince-harry-sues-the-sun-and-mirror-in-war-on-tabloids.
14. The story was picked up by a variety of newspapers, including:

    '*TMZ Catches Photos of Prince Harry in Naked Vegas Billiards Game,*' The Atlantic (August 22, 2012),

    '*Prince Harry Naked Vegas Photos: Anatomy of a Royal Scandal,*' E! News (August 24, 2012),

    '*A sleazy club, a nude blonde and the truth about those snaps in Harry's Vegas suite,*' The Daily Mail (August 24, 2012).
15. *'Court awards Duchess of Cambridge damages over topless photos,'* The Guardian (September 5, 2017).
16. Interview given to Emily Maitlis of Newsnight at the BBC (available via iPlayer), aired at 9pm on November 16, 2019, https://www.bbc.co.uk/iplayer/episode/m000c1j4/newsnight-princeandrew-the-epstein-scandal-the-newsnight-interview.
17. Reported by a variety of sources, such as:

    'Prince Andrew to step back from public duties for 'foreseeable future,' The Guardian (November 20, 2019),

    '*Queen sacks Prince Andrew: Monarch summons distraught Duke of York to Buckingham Palace, orders him to step down from public duties and strips him of £249,000 'salary' amid fall-out from his friendship with paedophile Jeffrey Epstein,*' The Daily Mail (November 20, 2019).

18. U.S. Const. amend. I.

19. U.S. Const. amend. I.

20. *New York Times Co. v. United States*, 403 U.S. 713 (Black, J., concurring).

21. Official statement published on October 1, 2019, https://sussexofficial.uk/.

22. Human Rights Act 1998 c. 42.

23. Convention for the Protection of Human Rights and Fundamental Freedoms—Rome, 4.XI 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

24. 4 Harv. L. Rev. 193, 196 (1890).

25. *Prince of Wales v. Associated Newspapers Limited* [2006] EWHC 522 (Ch).

26. Article 8—Right to respect for private and family life

    1. Everyone has the right to respect for his private and family life, his home and his correspondence.

    2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

27. Article 10—Freedom of expression

    1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

    2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

28. [2006] EWHC 522 (Ch), para 132: 'The conclusion from all of this can only be that the contribution that the Hong Kong journal makes to any public debate or to any process of informing the electorate about the various matters identified by Mr. Warby in the course of his submissions is at best minimal.'

29. *PJS v. News Group Newspapers Limited* [2016] UKSC 26.

30. [2016] UKSC 26 para. 17(ii): "concluded that "a claim for misuse of private information can and often will survive when information is in the public domain," continuing (para 39)."

31. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

32. *Id.* at 268.

33. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 332 (1974).

34. *New York Times Co.*, 376 U.S. at 279.

35. *Gertz*, 418 U.S. at 323.

36. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986).

37. *Id.* at 776.

38. *Von Hannover v. Germany* [2004] ECHR 59320/00.

39. 1. The public interest includes, but is not confined to:

    - Detecting or exposing crime, or the threat of crime, or serious impropriety.
    - Protecting public health or safety.
    - Protecting the public from being misled by an action or statement of an individual or organisation.
    - Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.
    - Disclosing a miscarriage of justice.
    - Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.
    - Disclosing concealment, or likely concealment, of any of the above.

    Found: https://www.ipso.co.uk/editors-code-of-practice/.

40. *Near v. State of Minnesota ex rel. Olson*, 283 U.S. 697 (1931).

41. *Id.* at 728.

42. *Id.* at 723.

43. *Id.* at 713-14.

44. New York Times Co., 403 U.S. at 713.

45. William Shakespeare, Othello act 3, sc. 3. 162-165.

46. Benjamin Franklin, Poor Richard's Almanack (1750).

47. Canute (I), byname Canute the Great, Danish Knut, or Knud, den Store, Norwegian Knut den Mektige (died Nov. 12, 1035), Danish king of England (1016–35), of Denmark (as Canute II; 1019–35), and of Norway (1028–35), who was a power in the politics of Europe in the 11th century, respected by both emperor and pope. https://www.britannica.com/biography/Canute-I.

48. *Mosley v. News Group Newspapers Limited* [2008] EWCH 1777 (QB) Para. 32.

