

Defamation

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INTRODUCTION

The term 'TORT' is French in origin which is a synonym to 'wrong' in English. The word 'tort' originated from the latin word 'tortum' which means 'to twist' i.e., not straight and correct. It implies conduct which is twisted or tortuous. The Roman word 'delict' depicts same meaning as tort. 'Tort' may be said to mean a conduct which is not straight, or lawful, but is twisted, crooked or unlawful.

A person who commits a tort or wrong is called a 'tort-feasor' or 'wrong doer'. His wrongful act is called a 'Tortuous act'.

The law of torts is concerned with the protection of variety of interests arising in the society. The cardinal task and primary object of this branch of this law therefore is the protection of interest by the redistribution of losses of the parties i.e. by requiring the person who invades such an .interests to make pecuniary compensation at the suit of the wronged person.

Law of torts is the branch of law which has been developed by judicial process and Judicial process is nothing else but the evaluation of social events by the Judiciary.

DEFAMATION: INJURY TO THE REPUTATION OF A PERSON

INTRODUCTION

Right of reputation

The Law of Defamation has its roots in the right of reputation. Every person has a right to live with dignity and reputation. Reputation depends upon opinion of other people about a particular person. Opinion is communicated from one individual to another by expressing their thoughts. A person's own opinion about himself is not his reputation. The good name one bears or the esteem is not his reputation. The good name one bears or the esteem in which one is held in society is one's reputation. Thus, reputation means what is thought of a person by others and is constituted by public opinion, it is the general credit which a man has obtained in that opinion.

Reputation is different from character or disposition on the other. The character of a person signifies the reality about him whereas reputation indicates only what is reported of him by others. Character is internal, while reputation is external. Character disposition comprehends the springs and motives of actions, is permanent and settled and respects the whole frame and texture of his mind. The good name one bears or the esteem in which one is held in society is one's reputation.

The love of reputation is the natural instinct of every person and human action or behavior is moulded by his desire of reputation. Hence reputation of individual should be protected and encouraged for the progress of society. The right of reputation is equal to the right to enjoyment of his life, liberty, health, property etc. In modern society, the right of reputation is acknowledged as an inherent personal right of every person as part of the right of personal

liberty. A man's reputation is an invaluable property. It is a jus in rem, a right absolute and good against all the world.

If a person's reputation is damaged then the loss far exceeds than the damaged property. Hence, the law is there to protect the reputation of a person if it is infringed by someone.¹

Every one is given the fundamental right of freedom of speech and expression by Article 19(1)(a) of our Constitution and is saved by clause (2) of article 19. Truth and privilege protect the freedom of speech and expression. Defamative expressions infringe the right of reputation. The fundamental principle is that the reputation of a member of society, the esteem in which he is held by it, the credit and trust it reposes on his intelligence, honour and integrity, all these constitute a valuable asset for him and it deserves protection at the hands of law. The law of Defamation aims at giving protection only to the external reputation of a person and not to his internal disposition or character. The law recognizes in every man a right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit. Any disparagement of his good name is infringement of the right of reputation and therefore defamation is a wrongful act for which civil and criminal proceedings would lie.

DEFINITION OF DEFAMATION

According to **Black's Law Dictionary**, defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held or to exercise adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred ridicule or obloquy.

As per **Tomlin's law Dictionary**, defamation is a false publication calculated to bring one in disrepute. Defamation is when a person speaks scandalous words of others, whereby they are injured in their reputation.

According to **Bhagwadgita**, "For a man of honour, defamation is worse than death."

According to **Salmond**, the wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification.

¹ Dr.RK Bangia, Right to reputation,183,(2nded, 2010)

According to **Underhill**, “Defamation is the publication of a false and defamatory statement concerning another without just cause or excuse whereby he suffers injury to his reputation.

Winfield states, “Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally or which tends to make them shun or avoid that person. It is libel if the statement be in permanent form and slander if it consists in significant words or gestures.”

Section 499 of the Indian Penal Code provides that:

Defamation: Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted., to damage that person.

Explanations 1:- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of the person if living and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2:- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3:- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4:-No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person, in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”²

Defamation is an intentional false communication, either published or publicly spoken, that injures another’s reputation or good name, holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil.

² Dr.SR.Myneni,Definition of Defamation,413,(1st ed ,2010)

Mischief to a private individual is the basis of the law of civil defamation while mischief to the society is the basis of criminal defamation.

Defamation is different from wrongful acts which injure reputation, e.g assault, involving disgrace, unlawful arrest or attachment, malicious prosecution, a breach of contract and differs from words which cause damage to a person, property or business and not to his reputation Example- injurious falsehood like slander of title or slander of goods. Defamation also differs from insult caused by words or representation or any form of injurious falsehood. The test of the defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of other persons. While insult is an injury to one's dignity or self- respect, defamation is an injury to the esteem or regard in which one is held by others. The essence of Defamation to anticipate a term, is publication. Insult per se constitutes no civil wrong as it consists in abusing a person only in his hearing.

