

ONLINE / NEW AGE DEFAMATION

ZUL RAFIQUE & partners



Disclaimer

INTRODUCTION

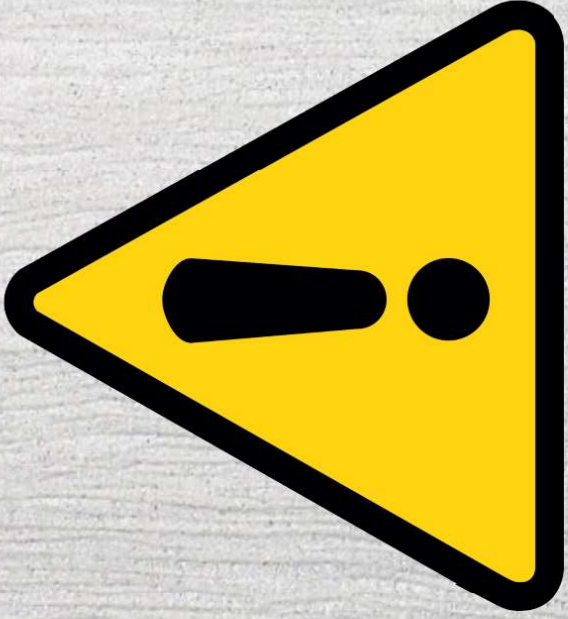
POSSIBLE
SCENARIO

DEFENCES

REMEDIES

PRACTICAL
STEPS

Thank
You



Whilst the case laws referred to in this presentation are based on actual reported decisions, the graphic(s) used to illustrate the cases as well as some of the examples are fictitious.

Any resemblance to any persons or entities living or dead is purely coincidental

LIBEL



- Written
- Permanent in nature
- Actionable *per se*
- Damage is presumed

SLANDER



- Spoken
- Transitory in nature
- Actionable upon proof of Special Damage

ELEMENTS Of DEFAMATION

**Words must be
defamatory**

**Must refer to
the claimant**

**Must be
Published**

Who Can Sue?

Individual

Companies

When can a company sue for Defamation?

1. *A company cannot be injured in its feelings but only in its pocket:*
2. *A company may sue for defamation without proof of special damage if the words complained of:*
 - *Injurious affect the company itself as distinct from the individuals which compose it*
 - *Consist of a libel reflecting on the management of their trade or business*



Related Causes of Action

**1. Malicious
Falsehood**

**2. Slander of
Goods**

3. Slander of Title

Elements of malicious falsehood

- (a) Words published were untrue / false
- (b) Words referred to the Claimant / his property or business
- (c) The words have been published maliciously; and
- (d) Special damage followed as a result.

Unlike
defamation,
the words used
do not have to
be defamatory.

Unlike
defamation, an
action for
malicious
falsehood
survives the
death of a
claimant



Plaintiff a Developer in Perak claimed that the Defendant had defamed them through a Facebook posting in which the plaintiff suffered loss for not being able to sell off completed houses claiming damages up to RM 8,433,200.00

FACTS

Case 1:

**Sejati Maju
Constructions Sdn
Bhd
v
Thong Siau Mei**

COURT'S DECISION

Case 1:

**Sejati Maju
Constructions Sdn
Bhd
v
Thong Siau Mei**

The words published Defendant were defamatory of the Plaintiff in the way of its trade.

- However the Defendant succeeded in his defence of justification
- Expression of disappointment backed by solid facts and truth are considered to be justified

- Plaintiff and D1 were married for 7 years before they divorced.

- D1 was a senior officer in TLDM

- TLDM maintains a “Sistem Maklumat Sumber Manusia” (“the HR Info system”) containing the personal details of its personnel and their spouses/ ex-spouses and children.

- Based on the HR Info System, the Plaintiff and D1 was still married. It also contained other personal information of the Plaintiff.

- The plaintiff alleged that false and untrue information regarding her post-divorce marital status with D1, was kept in TLDM’s human resources information system for a period of time after she and D1 had been divorced.

- The Plaintiff further alleged that D1 had used the name and the private information of the Plaintiff and the Plaintiff’s good name and reputation and for his own benefit in TLDM, including for the purpose of promotion and to obtain a good name informing third parties.

FACTS

Case 2:

Dato' Aishaf Falina binti
Ibrahim

v

Ismail bin Othman & Ors

[2017] MLJU 2257

- The plaintiff succeed in establishing liability for defamation.

- However, since there was no evidence of any actual viewing by anyone who had access to the "user view" of the HR Info System, and publication is at best "deemed", and the plaintiff having admitted that she suffered no tangible losses as result of the retention of the erroneous information in the "user view" of the HR Info system, the quantum of compensation which would be fair, just and equitable would be RM50,000.00.

- The amount based on, the slur on the plaintiff's reputation caused by imputation that is cast on her by the portrayal that she is still married to D1 and is still living and cohabiting together at the address as stated in the "user view" as well as the plaintiff's standing as an established businesswoman and managing director of a company which owns a well known building, Wisma Denmark Sdn Bhd.

