

Defamation

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Definition

Defamation is the publication of a statement which reflects on a person's reputation and which tends to lower a person in the estimation of right thinking members of society generally, or, which tends to make him shun or avoid that person (Winfield).

Essentials of Defamation

**The statement
or words must
be :**

i) False

**ii) Spoken
(slander) or
written (libel)**

**iii) Defamatory
and**

iv) published.

Continue

i) False :

The words used must be false. In fact, truth is a clean justification. It must be shown that the imputation was false and malicious.

ii) Spoken (slander) or written (libel):

The words may be spoken as in slander or may be in writing i.e., in a permanent form as in libel. Any writings, publication in a newspapers, sky writing, cinematograph film, etc., are covered under libel.

The leading case is **Youssoupoff V. M.G.M. Pictures**. The defendant D, produced a film named "Rasputin, the mad monk". In that film, one princess "Natasha" had been raped by Rasputin, the mad monk. The princess Irina of Russia, the wife of prince Youssoupoff (plaintiff) claimed compensation on the ground that it was clearly understood that the reference was to prince Irina. The jury awarded 25,000 pounds as compensation and this was confirmed by the Court of Appeal.

iii) Statement must be defamatory and refer to the plaintiff:

The test is whether the words used tend to lower the plaintiff in the estimation of the right thinking members of the society generally (Winfield). If the words expose a person to contempt, ridicule or hatred or injures his profession or trade, or makes others shun or avoid his company, then the words are defamatory e.g. imputation of unchastity to a woman. The plaintiff must prove that the defamatory words have a reference to him. Intention is not material. If the reference is to a Class or group of persons, then the plaintiff must prove that the reference is to himself.

A writes that m"lawyer are thieves", no particular lawyer can sue (**Eastwood V. Holmes**), But, when words have a latent meaning or a double meaning (pun), then it is defamatory. This is called "Innuendo".

iv) The words must be published

Publication is an essential requirement. Whether a statement tends to lower a person's reputation is decided by the standard of a reasonable man. Publication means publishing a particular item of news or information to a person, other than the person to whom it is addressed.

1. If A writes to B, defaming B and sends the letter by registered post, there is no publication and therefore A is not liable.

2. If A writes a post-card defaming B, and sends by post, there is publication if an inquisitive postman reads and publishes. A is liable in such a case. (**Robinson V. Jones**)

Differences between slander and Libel.

Libel

1. The statement must be in permanent form, Broadcasting of words comes under libel. Pictures, statues, effigy writing in any form, Printing marks or signs, sky writing by airplane etc come under libel. T V relay is libel.
2. Libel is generally addressed to the eye.
3. Libel is actionable per se. (by itself) Libel tends to provoke breach of peace. It is a crime as well as tort in England and Bangladesh .

Slander

1. Slander is in a temporary form. It is in words or gestures. Manual languages of the deaf and dumb, mimicry, and gesticulations etc., are examples. Slander is addressed generally to the ear.
2. Slander is not actionable per se. Hence, special damage must be proved i.e., Economic or Social loss to the plaintiff must be proved. Slander is not a crime, in England However on some occasions words may be seditious or blasphemous and hence may become a crime but according to Sec. 499 P.C. it is a crime, in Bangladesh.

Defences open to the defendant

Defences:

Justification

**Fair
Comment**

Privileges

Justification

Truth or justification is a very good and complete defence. Defamation is the injury to a man's reputation and if there is truth in the statement, then there is no defamation. The person is not lowered, but is placed to his proper level.

- The substance of the statement must be true, not merely a part of it. "How, a lawyer treats his clients" was an article which dealt with how a particular lawyer was treating his client. Held the article was in-sufficient to justify the heading. (**Bishop V. Lautiar**)

Fair Comment

The comment must be on a matter of public interest. Honest criticism is essential for the efficient working of democratic public institutions. The Government and its institutions may be criticized.

- **Contents :**

- 1. The matter commented must be of public interest. The Government and its various wings and establishments and public institutions may be criticized. Novelists, Dramatists, Musicians, Actors, etc., may be criticized.
- 2. Fair comment must be an expression of an opinion and not an assertion of facts. Plaintiff was advertising in papers as a specialist in E.N.T the defendant commented on him as "a quack of the rankest species". **Held:** that it was a comment, the Court always looks to the merit of the comments.
- 3. **The comment must be fair** : Mere violence in criticism by itself will not make the statements unfair.
- 4. Comment must be malicious. Even fictitious name may be used. That by itself will not render the statement unfair.

Privileges

Privileges

They are occasions on which there ought to be no liability for defamation. This is because the public interest outweighs the plaintiff's right to his reputation.

Absolute

Privileges are absolute when the communication is of paramount importance.

Qualified

Statements are qualified when the person makes the statement honestly even though they are false.

Examples for absolute privileges:

1. Statements made in Parliament or Legislature.
2. Reports, papers, etc., of either House of Legislature.
3. Judicial proceedings.
4. Communications between solicitor (advocate) and his client.
5. Communication between one officer and a foreign officer.

Example of qualified privileges

1. Fair and accurate reports of Parliamentary debates, and proceedings.
2. Fair and accurate reports published in newspapers. Similarly broadcasting.
3. Statement made in pursuance of duties. A reports to B. about the conduct of C. If it is A's duty to report and if he is to protect the interest of B, he may make statements about C.
4. Where A and B are having a common interest to be protected. Statements made about the plaintiff P between A and B themselves are protected.
5. Statements made in self protection and self-defense to procure redress of public grievances are protected.

Thank You !!