Thus defamation is injury to the reputation of a person, "A man publishes a defamatory statement at his peril or at his own risk. In other words, if a person injures the reputation of another he does so at his own risk or peril. The defamatory statement must expose the person to whom it relates to ridicule or contempt.³

DISTINCTION BETWEEN DEFAMATION AND INSULT

- (1) The false statement referring another person without lawful justification is a wrong of defamation. But 'insult' means treating with abuse, insolence or contempt. An insult is a gross indignity offered to another whether by act or by word.
- (2) Defamation affects one's reputation while the immediate effect of insult is provocation.
- (3) Defamation includes insult, but insult may or may not include defamation.
- (4) There must be publication of a defamatory matter to a third party whereas insult need not be published to a third party. The wrong- doer may insult the plaintiff directly in the presence of third person or without presence of any persons. Publication of insult is not the sine qua non of the offence.

³ <https://legal-dictionary.thefreedictionary.com/defamation/> available on 29.11.17 at 4:05p.m.

- (5) There is no offence if the defamatory statement is communicated only to the person defamed. But, it becomes an offence if the wrong-doer communicates insulting matter/ statement or behavior only to the person insulted.
- (6) A true statement of fact does not amount to defamation whereas it may be considered as insult depending upon the circumstances.
- (7) Sections 499 and 502 of IPC define and explain the criminal nature and punishments for defamation while Sections 504 and 509 of IPC define and explain the criminal nature and punishments for insult.

ESSENTIALS OF DEFAMATION

The following are essentials of defamation which must be proved in order to succeed for an action in the nature of defamation.

(1)The statement must be defamatory

A statement is defamatory when it has a tendency to injury a person's reputation. It is not essential that there must be some disparagement of the moral or intellectual character of the plaintiff in the ordinary sense. No general rule can, be laid down to define absolutely and once for all what words are defamatory, and what are not. Words which would seriously injure a person's reputation, might not harm another person. Each case must be decided mainly on its own facts. The test of the defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinions or feelings of others such as hatred, ridicule, contempt.

In determining whether a statement is defamatory or not, the motive or intention with which it was used by the defendant is immaterial. Good faith or ignorance of the defamatory nature of the statement is no defence, for a man utters defamatory statements at his peril. The statement is defamatory if, under the circumstances in which the writing was published, reasonable men (i.e. the right thinking members of society) to whom the publication was made would be likely to understand it in a libelous sense.

To decide whether a statement is defamatory or not, the statement must primarily be understood in its ordinary natural meaning; and a statement is said to be prima facie defamatory when its natural, obvious and primary sense is defamatory. But words which are not defamatory in the ordinary sense may, nevertheless, convey a defamatory meaning owing to the particular circumstances in which they are spoken. When a statement to it, he must, in his pleading, set forth the circumstances which make it actionable; in technical language, he must prove an innuendo. The plaintiff is bound by his own innuendo and must prove the meaning so alleged.

To be actionable the alleged defamatory statement must be false. But it is not the duty of the plaintiff to prove the falsity of the statement. It will be presumed to be false. The defendant is to establish in his defence that the statement is true. If the statement is correct, then no question of defamation arises. False statement gives rise to defamation.

The correct test to be applied in defamatory cases was formulated by Lord Atkin in the case of *Sim v. Stretch* [(1936) 2 All ER 1237] thus: “would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?”

It is usual in all actions for defamation for the plaintiff to state formally that the defendant published the defamatory matter ‘maliciously’. ‘Maliciously’ means ‘without any lawful justification or excuse.’ ‘Malice’ here means nothing more than doing an act intentionally without any lawful justification or excuse.’ Whenever it is clear that the defendant has committed a prima facie wrongful act, the law would impute malice to the defendant. Malice in its real popular sense of bad or evil motive is also applied in the law of defamation especially in connection with the defence of qualified privilege.

The defamatory statement may be malicious or negligent. Any words will be deemed to be defamatory which

- Expose the plaintiff to hatred, contempt, ridicule, obloquy;
- Tend to injure him in his profession or trade;
- Cause him to be shunned or avoided by his neighbors.

RELATED CASE LAWS:-

- **Ramdharma v. Phulwatibai, [1969 Jab.LJ 582]**

Facts: The plaintiff was a widow aged 45 years. She was falsely imputed by the defendant that she was a keep of maternal uncle of plaintiff's daughter-in-law.

Judgement: It was held that imputation of chastity was a defamation.

- **D.P. Choudhary v. Manjulata,[AIR 1997 Raj. 170]**

Facts: There was publication of a statement in a local daily in Jodhpur that Manjulata went out to attend night classes of B.A. and ran away with a boy named Kamlesh. She belonged to a reputed family. The news item was untrue and had been published with utter irresponsibility and without any justification. Such publication had resulted in her being ridiculed and affected her marriage prospects.