COURT'S DECISION

Case 2:

Dato' Aishaf Falina binti
Ibrahim
v

Ismail bin Othman & Ors

[2017] MLJU 2257

- On 22 December 2016, the Defendant's husband, Jerry Ong, made a booking at a restaurant known as "BGT Lakeview Restaurant" in SS 7, Kelana Jaya ("the Restaurant") and paid a booking fee of RM105.20 to BGT Lakeview Sdn. Bhd. The booking was confirmed for 2 people at 8pm to be seated at table no. B17.
- On 25 December 2016, the Defendant and her husband attended the Restaurant but neither of them dined or ate at the Restaurant.
- On or around 25 December 2016, the Defendant published or caused to be published Posting 1 in her Facebook account. Posting 1 contained edited photographs of the Restaurant.

FACTS

Case 3:

Synergistic Duo Sdn Bhd v Lai Mei Juan [2017] MLJU 743

The Court found that an ordinary person's understanding of Posting 1 and Posting 2 would be that:

- Many customers are disappointed with the food and service at the Restaurant;
- The Defendant was cheated by the Plaintiff; and
- If the ordinary and reasonable person dined at the Plaintiff's Restaurant he/she would be subjected to bad food and bad service and would be cheated by the Plaintiff.

Therefore any reasonable person reading the Posting 1 in the Defendant's Facebook page and Posting 2 in the newspapers, websites, blogs and Facebook pages in which the posting was published and re-published, would understand them in the defamatory sense.

Therefore the Court granted injunction to restrain the Defendant from publishing the words complained of

COURT'S DECISION

Case 3:

Synergistic Duo Sdn
Bhd
v

Lai Mei Juan

[2017] MLJU 743

- Mead Johnson had a website generally to promote their products. The website allowed public to create topics for Online forum
- Certain unidentified or anonymous individual created a forum that was defamatory of the Plaintiff.
- Plaintiff sued Mead Johnson as well as the web developer for defamation not only based on the defamatory words contained in the forum but also for the hyperlink pasted on the forum which led to another website that was equally defamatory of the Plaintiff.

FACTS

Case 4:

Stem Life Berhad v Mead Johnson Nutrition (Malaysia) Sdn Bhd & Anor

[2013] MLJU 1582

Plaintiff succeeded in its claim for the publication of defamatory words in the forum as well as the hyperlink even though Mead Johnson did not specifically author the defamatory postings.

COURT'S DECISION

Case 4:

Stem Life Berhad

v

Mead Johnson

Nutrition

(Malaysia) Sdn Bhd

& Anor

[2013] MLJU 1582


DEFENCES

FAIR
COMMENT

JUSTIFICATION

QUALIFIED
PRIVILEGE

ABSOLUTE
PRIVILEGE



FAIR COMMENT

Common law defense that guarantees the freedom to express statements on matters of public interest, as long as the statements are not made with ill will, spite, or with the intent to harm the plaintiff

JUSTIFICATION

**If a person can show that
the words complained of
are true in substance
and in fact then he shall
not be liable for
defamation**

QUALIFIED PRIVILEGE

The defense of qualified privilege permits persons in positions of authority or trust to make statements or relay or report statements that would be considered slander and libel if made by anyone else.

ABSOLUTE PRIVILEGE

This defence can only be raised in when the defamatory words are published in certain circumstances such as judicial proceedings, parliamentary proceedings, police report etc



Compensatory Damages

Court usually takes into consideration any actual and anticipated pecuniary loss, any resultant social disadvantage and compensation for the natural grief and distress which he plaintiff might feel as a result of the statement having been published



CURRENT TREND OF AWARD

RM 50k

-

RM 400k

**Factors to consider for
awarding
compensatory
damages**

- **Standing and reputation of
the plaintiff and the
defendant**
- **Nature of defamation**
- **The extent of publication**

Aggravated Damages

Awarded in cases where the defendant's conduct has aspects of high-handedness, oppressingness, or is insulting or contumelious

Considering Factors:

- Express Malice
- Recklessness
- Conduct of the defendant
- Failure to apologize

Special Damages

Claimant must
prove monetary
loss

Punitive or Exemplary Damages

Usually awarded in circumstances where the defendant has **deliberately or recklessly** published a defamatory statement with the knowledge that the chances of economic advantage from publication outweigh any sum for which he might be held liable in damages

PRACTICAL STEPS FOR THE CLAIMANT

- 1. CONTACT PARTY DIRECTLY AND
ISSUE A NOTICE FOR REMOVAL OF
DEFAMATORY POSTING**
- 2. FOR SOCIAL MEDIA PLATFORMS, LODGE A
COMPLAINT THROUGH THE PLATFORM IN
ITSELF.**
- 3. FOR WEBSITES AND BLOGS, LODGE A
COMPLAINT TO MCMC**
- 4. APPLY FOR INJUNCTION IF PARTY REFUSES
TO REMOVE DEFAMATORY POSTING DESPITE
BEING TOLD TO DO SO**
- 5. CONSULT LAWYERS TO COMMENCE
DEFAMATION SUIT**

**PRACTICAL STEPS
FOR THE
DEFENDANT**

- 1. CONSIDER REMOVING OR EDITING
ALLEGED DEFAMATORY POSTING**
- 2. CHANGE POSTING'S PRIVACY
SETTINGS**
- 3. NOTIFY INSURERS AND LAWYERS**
- 4. ENSURE POSTINGS ARE BACKED BY
NECESSARY FACTS AND EVIDENCE**

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Thank You!

