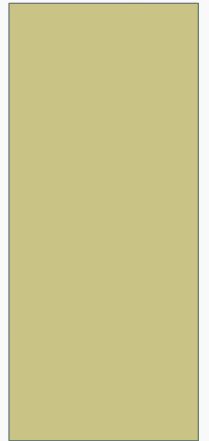


INFORMATION TECHNOLOGY LAW

CIVIL LAW AND IT



CIVIL LAW AND IT

Rights and Liabilities Online

- There are a number of possible civil actions arising from the use of IT
- Communications online pose a particular risk in terms of civil action
- The application of existing legal rules to online communications has proved problematic
- We will examine three areas
 - Defamation
 - Privacy
 - Confidential Information

DEFAMATION

Competing Interests

- Individuals right to their good name
- Freedom of Expression
- Media freedom of expression
- Express Constitutional protection in Article 40.3.2 (good name of the citizen) and Article 40.6.1 – Freedom of Expression
- The legal rules must achieve a balance between these two completing interests
- In the past the focus was on media organisations
- Now the issue can arise in the context of any form of electronic communication – email, discussion boards, blogs, social media etc
- Issues such as anonymity and jurisdiction prove particular challenges here

DEFAMATION

Defamation Act 2009

- Background to the Act
- Previous Law
- Scope of the Act
- Criticisms of the Act

DEFAMATION

Defamation Act 2009

- Creates a single tort of defamation
- There is no longer a distinction between libel and slander
- All claims are now actionable without proof of special damage
- The publication **by any means** of a defamatory statement concerning a person to another person or persons - S6(2)

DEFAMATION

The Plaintiff

- The person who has been the subject of a defamatory statement
- Deceased persons
- Corporate persons
- Public bodies

DEFAMATION

The Defendant

- Any person involved in the publication is a potential defendant
- The person who makes the statement
- Media organisations
- Individuals involved in production and distribution
- Vicarious liability
- Defence of 'innocent publication' S27

DEFAMATION

Proving Defamation - Identification

- Can the statement reasonably be understood to be referring to the plaintiff
- Magee v MGN (2003) – two stage process
- Examples of identification
- Use of search engines
- Intention of the publisher

DEFAMATION

Identification as part of a class

- Gallagher and Shatter v Independent Newspapers (1980)

Publication

- S6(2) 'by any means'
- S2 – Definition of 'statement'
- Publication to a single third party is sufficient
- Accidental publication – Theaker v Richardson (1962)
- Bryanston v de Vries (1975)
- S27 - Innocent Publication

DEFAMATION

Defamatory Meaning

- S2 – ‘tends to injure a persons reputation in the eyes of reasonable members of society’
- Pre 2009 Act – ‘right thinking members of society’
- Norms and values of the society and era in which statement is made
- Yousuoff v MGM (1934)
- Sodden v Image Magazine (1983)
- An Objective Test – what would a reasonable person think – not how the statement was perceived by the plaintiff

DEFAMATION

Natural and ordinary meaning of the statement

- What would the reasonable person understand the statement to mean?
- McGrath v Independent Newspapers (2004)
- Charleston v News Group (1995)
- Cruise v Express Newspapers (1995)
- Satire/Humour – recent case and comment

DEFAMATION

Role of the Jury

- Determine the meaning which ought to be attributed to the statement
- Decide whether that meaning would injure the reputation of the person in the eyes of reasonable (right thinking) members of society
- Cooper Flynn v RTE (2004)

DEFAMATION

Role of the Judge

- Rule on questions of law
- Instruct the jury as to the meaning of defamation
- May express own view as to the meaning of the words
- *Barrett v Independent Newspapers* (1986)

DEFAMATION

Defences

- Abolition of Common Law Defences
- S16 Truth
- Burden of proof rests on the defendant
- Absolute Privilege – Constitution Articles 13/15
- S17 Absolute Privilege
- S17 & 18 Qualified Privilege
- S20 Honest Opinion
- S26 Fair and reasonable opinion on a matter of public interest – Reynolds Privilege
- S27 Innocent Publication

DEFAMATION

S24 - Apology

S22 – Offer of Amends

Remedies

- S34 - Summary Disposal
- S28 - Declaratory Order
- S30 – Correction Order
- S29 – Lodgement
- S31 - Damages
- Prior Restraint

DEFAMATION

Defamation and the Internet Publication

- Carrie v Tolkien (2009)
- Gregg v O'Gara (2008)

Liability

- E-Commerce Regulations
- Mere Conduit, Caching and Hosting
- EMI v UPC (2010)
- Bunt v Tilley and others (2006)
- Mulvaney v Betfair (2009)

DEFAMATION

Liability of Third Parties

- Godfrey v Demon Internet (1999)
- Metropolitan International Schools (2010)

Social Media

- Twitter Cases – [Ireland](#) and [UK](#)

Discovery

- Norwich Pharmacal Case (1974)
- EMI v Eircom (2005)

PRIVACY

- Privacy is not an unlimited right
- Technology poses particular challenge to privacy
- “Vast amounts of information about everyone are stored on computers, capable of transmission anywhere in the world and accessible at the touch of a keyboard” Lord Hoffman in R v Brown