Judgement: The defendants were held liable as the statement was defamatory.

- **Prameela Ravindran v. P. Lakshmi Kutty Amma,[AIR 2001 Mad.225]**

Facts: The defendant, who disputed the marriage, had been sending letters to various persons regarding the marital status of the plaintiff. The plaintiff filed an application requesting for an order to restrain the defendant from making any defamatory statement against her. The evidence produced by the plaintiff was in her favour.

Judgement: It was held that the letters were defamatory and restrained the defendant not to make such statements and write letters.

(2)-The statement or representation must refer to the plaintiff

⁴ Dr.SR.Myneni, Essentials of aDefamation, 416,(1st ed, 2009)

In order to succeed for an action of defamation the plaintiff must prove that defamatory statement was published by the defendant and that statement relates to the plaintiff or representation was described on his name, or even by a fictitious name. He must satisfy the court that the words were referred to him. Intention or motive of the defendant is immaterial. It is also not necessary that all the world must know that it refers to the plaintiff. It is sufficient if the person who knows the plaintiff understands that it refers to the plaintiff. If plaintiff himself publishes defamatory statement then person is not responsible.

Whether a person is named in the statement or not, Plaintiff can call witnesses to show that those who know him understood the words to refer to him.

It is not necessary that the plaintiff should be referred to by name. It may be made under a fictitious name or in the name of a class. There is however, a rule that if a libel is made in the name of a class, a particular individual can bring an action only if he can show that it applies to himself. Thus, "If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there is something to point to the particular individual." Whether an individual member of a group can complain of defamatory matter written about the group is to be decided by asking two questions. The first is whether the words are capable of referring to the plaintiff. The second is one of fact and is whether reasonable people who know the plaintiff think the words refer to him.

Where the statement though generally referring to a class can be reasonably considered to be referred to a particular plaintiff, his action will succeed.

RELATED CASE LAWS:

Fanu v. Malcolmson[(1848) 1HL Cas. 637]

It was stated in an article published by the defendant that cruelty was practiced upon employees in some of the Irish factories. From the article as a whole including a reference to Waterford itself, it was held that the plaintiff Waterford factory was aimed at in the article and the plaintiff was successful in his action for defamation. It was further observed that it was sufficient if the statement was such that at least one person to whom it was communicated had good and reasonable grounds believing it to refer to the plaintiff.

Hulton and Company v. Jones,[1910 AC 20]

The Plaintiff, Artemus Jones was a barrister and a popular person in the city. The defendants were publishers of "Sunday Chronicle", a newspaper. The defendants Hulton and company published an article written by their correspondent at Paris. The author of the article created a fictitious character of a church warden named as Artemus Jones. The author in his article described that "Mr. Artemus Jones, a Church warden at Peckham (a fictitious character) visited a motor festival at Dieppe with a woman who was not his wife, who must be, you know the other thing. He also described the behavior of certain countrymen when they visit abroad, and described that character of the woman as characterless person

The plaintiff Artemus John sued the defendant contending that the article published by the defendants in their newspaper was defamatory and referred the plaintiff. The statement in the article gave the meaning that the plaintiff was a characterless person. The defendants argued that their article and the statements therein were purely fictitious. Further the character of Artemus Jones in the article was not referring the plaintiff in any way. They also contended that the plaintiff was a barrister, but not a Church warden, and he did not live in Peckham and had not been to the Dieppe festival. However, the plaintiff and the witnesses deposed that they took the character in the article published by the defendants to refer the plaintiff only.

The lower court gave the judgement in plaintiff's favour, awarding compensation. The defendants appealed to the court of Appeal and House of Lords. There also, the defendants appeal were dismissed and compensation to the plaintiff was confirmed.

Newstead v. London Express Newspapers ltd. [(1939) 4 All ER 319], the defendants published an article stating that "Harold Newstead, a Camberwell man" had been convicted for bigamy. The story was true of Harold Newstead, a Camberwell barman. The action for defamation was brought by another Harold Newstead, a Camberwell barber. As the words were considered to be understood as referring to the plaintiff, the defendants were held liable.

3-The words must be published

Publication is necessary for defamation. Publication must be intentional or negligent. Here publication does not mean giving the publicity but to make the statement known to other person

than the person defamed. If a defendant has committed defamatory statement only to the plaintiff and to none else then it shall not amount to defamation. If he of his own will hands it over to someone else who reads it, it will be publication by himself and, therefore defendant cannot be responsible, but where he is under a duty to send it to some other person, defendant is liable.

RELATED CASE LAWS:

- **Pullman v. Hill**[(1891) 1 QB524],

The plaintiff dropped a letter in an open card containing defamatory matter, which is likely to be read by somebody else. It was held that it amounts to publication.

- **Theaker v. Richardson** [(1962) 1 All ER 229)

It was held that to send something via telegram or postcard that could be read by others can be claimed as publication.

