

What is defamation?

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Defamation is an offence relating to reputation. The Constitution has guaranteed the right to speech. This right is important, but unfortunately it is being abused. Everyone thinks that he is free to speak anything, anywhere and in any

way. Some of these statements constitute criminal defamation and some civil defamation.

I have been following closely the latest development on social media postings in Sabah, particularly posting by groups of political parties. Political group of WhatsApp, Facebook, Twitter and Instagram which tend to commit defamatory, libellous and slanderous statements in the social media, taking the risk of being sued in the court of law or being prosecuted under Criminal Defamation.

In the case of criminal

defamation the court may consider invoking its discretionary power to sentence defendant or accused person to a term of imprisonment for months or years depends on the seriousness of the defamation case in question. The law related to DEFAMATION can be covered by the Malaysia Defamation Act 1957, Sedition Act 1948, Penal Code s. 499, 500, 501 and 502.

Malaysia defamation law is primarily based on the English common law principles. The Malaysian Defamation Act 1957 is in pari materia with English Defamation Act 1952. Communication and Multimedia Act 1998 (Act 588), Malaysian Communications and Multimedia Commission Act 1998 (Act 589), are relevant Laws and provisions which must be observed and respected by all posters of social media today. In order to prove defamation the plaintiff must establish the element of:

- i) The words are defamatory,
- ii) The words refer to the plaintiff and,
- iii) The words have been published.

The interest that is protected by this law is a person's good name and reputation. Defamation arises when there is a publication which has a tendency to lower the person's reputation or to cause him to be shunned or avoided by reasonable person in society, and thereby adversely affecting his reputation.

A) Who can sue?

Besides individuals, in general a trading or non-trading corporation which can show that it has a corporate reputation which is capable of being damaged by defamatory statement, may sue in libel to protect that reputation in the same way as could a natural

person. A company may claim for libel where the libel concerned injures its reputation in the way of its business. There is no need to prove special damage.

A company may also sue for slander as provided under S.6 of the Defamation Act 1957. A corporate body may take an action for libel or slander in the same way as an individual. The imputation must reflect upon the company itself and not upon its members or officials only.

B) Who can be sued?

Social media posters or the author of the defamatory words would be the party sued. Where more than one person is involved in the publication of the defamatory words, all of them may be sued. These would include the publisher, editor, journalist (reporter or author) and printer, respectively.

C) Types of defamation:

Defamation may be divided into two different types, namely libel and slander. In England, libel is a tort as well as a crime whereas slander is only a tort and not a crime. In Malaysia, libel and slander are both TORTS and CRIMES.

Libel

Libel is defamation in a permanent form and is usually visible to the eye, such as items in writing which includes e-mail, pictures, statues or effigies. Section 3 of the Act provides that the broadcasting of words by means of radio communication shall be treated as publication in a permanent form and therefore constitutes a libel. Libel is actionable per se, which means that a plaintiff need not prove any damage.

Slander

Slander is defamation in a

temporary or transient form. Publication is usually made through spoken words or gestures. A slander is not actionable per se. The plaintiff therefore needs to prove actual or special damage in order to succeed in his action. The preferred term is 'actual' rather than 'special' damage, and where reference is made to 'special' damage, it is synonymous with 'actual' damage.

Imputation of a crime

Slander is actionable per se if the words indicate that the plaintiff is involved in a crime. The crime must be one which attracts corporal punishment, which includes the death penalty, whipping and imprisonment.

The idea is that the punishment ought to be of a type where the plaintiff can be made to suffer physically. Imputation of an offence punishable by fine merely, is not sufficient.

Words are defamatory

The first requirement that must be established by a plaintiff in a defamation action is that the statement that forms the subject matter of his complaint is defamatory. As a general rule this requirement is satisfied when the words have a tendency to lower the estimation of the plaintiff in the minds of the right-thinking members of society.

Innuendo

Sometimes a defamatory imputation does not arise from the literal meaning of the words. So the words by themselves are not defamatory but become so by virtue of either inferences or special facts or circumstances known by the recipient or reader of the words. In these circumstances the words are said to be defamatory by innuendo.

Juxtaposition

Juxtaposition usually involves a situation that employs visual effects, such as an effigy or placing the plaintiffs photograph in a pile of pictures of wanted criminals. Thus defamatory imputations can arise from material other than written or spoken words.

The words must be published

That the words must be published is relevant element of defamation. Publication means the dissemination of the defamatory words or material to a third party, other than the plaintiff.

The rationale is that if the defamatory words are not made known to any other person (other than the plaintiff himself), then the defendant's words cannot injure the plaintiffs reputation for in whose estimation would his reputation be lowered.

Therefore if the words or printed material are not heard or seen by third parties, and only the plaintiff hears or sees them, publication does not arise.

The general rule is that if a document which contains defamatory words is expected to be published to a third party and a third party does in fact read the document, publication is established, thus a prima facie case may be established in the case of Criminal Defamation or on the balance of probability in the case of civil defamation.

As reported recently in the media the cases of Tan Sri Harris Salleh v. Datuk Seri Yong Teck Lee about double Six cases on defamation, Datuk Seri Hadi Awang v. Clare Brown and the Attorney General Tan Sri Apandi v. Raja Petra are all relevant cases to the acts of DEFAMATIONS.