

GCE

LAW:
RESTRICTIONS, INCLUDING THOSE
RESTRICTIONS PERMITTED BY
THE EUROPEAN CONVENTION ON
HUMAN RIGHTS

BREACH OF CONFIDENCE
SUGGESTED IDEAS FOR TEACHING
AND LEARNING



SUGGESTED IDEAS FOR TEACHING AND LEARNING

Teacher /Lecturer:	
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Course:	A Level Law
Topic:	Restrictions, including those restrictions permitted by the European Convention on Human Rights
Session:	Duty of confidentiality Breach of Confidence

Component:	A Level Component 2 and 3
Ref. to specification:	Human Rights Law
Suggested time allocation:	2-4 hours

Aims and Objectives: At the end of these sessions the student will be able to:

- Define breach of confidence
- Explain the civil law of breach of confidence with reference to cases
- Discuss the competing interests of freedom of speech and protection of private life
- Discuss cases post Human Rights Act 1998
- Critically evaluate the need for a tort of invasion of privacy

Main Teaching and Learning Activities

Teacher/ Lecturer Activities:

- Introduce topic, PowerPoint presentation can be used to introduce the topic, state the objectives and for the topic area.
- Organise the class into small groups and ask them the following questions: Do we in English Law have a right to privacy? What is privacy? Students to discuss this topic with reference to Articles 8 & 10 of the ECHR and to give their definition of privacy. Feedback answers to class and facilitate a discussion of the competition between freedom of expression and respect for an individual's privacy. Both are vitally important rights. Give students a definition of privacy e.g. **Calcutt Committee 1990**
- Explain in English/ Welsh law no tort of the invasion of privacy, unlike US – however in Britain the development of a privacy law has been spurred by enactment of the Human Rights Act 1998.
- Introduce breach of confidence – explain this law has been used by many to claim breach of privacy. Ask students to give their definition of breach of confidence and compare it with the definition in **Coco v AN Clark (Engineers) Ltd 1969**.
- With reference to cases discuss - what is 'information' for the purposes of the law of confidence? See for example: **Stephens v Avery (1988); HRH Princess of Wales v MGN Newspapers Ltd (1993); Shelley Films Ltd v Rex Features Ltd (1993); Fairrie (Dec'd) and Others v Reed and Another (1994)**

- Recap the competing interests debate i.e. between freedom of expression and privacy and discuss the public interest defence with reference to cases e.g. **AG v Guardian Newspapers Ltd (No 2) Spycatcher(1990)** ; **Woodward v Hutchings(1977)**; **Lion Laboratories v Evans and Express Newspapers ;(1985)** ; **X v Y (1988)**
- Put students into groups and use past paper scenario questions to test levels of understanding of the common law of breach of confidence- feedback to class
- Discuss breach of confidence law & privacy post Human Rights Act 1998 - Right to Privacy now incorporated into the Human Rights Act 1998, but still no tort of invasion of privacy, however the existing laws of breach of confidence, have served many celebrities in their battles for the right to privacy. (e.g. Catherine Zeta Jones) - **Douglas v Hello (2007)**; **Campbell v MGN (2004)**; **See also Venables & Thompson v News Group Newspapers (2001)**
- Discussion of these cases should lead into further class discussion of - Do you think a privacy law is needed or does the law of breach of confidence suffice?

Student Activities:

- Students in small groups discuss - Do we in English Law have a right to privacy? What is privacy? Feedback answers to class , with each group giving a definition of privacy
- Class discussion of the competition between freedom of expression and respect for an individual's privacy.
- Still in small groups - give their definition of breach of confidence and discuss what types of information the law of confidence protects
- Students in small groups - apply the law to given scenarios (either use past paper questions or own scenarios) – feedback findings to class. This exercise should form a substantial part of the teaching of the topic, students should advise the client they have been given and, during feedback against other groups, put forward their legal arguments
- Class discussion of - Do you think a privacy law is needed or does the law of breach of confidence suffice? Students could be asked to research this before the final lesson on breach of confidence

Suggested links / resources:

- PowerPoint
- Past paper scenario questions
- Internet
- Cases
- Handout

Assessment

During the lesson	Group exercises, past paper scenario questions and direct questioning illustrate how well the students have understood of breach of confidence
Subsequent to lesson	Homework –problem question on breach of confidence

TOPIC: Breach of confidence

Questions:		Expected answers:
1.	Do we in English Law have a right to privacy?	Some students will answer yes, some no
2.	What is privacy?	<p>Calcutt Committee 1990 defined it 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." Students usually come up with things similar to this definition</p>
3.	What is meant by breach of confidence?	<p>3 traditional elements of breach of confidence found in <i>Coco v AN Clark (Engineers) Ltd 1969</i></p> <ol style="list-style-type: none"> 1. The information must have the necessary quality of confidence about it 2. The information must have been given in circumstances importing an obligation of confidence 3. Unauthorised use of that information
4.	What is 'information' for the purposes of the law of confidence?	Students tend to answer – personal photographs confidential information e.g. medical records; information not already known to the public etc
5.	Do you think a privacy law is needed or does the law of breach of confidence suffice? Students could be asked to research this before the final lesson on breach of confidence	A discussion could take place here of Article 8 right to privacy and cases like <i>Douglas v Hello (2007)</i> ; <i>Campbell v MGN (2004)</i>