- **Delacroix v. Thevenot** [(1817) 2 Stark 63]

It was observed that if a person knowingly sends something in writing to defame a person in a closed envelope that it will be opened by someone else, then this amounts to publication..

- **Sadgrove v. Hole**[(1829) 10BRC 263]

The defendant sent to a third person a post card containing a defamatory statement relating to the plaintiff, but plaintiff name was not mentioned, and no stranger unacquainted with the circumstances would have known to whom it referred. It was held that there was no publication.

KINDS OF DEFAMATION

Defamation may be committed either by way of writing i.e. “libel” or by way of speech i.e. “slander”.

1-SLANDER

In early period in the history of the common law, the term ‘slander’ applied in the general term for all kinds of defamation, both oral and written. Gradually, the common law limited “slander” to oral defamations only. Slander is less severe and soft term that applies to civil wrongs. Thus ‘slander’ is the speaking of bad and defamatory words which tend to the prejudice of the reputation, office, trade, of another.

Slander is a false and defamatory statement made by spoken words, or in some other transitory form, whether visible or audible such as gestures, smile, hissing etc. to a person other than the person defamed, causing injury to the person defamed.

ESSENTIALS OF A SLANDER:

A slander has the following six essential ingredients:

- It must be false and must not to be privileged; or in nature of a fair and bona fide comment.
- The matter complained of must be defamatory
- It must refer to the plaintiff
- It must be published
- It must be published by defendant

There must be special damage done to the plaintiff except in four cases.

In general, slander is not actionable per se. But the following are the exceptional cases in which slander is actionable per se without proof of special damage-

- An imputation that the plaintiff has committed a criminal offence. The imputation must be a direct charge of some offence, which when proved would expose the plaintiff to punishment.
- An imputation that the plaintiff suffers from a contagious disease such as renders him unfit for society. Example-venereal diseases, leprosy, etc.
- An imputation against the plaintiff in the way of his business or office. Example- a charge of insolvency against a trader, of incompetence against a surgeon, of ignorance against a lawyer.
- An imputation of unchastity against a woman.

2-LIBEL

Bishop defines libel as any representation in writing calculated to create disturbances of the peace, to corrupt public morals, or to lead to any act which, when done is indicatable. The gist of the offences of libel is the publication of something which tends in contemplation of law to affect injuriously the peace and good order of society because it injuriously affects the reputation, memory, or business of individuals.

Section 6 illustration (c) of Evidence Act,1872 states, “A sues B for a libel contained in a letter forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.”

Blackstone says, libel, taken in their larger and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency considered particularly as offences against the public peace, they are malicious defamations of any person, made public by either printing, writing, signs or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule.

Other definitions of Libel are:

“Libel is a censorious or ridiculing writing picture, or sign, made with a mischievous and malicious intent towards Government, Magistrates, individuals.”

“Libel is any writing, picture or other sign tending, without lawful excuse, to injure the character of an individual by subjecting him to ridicule, contempt or disgrace.”

In “Libel” the defamatory statement is made in some permanent and visible form such as writing, picture effigy etc. libel is always actionable per se i.e. without the proof of any damage.

ESSENTIALS OF LIBEL

Libel must prove:

- That the statement is false;
- That such a statement is in some permanent form; and
- That it is defamatory which injures the reputation of the plaintiff.

A talking film was held to be a libel in **Youssouf v. Metro Goldwyn Mayer Pictures Ltd, [(1934)50 TLR 581(CA)]**. In this case, the plaintiff was a Russian princess. The defendants who were cinematograph film producers and distributors produced a talking film called “Rasputin, the Mad Monk.” The plaintiff alleged that in the film it was falsely imputed that she had been seduced by Rasputin, a man of vile character. The defendants were held liable as it tends to make the plaintiff be shunned and avoided although there was no moral turpitude on her part.

In **Hulton and Co. v. Jones, [(1910) AC 20]**, Loreburn L.C. of House of Lords observed: “Libel consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of and injured by it. A person charged with libel cannot defend himself by showing that he intended in his own breast not to defame the plaintiff, if in fact he did both. He has nonetheless imputed something disgraceful and has nonetheless injured the plaintiff. A man in good faith publishes a libel believing it to be true, and it may be found by the jury that he acted in good faith believing it to be true, and reasonably believing it to be true, but in fact the statement was false. Under those circumstances he has no defence to the action, however, excellent his intention. If the intention of the writer be immaterial in considering whether the matter written is defamatory, I do not see why it need be relevant in considering whether it is defamatory of the plaintiff.”⁵

⁵ Dr.Pandey,kinds of defamation,165,(3rd ed,2002)

DISTINCTION BETWEEN LIBEL AND SLANDER

1-Libel is a defamatory representation made in some permanent and visible form. Eg. writing, painting, effigies and cartoons etc. while Slander is a defamatory exposition not in a permanent form but transitory though it may be visible. Eg. Words of mouth, postures, gestures etc.