PRIVACY

Sources of Privacy Rights

- The Irish Constitution
- Kennedy and Arnold v Ireland (1987)
- “Though not specifically guaranteed by the Constitution, the right of privacy is one of the fundamental personal rights of the citizen which flow from the Christian and democratic nature of the state” (Hamilton)
- Not an absolute right - must be balanced against needs of the common good
- EMI v UPC (2010)

PRIVACY

Defining Privacy

- “Privacy as a right is difficult to define adequately. Privacy in the modern panoptic society must be flexible enough to address new technologies and developments and their privacy implications while at the same time certain enough to offer guidance and clarity as a matter of law. Keeping this tension in mind, it is extremely difficult to arrive at an appropriate definition. Description is therefore preferable”
- Charlton J in *EMI v UPC* (2010)

PRIVACY

The European Convention on Human Rights

- “Everyone has the right to respect for his private and family life, his home and his correspondence” Article 8(1)
- European Convention on Human Rights Act 2003
- Pretty v UK (2002)
- Any interference by state must be ‘in accordance with law’ and ‘neccessary in a democratic society’ in order to protect interests such as national security or public safety
- Von Hannover v Germany (2004)

Definition of Privacy

- *The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose.*

Yall Onn: Privacy in the Digital Environment

PRIVACY

Privacy as a Common Law Right

- Campbell v MGN (2004)
- No general tort of 'invasion of privacy'
- Could however form basis for an action in 'Breach of Confidence'
- There is a right to control the dissemination of private information

PRIVACY

Statutory Rights to Privacy

- Limited Rights – no general right to privacy in legislation
- S114 CRRA 2000
- Photos or film for private use
- Right not to have the work or copies made available to the public
- In Ireland the Right to Privacy is protected through the Constitution and the ECHR

PRIVACY

Value of Privacy Rights

- Jane O'Keefe v Ryanair (2002)
- Kennedy and Arnold v Ireland
- Aherne v RTE (2005)
- Douglas v Hello (2001)

PRIVACY

Privacy in a Public Place

- An individual can still have a right to privacy in a public place
- Kane v Governor of Mountjoy (1988)
- Von Hannover v Germany

PRIVACY

Social Media

- Privacy dependent on restrictions user places on their information
- Restrictions can be avoided
- Fogarty and O'Connor v IBM (2000)
- Equality Acts 1998 – 2000
- Data Protection Acts 1988 - 2003
- Bodil Lindqvist v Sweden (2003)

PRIVACY

Search Engines

- Data Protection Acts 1988 – 2003
- Liability of ISP

YouTube

- Breach of Privacy Rights
- Data Protection Acts 1988 – 2003
- Peck v UK (2003)

PRIVACY

Remedies for Breach of Privacy

- Criminal Law
- Offence of Harassment
- DPP v Ronayne (2004)

Civil Remedies

- Kennedy and Arnold v Ireland
- Gray v Minister for Justice (2007)
- Wainwright v Home Office (2003)
- Privacy Bill 2006 and 2012

CONFIDENTIAL INFORMATION

The action for Breach of Confidence – Essential Elements

- The information in question must be confidential
- The must have been communicated in circumstances which impose an obligation of confidence on the recipient
- The information has been used in a manner not intended by the owner and not authorised by him
- Commercial information can be of significant value
- Disclose of information can reduce its value

CONFIDENTIAL INFORMATION

Categories of Information

- Trivial or public information
- Skill and experience
- Trade secrets

Employment Cases

- Meadox Medical (1981)
- Facenda Chicken (1986)
- Lawrence David v Ashton (1991)
- House of Spring v Point Blank (1985)

CONFIDENTIAL INFORMATION

Non Employment Cases

- Saltman v Campbell Engineering (1948)
- Terrapin v Builders Supply (1960)
- National Irish Bank v RTE (1998)

Celebrities

- Campbell v MGM (2004)
- Von Hannover v Germany (2004)
- Ryan Giggs – [here](#)
- A list of alleged super injunctions [here](#)
- Clearly this area of law has undergone substantial development in the UK in comparison to Ireland

CIVIL LAW AND IT

Additional Reading

- Carolan and O'Neill, Chapter 6
- <http://www.digitalrights.ie/2010/02/28/irish-defamation-law-still-inadequate-for-internet/>
- <http://irishbarrister.com/defamation.html>
- <http://www.cearta.ie/2010/10/the-defamation-act-2009-in-the-courts/>
- [http://www.williamfry.ie/publication-article/social_media_-_applicable libel and privacy laws in ireland.aspx](http://www.williamfry.ie/publication-article/social_media_-_applicable_libel_and_privacy_laws_in_ireland.aspx)
- <http://www.irishtimes.com/newspaper/ireland/2012/0201/1224311048403.html>
- <http://www.irishexaminer.com/opinion/columnists/matt-cooper/cowards-who-abuse-free-speech-hiding-behind-anonymity-of-internet-181733.html>
- <http://www.digitalrights.ie/category/pamphlets/>