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Law of Defamation – Protecting One's Reputation

Civil Litigation Practice Series



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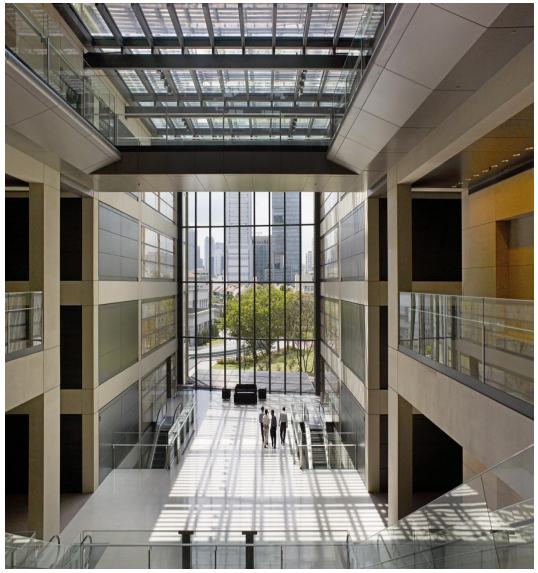


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"Right to free speech v. Right to protect one's reputation"

What Constitutes Defamation?

What should you do if you have been defamed or are accused of defaming someone else?

Defamation: Libel v. Slander

The law of defamation protects a person / company's reputation and good name. There are two categories of defamation; "libel" which, is written, and "slander" which, is oral.

Defamatory statements may manifest in various forms; e.g. spoken words, written words, cartoons, caricatures, visual images, statues, signs, gestures, etc.

Insults directed to you (and only you are present) do not *per se* constitute defamation, since the tort is not primarily concerned with your wounded feelings.

The wrong that the law of defamation seeks to address is the lowering of you "*in the estimation of right-thinking members of society or which causes* [you] *to be 'shunned or avoided'*."

Simply, that you have suffered a loss of reputation in the sense that third parties think less of you.

In A Nutshell

As a start, to succeed in an action for defamation, one must prove the following:-

a) that the statement was defamatory;
b) that it referred to you, and
c) that it was published, i.e. communicated to a third party.

Thereafter, the onus will then shift to the other party to prove that he / she has a valid defence, including:-

a) justification (that the statement made was based on the truth);
b) fair comment (the statement made was on a matter of public interest);
c) qualified privilege (the statement was made on a privilege occasion).

Ultimately, the law of defamation strives to balance the competing demands of two very important concepts of liberty: the right to free speech and the right to protect one's reputation.

Where the question of damages / compensation is concerned, in Singapore, our Courts have consistently awarded higher damages to public leaders than other personalities for similar types of defamation because of the greater damage done not only to them personally, but also to the reputation of the institution of which they are members. (**Lim Eng Hock v Lin Jian Wei** [2010] SGCA 26)

"Individuals and Companies can defame and be defamed"

Elements of Defamation

Both an individual and a company may be defamed. To establish that one has indeed been defamed, the following conditions must be satisfied:-

a) **Whether the alleged content is defamatory**; the Court must first decide whether the words used are capable of a defamatory meaning. That is a question of law. In determining the natural and ordinary meaning of words in a defamation action, an objective test is applied to determine the meaning that would be conveyed by the words to an ordinary, reasonable person using his general knowledge and common sense and who was not unduly suspicious or avid for scandal.

Examples of words / statements deemed defamatory:-

- to call a man a 'villain' is defamatory (*Bell v Stone* (1798) 1 Bos & P 331)
- to say that a trader is bankrupt is defamatory (*Shepheard v Whitaker* (1875) LR 10 CP 502)

b) **Whether the defamation had a reference to you**; In order to be actionable, the defamatory words must be understood to be published of and concerning you. That said, your name need not be expressly mentioned in the statement; it suffices if ordinary sensible people, proved to have special knowledge of the facts, might reasonably believe that the statement referred to you.

c) **Whether the defamatory material was published to third parties**; The requirement is 'mere' publication. Publication is making known the defamatory matter after it has been written to some person other than the person of whom it is written. This requirement of publication to a third party underlines that the tort protects not an individual's opinion of himself but the estimation in which others hold him.

Remedies (non-exhaustive)

a) **Damages**; Monetary compensation for one's loss of reputation - i.e. to the extent which he is held in less esteem and respect, and suffers loss of goodwill and association.

b) **Aggravated Damages**; A higher amount of damages awarded taking into account the defendant's malicious / defiant unreasonable conduct (if any).

c) **Injunctions**; An aggrieved party may apply for a Court order mandating the wrongful party to either do or refrain from doing something.









Defences to Defamation

a) **Justification**; the wrongful party must prove that the alleged defamatory statements were in reality true. The rationale is that "*the law will not permit a man to recover damages in respect of an injury to a character which he does not ….. possess.*" (also see the Defamation Act (Cap. 75))

b) **Fair Comment**; the burden of proving fair comment rests on the wrongful party. To succeed, the wrongful party must establish that: (a) the words complained of are comments, though it may consist of or include inference of facts; (b) the comment was on a matter of public interest; (c) the comment is based on facts; and (4) the comment was one which a fair-minded person could honestly make on the facts proved.

c) **Qualified Privilege**; If A has an interest or duty (whether legal, social or moral) to communicate information regarding B to C, and C has a corresponding interest or duty to receive that information, then such communication is protected by qualified privilege even if it is in fact defamatory of B.

d) **Innocent Disseminators**; a common law defence (also see the Defamation Act (Cap. 75)).

e) **Apology**; Not strictly a defence but only a mitigation in damages (see the Defamation Act (Cap. 75)).



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