

Book review

Godioli, Alberto, Sabine Jacques, Jennifer Young and Ariadna Matamoros-Fernández (2025). *What's in a Joke? Assessing Humor in Free Speech Jurisprudence*. Forum for Humor and the Law and Columbia Global Freedom of Expression.

Introduction: Humour and Legal Matters

Humour can entertain, educate, criticise, and express the “forbidden,” but it can also insult, marginalise, and potentially jeopardise public morals or even safety. Restricting humorous expression is a highly delicate matter that legal systems around the world must approach with utmost care and tactfulness, always mindful of the fundamental importance of freedom of expression.

A universal guideline on how to address the sensitive interplay between humour, freedom of expression, and the protection of other civil and state rights will likely never exist, given the vast diversity of cultures, legal systems, and humour traditions. In this context, the toolkit *What Is in a Joke* is a tremendously important resource and an invaluable support tool. It is a pioneering attempt to contribute to legal practice and jurisprudence in addressing the challenges of restricting, banning, or sanctioning humour and expressions of satire under the veil of protecting public good, safety, and the interests of particular social groups or the state interests.

The emergence of this toolkit could not be more timely. In an era when the world is gripped by political polarisation and deepening intergroup animosities—amidst which humour is often caught as collateral, hastily accused of wrongdoing—the voice of legal reasoning grounded in globally accumulated case studies, and cogent argumentation could not be more pertinent. The toolkit’s contribution lies in its ability to bridge the gap between abstract legal norms and the nuanced realities of humorous expression, offering practitioners, scholars, and policymakers a much-needed framework for balancing freedom of expression with the protection of dignity and public order.

The structure of the book

The toolkit consists of six parts, four chapters, a glossary and a bibliography.

Chapter 1 presents the toolkit as a resource for legal professionals to navigate the challenges of interpreting humour within freedom of expression cases. It defines humour as a diverse and context-dependent form of communication and highlights its crucial democratic function in challenging norms and authority. The chapter stresses that while humour can be restricted under specific legal conditions, such limitations must be lawful, necessary, and proportionate to avoid undermining creativity and open, democratic discourse.

The second chapter, Humour under Articles 19 and 20 outlines the international standards concerning freedom of expression, such as the Articles 19 and 20 of the International Covenant on Civil and Political Rights (ICCPR). It introduces the three-part test used to assess the necessity of speech restrictions, based on the criteria of being prescribed by law, pursuing a legitimate aim, and being necessary and proportionate.

The authors illustrate how courts have applied the three-part test when assessing the necessity of restrictions on humorous expression. The cases discussed are organised into three distinct categories: (a) reputation of public figures, (b) private citizens, and (c) employment relations. Regarding the first category, the authors advocate for a more careful application of defamation laws and a clear distinction between serious reputational harm and subjective offense.

The chapter then discusses the significance and nature of the “pressing social need” as a principle guiding legal reasoning in cases involving humour, criticism, and ridicule. Through examples involving religiously offensive humour and alleged threats to public morals across Europe, the authors show the importance of balancing public morals and order with freedom of expression. The discussion concludes by addressing satirical protest and the protection of free expression in criticism.

In continuation, the authors address incitement cases, drawing on the UN’s Rabat Plan of Action, which identifies six criteria for determining whether a speech act constitutes an incitement to discrimination, hostility, or violence. Through examples of disparaging humour court cases, they demonstrate the importance of distinguishing between imminent threats and cumulative harm in incitement assessments.

The third chapter *Interpreting Humour* briefly explains the basic mechanism of humour — incongruity — exemplifying its relevance to the legal context. It then outlines the most frequently occurring instances of figurative language that underpins humorous communication, illustrating each with a relevant case law.

The authors proceed with a discussion on the importance of context, addressing different aspects of it, such as historical and socio-political circumstances, specific communicative setting, and other, each illustrated with a relevant case law. In so doing, the authors highlight that genre is the contextual dimension less consistently examined across humour-related jurisprudence. Contextual analysis, authors argue, should also take into consideration the application of the reasonable person test when dealing with the ambiguity of jokes and their potential harm. The authors draw attention to the challenge of establishing who the reasonable audience in each situation may be, opting for a context-sensitive interpretation.