    > There are short clips from the video material available on the website, again with discreet blobs to cover private parts, but these only lasted for something like 90 seconds. They were available until the morning of 31 March, when the newspaper agreed to take them down until the outcome was known of an application for an injunction (to be made before me on 4 April). I declined the injunction and handed down my reasons on 9 April. The material was available elsewhere, but that displayed on the Defendant's website was itself viewed hundreds of thousands of times. It was restored to the website very shortly after I refused injunctive relief.

49. *PJS v. News Group Newspapers Limited* [2016] UKSC 26.

50. *PJS v. News Group Newspapers Limited* [2016] UKSC 26 Para. 21: The Court of Appeal in my opinion also erred in the reference it made, at three points in its judgment (paras 13, 30 and 47), to there being in the circumstances even a "limited public interest" in the proposed story and in its introduction of that supposed interest into a balancing exercise (para 47(v)). In identifying this interest, the Court of Appeal relied upon a point made by an earlier Court of Appeal in Hutcheson (and before that by Eady J in Terry), namely that the media are entitled to criticize the conduct of individuals even where is nothing illegal about it. That is obviously so. However, criticism of conduct cannot be a pretext for invasion of privacy by disclosure of alleged sexual infidelity, which is of no real public interest in a legal sense. It is beside the point that the appellant and his partner are in other contexts subjects of public and media attention—factors without which the issue would hardly arise or come to court. It remains beside the point, however much their private sexual conduct might interest the public and help sell newspapers or copy. The matter is well put by Anthony Lester (Lord Lester of Herne Hill) in a recent book, Five Ideas to fight for (Oneworld, 2016), p 152: "News is a business and not only a profession. Commercial pressures push papers to publish salacious gossip and invasive stories. It is essential to ensure that those pressures do not drive newspapers to violate proper standards of journalism."

51. *PJS v. News Group Newspapers Limited* [2016] UKSC 26.

52. 17 U.S.C.A. § 101 *et seq.*

53. Copyright, Designs and Patents Act 1988 c. 48.

54. Official statement published on October 1, 2019, https://sussexofficial.uk/.

55. Copyright, Designs and Patents Act 1988 c. 48 s. 11 First ownership of copyright.

56. *Duke of Sussex v. News Group Newspapers Limited*

Duke of Sussex v. MGN Limited

As reported by Byline Investigates: https://www.bylineinvestigates.com/murdoch/2019/10/4/worldexclusive-now-prince-harry-sues-the-sun-and-mirror-in-war-ontabloids.

57. Reported in numerous sources, including:

'Phone-hacking trial was officially about crime; but in reality, it was about power,' The Guardian (June 25, 2014).

'Q&A: News of the World phone-hacking scandal,' BBC News (August 4, 2012).

58. Reported in various sources, such as:

'News of the world closed following phone hacking scandal: how Prince's knee led to fall of a giant,' The Telegraph (July 8, 2011),

'Prince William's Voice Mails Led to Hacking Scandal,' Newsmax (July 8, 2011).

59. Transcript of Tony Blair's speech, as published by Reuters on June 12, 2007: 'Third, the fear of missing out means that today's media, more than ever before, hunts in a pack. In these modes it is like a feral beast, just tearing people and reputations to bits. But no-one dares miss out,' https://uk.reuters.com/article/uk-blair-speech/full-transcript-of-blairspeech-idUKZWE24585220070612.

60. Official statement published on October 1, 2019, https://sussexofficial.uk/.

61. Alan Rappeport, *Donald Trump Threatens to Sue The Times Over Article on Unwanted Advances*, N.Y. Times (October 14, 2016), at A15.

62. *Id.*

63. Michael Wolff, Fire and Fury: Inside the Trump White House (2018).

64. Michael M. Grynbaum, *Trump Renews Pledge to 'Take a Strong Look' at Libel Laws*, N.Y. Times (January 11, 2018), at A3.

65. Footage of the coronation can be found in many places, including the BBC, https://www.bbc.com/historyofthebbc/anniversaries/june/coronationof-queen-elizabeth-ii.

66. BBC1 Panorama interview with the Princess of Wales, broadcast in November 1995. Full transcript can be found at https://www.bbc.co.uk/news/special/politics97/diana/panorama.html.

67. Mark Townsend, *Jimmy Wales: UK Needs US-style First Amendment to Protect Whistleblowers*, *Guardian* (June 7, 2014).

68. Lewis Carroll, Alice Through the Looking-Glass 18 (1871).

69. *Id.*

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