2- At Common Law, a libel is a criminal offence as well as a civil wrong. Under Indian Law also libel is a criminal offence under Section 500 of the IPC while at common Law, a slander along with libel is a criminal offence under Section 500 of the IPC.

3- Libel is in every sense actionable per se i.e. without proof of special damage while Slander except for cases, is not actionable per se without proof 'special damage' which signifies that no damages are recoverable merely for a loss of reputation by reason of the slander, but that the plaintiff must prove loss of money or of some temporal or material advantage estimable in money

4- Libel is an infringement of a right and there is no need to prove the actual damage to sustain an action while a slander is actionable only when special damage can be proved to have been its natural consequence, or when it conveys certain imputation.

5- Libel shows a greater deliberation and raises a suggestion of malice while Slander may be uttered in the heat of the moment and under a sudden provocation.

6- Libel causes more harm to the person while slander causes less harm to the person defamed.

7- A libel conduces to a breach of peace while a slander does not conduce to breach to the peace.

8- Libel is written defamation addressed to the eye while Slander is spoken defamation addressed to ear.

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⁶ Dr.J.N. Pandey,distinction between libel and slander, 169,(1st ed,2002)

INNUENDO

Innuendo means allusive; an insinuation; an indirect reference an indirect suggestion; deprecatory remark or hint. It is equal to the phrase 'that is to say'. Innuendo means words which are not defamatory in the ordinary sense may nevertheless, convey a defamatory meaning to the particular circumstances in which they are used.

Innuendo means a remark with double meaning. Sometimes, it happens that a statement does not convey any defamatory imputation in its natural meaning, but it may convey a defamatory meaning owing to the particular circumstances and these particular circumstances by the plaintiff is called innuendo.

If the words of the defamatory statement are not plain and further explanation is needed to clear the doubt such explanation is called innuendo.

Innuendo is a 'statement by the plaintiff in an action for defamation' of the construction which he puts upon the words himself and which he will endeavour to induce the jury to adopt at the trial.

The word 'innuendo' is to signify in a proceeding for the defamation, the averment of a particular meaning in a passage prime facie innocent, which I proved, would establish its defamatory character. If a statement does not convey any defamatory imputation in its natural meaning, it may be because the words are innocent, or true or have two or more meanings some of which are innocent or have no well known meaning as in the case of slang, provincialisms, local or technical term not in common use. In all such cases the plaintiff should set forth, by a statement in the plaint known as the innuendo, the special or secondary meaning of a defamatory character, which the words complained of conveyed to the persons to whom they were published.

INDGREDIENTS OF INNUENDO

- (1) Words used by the defendant seemed to be innocent in their natural, obvious and primary sense. If they contain secondary or natural meaning damaging the reputation of the plaintiff, then they are alleged to be defamatory.
- (2) Burden of proof lies upon the plaintiff to show and prove that the inner meaning of the defamatory statement is defamatory and is attributed to him.
- (3) An innuendo is an explanatory averment, and becomes as a defamatory statement, when the words give secondary and latent meaning degrading the conduct and character of the plaintiff
- (4) Mere interpretation is not sufficient to allege an innuendo. It must be supported by extrinsic facts or matter.

The rule of innuendo is that whenever the words are not defamatory in their ordinary sense, the plaintiff must allege in his statement of claim an innuendo and must prove the facts necessary in satisfying the jury that the meaning alleged in an innuendo was the meaning of the words, and damage caused to the plaintiff.

The words must contain within themselves some 'key or pointer' indicating that those referred to the plaintiff.

The world at large may or may not understand the secondary and latent meaning of the innuendo. The cause of action arises, if the plaintiff understands the secondary and latent meaning of the published matter. The defendant cannot take the defence that the world at large did not understand the secondary and latent meaning of those words.⁷

Illustration:

Where A tells B, that "C is under the treatment of Dr. Q." This statement is not defamatory on its face. But if Dr.Q is widely known as a Psychiatrist then C may plead by way of innuendo that A has published to B that C is insane since Psychiatrists treat the insane.

RELATED CASE LAWS:

⁷ Ratanlal Dhirajlal, Innuendo, 273, (26th edition, 2010)

Morrison v. Ritihie and Co.,[(1902 4 F 645], a newspaper notice announced that “the plaintiff has given birth to twins.” Wholly harmless on the face of it. But the plaintiff who was married only two months back pleaded by way of innuendo the defamatory meaning in the words. Even though the defendants were ignored of this fact, they were held liable.

In **Tolby v. J.S. Fry and Sons Ltd.,**[(1981)AC 333 (HL)], the plaintiff was an amateur golf champion. The defendants were manufacturers of chocolates. The defendants in the advertisements of their product, used a caricature of the plaintiff without any contract or his consent. The plaintiff sued for damages alleging that by the advertisement he had suffered in his credit and reputation. He alleged that he never ate the chocolates of the defendants even. It was held that the innuendo that the plaintiff had prostituted his status for advertising was supposed by the fact and the advertisement was, therefore, defamatory for a man in his position.

