

Contents

Abbreviations	XI
Bibliographic Index	XIII
A. Press Freedom and Protection of the Individual	1
I. The Transition from an Industrial to a Post-Industrial Information-Based Society	1
II. Demands on the Media in the Information Society	1
1. Velocity of Information: Creation and Dissemination	2
2. The Public's Need for Sensationalism	2
3. The Trend towards Negative Reporting	3
III. Areas of Conflict between the Individual and the Media	4
1. Defamation by Personal Attack and Unjustified Revelation of Personal Affairs	4
2. Injury to the Self-Worth of the Individual by Reports that are Simply False	4
3. Harm to the Individual's Interest in Being Left Alone through the Unauthorised Acquisition and Use of Information	6
a) Basic Questions	6
b) Personality and Reporting in Court Cases	7
IV. Freedom of the Press and Protection of the Individual	8
1. The Freedom of Opinion, Information and the Press	8
2. Protection of the Individual	9
a) Reputation	9
b) Protection against Harm to Personal Identity (the Right to Self-Definition of Society's Image of the Individual) and the Right to be Left Alone	10
3. The Relationship between Protection of the Personality and Freedom of the Press	14
a) Individual Reputation, Press Freedom and Value Judgements	15
b) Protection of the Individual's Reputation and Identity, Press Freedom and False Assertions of Fact	19
aa) The Distinction between Assertions of Fact and Expressions of Opinion	20
bb) What Counts as a Breach of the Duty of Care when Untrue Assertions of Fact are Made?	22
c) Protection of the Private Sphere, Press Freedom and the Publication of True Assertions or of Pictures	22
aa) Illegal Acquisition of Information	23
bb) Use of a Person's Name or Picture	24
cc) Publishing Private Photographs and Facts without the Consent of the Individual	25
B. The Legal System's Role in Resolving the Tension between Protection of the Individual and Press Freedom in the Information Society	27
I. Basic Considerations	27
II. The Tribunal of Public Opinion	27
III. Ensuring that the Media are not a Closed Shop	28
IV. Preventing the Concentration of Media Ownership	29

C. Individual Cases of Harm and Consequent Legal Sanctions: A Comparative Perspective	31
I. Choice of Systems for Comparison	31
II. The Chief Field of Comparison: Protection of the Personality by the Civil Law	32
III. England	33
1. Protection of the Individual's Reputation Against Demeaning Value Judgements	33
a) Defamation	33
b) Defences	34
c) Remedies	35
2. Protection against False Assertions of Fact	36
a) Protection against Defamatory Assertions of Fact	36
b) Protection against Other Untrue Assertions of Fact	39
3. Protection Against the Publication of True Assertions and Personal Pictures without the Consent of the Person Concerned	39
a) Lack of a Right to Privacy	39
b) Using Recognised Legal Categories to Grant an Appropriate Remedy in Appropriate Cases and the Self-Control of the Press	40
IV. The United States	43
1. Protection of the Individual's Reputation Against Demeaning Value Judgements	43
2. Protection against False Assertions of Fact	45
a) Basic Considerations	45
b) The Public Arena as a Means of Arriving at the Truth	46
c) Remedies	47
3. Protection against the Publication of True Assertions without the Consent of the Person Concerned	48
V. Germany	50
1. Protection of the Individual's Reputation Against Demeaning Value Judgements	51
a) Basic Considerations	51
b) Weighing up the Competing Interests and Values	53
c) Remedies	55
2. Protection against False Assertions of Fact	56
a) Defamatory Assertions of Fact	56
b) Other False Assertions of Fact	57
c) Remedies	57
3. Protection against the Publication of True Assertions and Pictures without the Consent of the Person Concerned	59
VI. France	61
1. Protection of the Individual's Reputation Against Demeaning Value Judgements	61
a) The Criminal Law	61
aa) The Right of the Press to Report about Matters of Public Interest	62
bb) The Right of Criticism	63
b) The Civil Law	63
aa) Basic Considerations	63
bb) Action for Miscellaneous Illegal and Deliberate Behaviour	63
cc) Right of Reply	64
2. Protection Against False Assertions of Fact	65
a) Defamatory Untruths	65
b) Falsifications of the Individual Identity	65

3. Protection against the Publication of True Assertions and Personal Pictures without the Consent of the Person Concerned	65
VII. Comparative Overview	68
1. Historical Development of the Protection of the Individual against the Press	68
2. A Comparison of the Systems	69
a) England	69
b) The United States	71
c) Germany	72
d) France	74
3. Constitutional Law and the European Convention on Human Rights (ECHR) as the Basis of a Coherent Concept of Protection	76
D. Conflict of Laws/Cross-Border Enforcement of Rights.	81
I. Damages, Injunctions and Retractions	81
II. The Right of Reply	82
E. Outlook	83
Discussion Paper	85
Table of Cases	87
Simplified Chart	94
Subject Matter Index	97