The “reasonable person” approach is presented as particularly useful in the realm of political speeches and cases involving dog-whistling, helping courts determine whether the audience is capable of perceiving ambiguity and the seeming contradiction between content and potential harm. At the same time, this foregrounds the dilemma of establishing a clear yet distinct boundary between reasonable and irrational audiences and its relevance to legal proceedings on humorous expression.

The chapter concludes with a discussion on the relationship between online humour, incitement, and the importance of context. It emphasises the need to distinguish humorous content that might amount to incitement from instances of supposedly “edgy” online humour, urging courts to consider not only the offline context, but also the online environment in which the disputed expression circulates.

The fourth chapter, *Humour and Intellectual Property Law* examines the parody use of intellectual property (IP) protected materials and how IP law can offer a defence in copyright infringement cases, often through parody exceptions. The authors note that jurisprudence often favours ownership rights over freedom of expression and artistic creation, stressing the need to prevent restrictions on humorous uses of IP. To support this, the section analyses the interplay between freedom of expression and IP and reviews existing frameworks for humour in copyright, trademark, and design law.

The authors highlight the tension between IP and freedom of expression, frequently handled by prioritising one right over the other. They suggest viewing fundamental rights as a

way to humanise IP. The lack of supranational court decisions complicates matters, leaving national legislation to determine the approach, which the authors illustrate through selected cases.

Given the lack of uniform rules across IP regimes, the authors examine prevailing judicial trends in copyright, trademark, and design law. Under copyright, they explain, defences for humorous use aim to protect parody, satire, caricature, and pastiche, although definitions are not clearly statutory, leading to varied court interpretations in jurisdictions like the USA, UK, Australia, and Germany. The authors discuss cases on humorous trademark use, including NGO use, political contexts, artistic purposes, parody to promote other or competing goods, and limits to humorous use, illustrated with relevant legal cases. Protection of humorous designs, the authors argue, is a relatively new, in a need of further development and refinement.

To successfully address these shortcomings, the authors propose proportionality factors to balance IP and freedom of expression: humour as a cornerstone of democracy, contribution to public debate, familiarity of the original work, publication of original materials, speaker's status, nature and reach of the expression, IP right holder conduct, and market impact.

This fifth part Glossary offers working definitions of the key concepts employed in this toolkit, including a wide—but by no means exhaustive—range of humorous genres (absurdist humour, cringe, dark humour, observational humour, parody, slapstick), mechanisms (contrast, exaggeration, irony, metaphor, pun, understatement), functions (affiliative vs. aggressive coping, entertainment, satire, self-enhancing vs. self-defeating, transgression), modes and media.

Following this legal and conceptual analysis, the toolkit provides a glossary of terms and a bibliography for further reading, grounding the discussion in precise definitions and offering a practical reference for scholars and practitioners alike.

Comments and recommendations

The toolkit is original, rigorous, and valuable on multiple levels. It addresses a long-neglected aspect of jurisprudence, offering guidance where only fragmented legal treatment previously existed. Drawing on humour studies, socio-political research, legal scholarship, and case law, the text is relevant not only to humour scholars, legal experts, and practitioners but also to researchers in cultural studies, media studies, political science, and the social sciences more broadly.

Its greatest strength is the fresh, rational perspective it brings to an increasingly emotional and polarised field of debate. The toolkit emphasises that legal reasoning, not emotional reaction, must guide responses to humour. It encourages reflection beyond simplistic assumptions that offense equals harm, reminding us that humour can challenge, educate, and provoke without causing unlawful damage.

Ultimately, the toolkit is more than a reference or compilation of cases—it is an invitation to think about humour with nuance, proportionality, and intellectual rigor. It equips legal practitioners, scholars, and policymakers to navigate a complex terrain where humour intersects with freedom of expression, social norms, and cultural sensitivities. In doing so, it fosters a more reasoned, principled, and balanced approach to humour in law and society.

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