In **Bruce v. Odhams Press Ltd.** [(1936) 1 KB 697], the defendants published an article in their newspaper in which they referred to certain aeroplane smuggling exploits of ‘an English woman.’ The plaintiff brought a libel action against the defendants. She alleged that the words “an English woman.”, “she” and “her” in the article, referring to the woman meant the plaintiff. But the plaintiff was not identified in the article by name or description as the woman referred to by any witness. It was held that the defendants were not liable.

RULES TO TEST A DEFAMATORY STATEMENT

The following are the four rules to test a defamatory statement which are deducible from the case law on the subject of defamation.

- (1) **First rule:-** The statement complained of must be understood in its ordinary and natural meaning , and the whole of its must be read together, and not merely particular part of it. The context and the whole of the publication of which the alleged libel forms a part have to be considered.
- (2) **Second rule:-** If the statement in its plain and natural meaning conveys a defamatory imputation about the plaintiff as alleged in the plaint, then the defendant is liable unless he pleads and proves that the person or persons to whom it was published did not understand it in that sense, or refer to the plaintiff or would not believe the imputation to be true. It is not enough to him to prove that he did not intend the words to convey a defamatory meaning. The words had a special meaning in the context. In such cases the defendant should prove that the facts which impart a special meaning to the words were known to the hearers or readers..Similarly, he may show that the words were used as a joke; but they must also have been understood as such by the persons who read or heard them.
- (3) **Third rule:-** If the statement does not convey any defamatory imputation in its natural meaning, it may be because the words are innocent, or true or have two or more meanings some of which are innocent, or true or have two or more meanings some of which are innocent, as in the case of slang, provincialisms local or technical terms not in common use. In all such cases, the plaintiff should set forth, by a statement in the plaint known as the ‘innuendo’, the special or secondary meaning of a defamatory character which the words complained of conveyed to the person to whom they were published, and he

should also prove the facts and circumstances which made the words convey that meaning to those persons as reasonable men. These facts and circumstances should be such as were as known to the person to whom the words were published, and as were known or ought to have been known by the defendant.

(4) **Fourth rule**:- If the statement in its ordinary meaning conveys a defamatory imputation but does not in terms refer to the plaintiff, then also the plaintiff should allege that it was understood to refer to him, and prove it by evidence of circumstances of the nature already explained.

DEFENCES FOR AN ACTION OF DEFAMATION

The law of tort has recognized certain defences for the defendant in cases of defamation. If he successfully advances any of the defences and Court is satisfied, he shall not be responsible for the tort of defamation. Following are the defences:

Justification by truth:

In a civil action, defamatory statement is presumed to be false. The defendant can show that the statement is true and not false. If he proves the truth it will be a complete defence even if the words were published maliciously. The exact charge must be justified. If the statement is substantially true but incorrect in respect of certain minor particulars, the defence will still be available.

Sometimes, the defendant might have made some defamatory statement against the plaintiff without knowing the facts true or false. However, after publishing the said statement, if the statement is found to be true, the plaintiff is not entitled to recover any damages from the defendants. If the statement is proved as true, the purpose or motive of the defendant is irrelevant. However, the burden of proof lies upon the defendant that the statement as a whole and in every material part thereof are true.

If a statement contains truthful or actual narration of the facts without any aggregation, no defendant shall be responsible for such statement. Law never prohibits publication of truth, but truth must be stated as it is. Truth must not be twisted.

It is not necessary that the statement is literally true, he must prove that it is as a whole substantially true. The form of the plea is that “the words complained of are true in substance and

in fact.” If the statement is proved to be substantially true, it does not matter if it is incorrect on some unimportant detail.

Mere belief in truth of the statement, however, is so defence; for a man attacks the reputation of another at his peril,- and mistake, however innocent or inevitable, can be of no help. The plea of justification is indeed a dangerous one, for, if the defendant does not succeed in proving every material part of his statement the fact that the defence was attempted may be treated as an aggravation of the original injury.

Fair Comment:

Fair and bona fide comment is one of the defences to an action for defamation. For fair comment to be defence the following conditions must be satisfied:-

- It must be a comment i.e. it must be an expression of the opinion rather than assertion of facts.
- The comment must be fair.
- The matter commented upon must be of public interest.
- The comment must not be malicious.

I. COMMENT:

Comment usually means an expression of opinion which is based on certain facts. It is essential that the facts should be mentioned before making a comment. Comment or criticism must be distinguished from a statement of fact. A comment is an expression of opinion- an inference from facts. If it is a mere statement of fact the only defences available are justification and privilege.

