

Media law overview notes

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Libel and defamation

What is libel? Libel is a defamatory statement in permanent form (inc print, web, broadcast) that tends to lower a person or company's reputation in the eyes of 'right-thinking members of society'. The law states that a statement is defamatory if it tends to:

- expose a person to hatred, ridicule, or contempt
- cause him or her to be shunned or avoided
- lower a person in the estimation of right-thinking members of society generally
- disparage a person in their office, trade, profession or calling

For example, if you state or imply someone is a liar, is negligent, incompetent, or is otherwise of 'bad character', it is defamatory. You would need a solid legal defence before publishing, such as Truth (see 'Defences to libel' below).

For the purposes of the law a 'corporation' (a body trading for profit) is also a 'person' it has a corporate reputation to defend and can also be libelled by negative statements.

The burden of proof: In defamation law, the burden of proof is on the publisher/journalist. They must show that they had a defence to publication (see *Defences to libel* below).

A claimant must show:

- that the material was **published**;
- that it **identified them** (not necessarily by name);
- it could be thought to be **defamatory** (see criteria above);
- and that it caused, or is likely to cause, **serious harm** to reputation.

What is serious harm? An individual claimant must show that the material in question caused, or was likely to cause, **serious harm to their reputation**. A company ('an organisation trading for profit') must show that the material caused, or was likely to cause, **serious financial loss**.

Good practices

- Keep evidence: documents, tapes, notes etc
- Offer a right to reply
- Be accurate and specific
- Use multiple authoritative sources. Just because another title or blogger says it, does not mean it's necessarily true.
- Avoid making assumptions or using broad generalisations
- Apply defamation criteria and consider potential defences before you publish

Common defamation danger areas

- Meaning of words or identification issues in headlines, captions, standfirsts/sells
- Juxtaposition: defamatory meaning created when pieces of unrelated material are read/seen together
- Pictures: mistaken identification issues
- Apologies and corrections: take care with wording
- Danger words or loose phrases, such as 'turned a blind eye'.

Defences to libel

The main defences in the Defamation Act are listed in detail below. The most common are: Truth, Privilege, Honest Opinion, and 'the section 1 defence' of Innocent Dissemination. Other 'defences' are:

- The complainant has died.
- Consent. The claimant agreed to publication (nb difficult to prove).
- Proceedings were not started within the limitation period, ie one year from publication.

Defences to libel			
Truth	Honest opinion (formerly Fair Comment)	Privilege	'Section 1 defence' (Innocent dissemination)
Defendant must show the material was substantially true on the balance of probabilities.	A defence for opinion and reviews. Must be recognisable as comment and be based on true facts. Must indicate, in general terms, the facts on which it is based.	Applies to fair and accurate reports of matters of public interest in specific forums and meetings. eg parliamentary debates/committees; reports on articles in peer-reviewed academic journals.	Applies to secondary publishers (eg booksellers). Has been used by publishers who host material they have not commissioned and edited eg web forums. Forum publishers must demonstrate they took 'reasonable care'.
Public Interest	Operators of websites defence	Accord and satisfaction	Offer of amends
Defendant must show that: - The statement complained of was, or formed part of, a statement on a matter of public interest; and - Defendant reasonably believed that publishing the statement complained of was in the public interest.	The 'operator' must show they did not post a defamatory statement. Defence is defeated if: - It was not possible for them to identify the person who posted. - The operator failed to respond to complaint. Operator must go through steps including notifying user and giving them five days in which to respond to the complaint.	When an apology has been accepted in full and final settlement. BUT do ensure claimant agrees the wording and your lawyer has a written agreement to this effect.	Defendant must give a written offer to make a suitable correction and apology; publish the correction in a reasonable manner; pay suitable damages (if any) and costs. Applies when defendant didn't know, and had no reason to believe, the defamatory statement complained of referred to the complainant.

Copyright law

According to the Copyright, Designs & Patents Act, the creator ('originator') of a piece of work is the first owner of copyright in an original work. Original work is material which is 'originated' by the author or creator - using their time, labour energy and skill - and which is not substantially copied from another source.

This applies until either they assign (ie sell or give away) copyright in the work; or they license use of the material for a particular length of time or format.

This includes pics on websites/social media: the creator owns it - even if they share it online - unless terms & conditions state otherwise. Check any agreements your organisation has with contributors when using material. The contributors may already have assigned copyright to your employer.

You can use the defence of 'fair dealing' to quote short extracts from a text as part of a review or news story about the text. You can also use this defence for showing a few seconds of video from a longer clip for the purposes of review or reporting news. BUT the defence does not apply to photos.

Media Law and regulation sources

Books

Law for Journalists, Frances Quinn (Pearson) available in print or e-book format

McNae's Essential Law for Journalists, eds Mike Dodd and Mark Hanna (OUP)

Online sources

Holdthefrontpage.co.uk law column <https://www.holdthefrontpage.co.uk/category/blogs/lawcolumn/>

Press Gazette media law pages http://www.pressgazette.co.uk/category/news/media_law/

Media Guardian <http://www.guardian.co.uk/media/medialaw>

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