Additional material for chapter 25
Breach of confidence

The Douglas case
The legal battle which was the Douglas case lasted for seven years, and showed that breaching the law of confidence can be very costly.

Case study: In 2000 the actors Michael Douglas and Catherine Zeta-Jones and the publishers of OK! magazine sued in the High Court for breach of confidence. Their lawsuit was against the rival Hello! magazine because it published unauthorised photographs of the couple, taken at their wedding reception in a New York hotel. The couple had an exclusive, £1 million deal with OK! to have these wedding pictures taken by their own photographer and for only those images they approved of to be published. But Hello! obtained unauthorised pictures from a paparazzi photographer who had secretly infiltrated the hotel and taken the pictures covertly. Hello! rushed its next edition into print to publish his photos and so spoil the commercial impact of the OK! ‘exclusive’ pictures. Mr Justice Lindsay, ruling that Hello!’s publication of the unauthorised pictures had infringed the couple’s privacy, ordered it to pay them £14,600 damages and pay £1 million damages to OK! magazine. Hello! appealed against the £1 million award, but in 2007 it was upheld by the House of Lords (Michael Douglas, Catherine Zeta-Jones, Northern and Shell PLC v Hello! Ltd, Hola SA, Eduardo Sanchez Junco (4), Marquesa de Varela, Neneta Overseas Ltd and Philip Ramey [2007] UKHL 21).

In Douglas it was ruled that Hello! magazine, when it bought the unauthorised pictures, knew that the ‘information’ they contained – images of the couple - was regarded as private and confidential, and was also capable of commercial exploitation, and therefore Hello!’s conscience was touched - it was bound by the duty of confidentiality. It was noteworthy as regards the development of privacy law, and – for some in the media, controversial - that the decision in Douglas was that the couple’s wedding was a private occasion, although there were 350 guests and the couple were exploiting it in the picture deal with OK! The ruling was that the security measures the couple took against intruders, and their insistence on approving which images were published, made it private.

Not a sufficient degree of confidentiality

Case study: In 1982 the Court of Appeal lifted an injunction, granted under the law of confidence, which had stopped the Watford Observer publishing information about Sun Printers, a local company. In 1981 the company had in a ‘survival plan’ reduced its workforce from 1,800 employees to 1,300. It was chaired by the magnate Robert Maxwell, and had been making losses. Later in 1981 Maxwell appointed ‘an independent commission’ to prepare a report to make recommendations about the company’s future, and he asked the workforce to provide information to the commission, saying he would make a copy of its report available to the ‘the trade union side’. When the report was finished, Maxwell arranged for six copies of it to be sent to general secretaries of trade unions, six to union branch secretaries, 10 to union officials among the workforce, 28 to directors and senior managers, and 60 copies were distributed to middle and junior managers. The idea was that trade union officials would discuss the report’s findings with the company’s workforce – which meant the company expected information in the report to be shared with the workforce, so they could put their views to Maxwell. He had, on the basis of the report, already told managers and trade union officials that there needed to be a further 338 job losses at Sun Printers. Someone gave a copy of the report to the Watford Observer. After Maxwell heard that it planned to publish extracts, Sun Printers was granted a High Court injunction stopping the newspaper from doing this. This was because the High Court judge ruled that the report had been passed to the newspaper in a breach of confidence. It appealed to the Court of Appeal which lifted the injunction, allowing the newspaper to publish the extracts. The Master of the Rolls, Lord Denning said in the Court’s judgment that the commission’s report was so widely circulated by Sun Printers that it could not be regarded as confidential. ‘It was for circulation amongst such a large number of people that it had not a sufficient degree of confidence to entitle it to
the protection of the law’. So whoever handed a copy to the Watford Observer had not breached any confidence, and so the newspaper did not take it knowing that there was a breach of confidence. Lord Denning also said that publishing the information would be in the public interest, because the matters in the report were of great interest to ‘all the many people in the Watford area’ who were concerned with printing. ‘They were fit to be discussed, not only with the immediate workers in the Sun Printing works, but also those outside connected with the printing industry or interested in it’ (Sun Printers v Westminster Press Ltd, [1982] IRLR 292).