II. COMMENT MUST BE FAIR:

To bring the comment within the ambit of good defence, fair comment is necessary. Comment being a matter of opinion, and not capable of definite proof, he who expresses it is not called upon by the law to justify it as being true, but is allowed to express it, even though others disagree with it, provided it is fair and honest. The plea of fair comment is available only if it

appears as a comment and is not mixed up with facts in such a way that the reader cannot distinguish between what is report and what is comment.

‘Fair’ embraces the meaning of honest and also of relevancy. The view expressed must be honest and must be such as can fairly be called ‘criticism’.

III. PUBLIC INTEREST:

In order to support the defence of fair comment it is necessary that the circumstances exist which make it a matter of a public interest that plaintiff’s ability, integrity, morality or other qualifications or conduct should be subject to public criticism. It must be relevant to the facts of public interest and must be a reasonable inference based on those facts. Thus, though public acts and performances or the conduct of public men may be freely criticized or censured, imputation of wicked or dishonest motive to the person concerned, is not fair comment.

The public interest usually covers the matter which is legitimately concerned with people at large. It is upto the judge to decide whether matter is of public interest or not.

Following are some of the matters which are commonly regarded as matters of public interest:

- Affairs of State- Public acts of Ministers and officers of State.
- Administration of justice.
- Public institutions and local authorities.
- Books, pictures and works of art.
- Theatres, concerts and other public entertainments.
- Newspapers, means of communications and transport.

The defendant can criticize the novel or cinema or any such artistic works pointing out the defects in such works. However, he is not entitled to criticize the personal character of the author. The criticism must be relevant to the artistic work only, but should not concentrate on the personal affairs of the author.s

IV. COMMENT MUST NOT BE MALICIOUS

Even if other conditions are satisfied the comment cannot be protected if it is actuated by malice. The word fair refers to the language used and not to the mind of the publisher. Therefore, possibly a fair comment may be malicious. Existence of malice establishes that the criticism was not honest and, therefore, cannot be a defence. The purpose of this defence is to protect only honest criticism and not malicious comments, however, relevant and supported by facts they may be. The existence of malice destroys the defence.⁹

DISTINCTION BETWEEN JUSTIFICATION AND FAIR COMMENT

Fair comment is available in respect of expression of opinion whereas justification is available in respect of both facts and opinion.

In fair comment it is not necessary to prove the truth of the comment but that the opinion was honestly held. On the other hand, where justification is pleaded in respect of comments it is not enough that the views were honestly held, but it must also be proved that they were correct views.

PRIVILEGE

A 'privilege' is a peculiar benefit or advantage; a right or immunity not enjoyed by others or by all; special enjoyment of a good or exemption from an evil.

A 'privilege' is a particular and peculiar benefit or advantage enjoyed by a person, company, or class beyond the common advantage of other citizens.

The word 'privilege' means that which one has a legal claim to do; legal power; authority; immunity granted by authority; the investiture with special or peculiar rights.

Privilege means that a person stands in such a relation to the facts of the case that he is justified in saying or writing what would be slanderous or libellous in any one else.

Law of defamation recognizes the privilege as a good defence in the tort of defamation. There are certain occasions when the law recognizes that the right of free speech outweighed the

⁹ Ratanlal Dhirajlal, Defences for defamation, 292, (26th ed, 2010)

plaintiff's right to reputation, the law treats such occasions as not actionable. Privilege may be either absolute or qualified.

Absolute Privilege

A statement is absolutely privileged if no action lies for it even though it is false and is made maliciously with a view to causing injury to the plaintiff. Such privilege is available where the communication is of such paramount importance that nothing should defeat it.

The maker of the statement can make a defamatory statement with or without malice deliberately in the course of parliamentary, judicial, military, naval or State proceedings. The maxim 'Salus populi est suprema' (regard for the public welfare is the highest law) is the object of the absolute privilege. Generally absolute privilege is available either when the statement is made in discharge of a duty or protection of an interest, or the publication is in the form of report of parliamentary or other public proceedings.

Qualified Privilege

A statement is said to have a 'qualified privilege' when no action lies for it even though it is false and defamatory unless the plaintiff proves express malice. 'Qualified privilege' in the law of defamation extends to all communications made bona fide upon any subject-matter in which the party communicating has any interest or duty. The privilege embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation. The maker of the statement under this privilege can obtain defence, even though such statement is false and defamatory, however, such statement should not be made with malice on the part of the defendant, qualified privilege cannot be given to the defendant

- In qualified privilege, to avail the defence, the defendant has to prove the following two things:
- The statement was made on a privileged occasion i.e. it was in discharge of duty or protection of duty or protection of an interest.

