## Defamation Act 2009

* Creates a single tort of defamation
* There is no longer a distinction between libel and sander
* 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)

## The Plaintiff

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

## The Defendant

1. Any person involved in the publication is a potential defendant
2. The person who makes the statement
3. Media organisations
4. Individuals involved in production and distribution
5. Vicarious liability
6. Defence of ‘innocent publication’ S27

## Defamatory

(of remarks, writing, etc.) damaging the good reputation of someone; slanderous or libellous.

Or

Tends to injure a persons reputation in the eyes of reasonable members of society

## 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)

## 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)

**Defences** the action of defending from or resisting attack.

## 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)

**Liability of Third Parties**

Godfrey v Demon Internet (1999)

Metropolitan International Schools (2010)

**Social Media**

Twitter Cases – [Ireland](http://www.independent.ie/irish-news/online-first-as-blogger-apologises-to-ganley-over-tweets-28955543.html) and [UK](http://www.bbc.com/news/world-22652083)

Discovery

Norwich Pharmcal 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

## 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** a state in which one is not observed or disturbed by other people.

**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.

**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

**Statutory Rights to Privacy**

Limited Rights – no general right to privacy in legislation

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 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

**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)

**Search Engines**

Data Protection Acts 1988 – 2003

Liability of ISP

**YouTube**

Breach of Privacy Rights

Data Protection Acts 1988 – 2003

Peck v UK (2003)

**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

**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)

**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](http://www.theguardian.com/media/2011/may/23/ryan-giggs-mp-injunction)
* A list of alleged super injunctions [here](http://www.maxfarquar.com/2011/05/complete-list-celebrity-super-injunctions/)
* Clearly this area of law has undergone substantial development in the UK in comparison to Ireland