- The statement was made without any malice.¹⁰

DISTINCTION BETWEEN ABSOLUTE AND QUALIFIED PRIVILEGE

- (1) In case of absolute privilege, it is the occasion which is privileged, and when once the nature of the occasion is shown, it follows as a necessary inference, that every communication on that occasion is protected while in case of qualified privilege the defendant does not prove privilege until he has shown how that occasion was used. It is not enough to have an interest or a duty in making a communication, the interest or duty must be shown to exist in making the communication complained of.
- (2) The cases of absolute privilege are protected in all circumstances, independently of the presence of malice while in case of qualified privilege even after a case of qualified privilege has been established, it may be met by the plaintiff proving in reply actual malice on the part of the defendant.
- (3) Absolute privilege can be used as a defence in the Parliamentary, judicial, naval, military of State proceedings. While in qualified privilege can be used as a defence in the communications made:-

In the course of legal social or moral duty;

- For self protection;
- For protection of common interest
- For public good
- Reports of Parliamentary and judicial proceedings
- Proceedings at public meetings.

¹⁰ <https://www.nolo.com/legal-encyclopedia/privileges-defenses-defamation-cases.html/> available at 29.11.17 at 3:45 p.m

‘Salus populi est suprema’ is considered more in granting the absolute privilege while Salus populi est suprema’ is considered in relation to personal relations, duties, interests, etc, while allowing qualified privilege.

A speech of a member of Legislature or Parliament in the Parliament proceedings is protected by absolute privilege. While a speech given by a member of parliament in a public meeting has the defence of qualified privilege if the Member of Parliament can prove the nature and occasion.

11

REMEDIES FOR DEFAMATION

Apology- In all actions for defamation, if the defendant makes an unconditional apology it would mitigate damages, but it cannot affect his liability. An apology should amount to a full and frank withdrawal of the charges on suggestion conveyed and should contain expression of regret that such charges or suggestions were ever made.

Where the defendant had communicated or published certain defamatory matter against the plaintiff, and later he came to know that he did a mistake and if the defendant meets the plaintiff and requests to excuse him, and submits his apology to the plaintiff and if the plaintiff accepts his apology, the dispute is settled amicably between them on a simple apology.

The apology should be given as much publicity as the original libel. If the libel appeared in a newspaper, the apology should be inserted in the same newspaper, in as large a type and as prominent a position as the libel. It ought to be inserted in such a manner as to attract attention. If inserted in a minute type it will defeat its object and may be evidence of mala fides.

Damages-

- An action for defamation is an action for damages for injury to the reputation of the plaintiff. In deciding the compensation for damages for defamation, the court takes into consideration the following factors:
- The conduct of the plaintiff.
- Rank, social position and standing.

¹¹ Dr.SR.Myneni,Distinction between absolute and qualified privilege ,412,(1st ed, 2009)

- Nature of libel.
- Mode of publication.
- Mitigating circumstances.
- The absence or refusal of any retraction or apology.
- The whole conduct of the defendant from the date of publication of libel to the date of decree.

The following circumstances may mitigate damages:

- Evidence falling short of justification.
- Absence of malice, such as when a newspaper only happened to publish defamatory news sent by a correspondent.
- Apology at the earlier opportunity.
- Retaliation by the defendant, the plaintiff being in the habit of libeling the defendant.
- Provocation by the plaintiff; and
- Bad reputation of the plaintiff.

In **Rooks v. Barnard**,[(1964) 1 All ER 367 at p. 410], Lord Delvin said that there are only three categories of cases in which exemplary damages could be awarded, namely:-

- (1) Where there had been oppressive, arbitrary or unconstitutional act by servants of the Government;
- (2) Where the defendant's conduct had been calculated by him to make profit for himself which might well exceed the compensation payable to the plaintiff;
- (3) Where exemplary damages are expressly authorized by the statute.

In **Piyush Kanti Dutta v. Mangilal Gidia**,[AIR 1987 Cal. 136], the letter contained defamatory words charging the plaintiff with offence which if proved would have subjected him to punishment under Penal Code and no evidence was led to show actual loss suffered by plaintiff. It was held that still the plaintiff was entitled to damages but only nominal in the circumstances of the case.

In **Nellika Achuthan v. The Deshabhimani Printing and Publishing House Ltd. Kozhikode**,[AIR 1986 Ker.41], the plaintiff filed suit for recovery of damages from printer and publisher of newspaper for having printed and published a defamatory news item under the

caption ‘theft of elephant tusks’ in its newspaper dated 1.12.1974. This was followed by a further news item four days later with the caption “the elephant tusks taken into custody have been produced in Court.”

The defence was one of justification by truth. It is an undisputed fact that on 28.11.74 an elephant was shot dead by plaintiff in the forest area allotted to him by Government in recognition of his services as captain in Indian National Army. According to plaintiff, he had taken to his house tusks of dead elephant to prevent their pilferage by others and later had produced them before Court and there was therefore no evil intent to commit theft of tusks. The defendants have taken the stand that the statements contained in the two articles are correct and true. It was held that the defence of plea of justification by truth had been established.¹²

In **D.P. Choudhary v. Manjulata**, [AIR 1997 Raj. 170], the defendant appellants were held liable to pay compensation for negligently publishing a report regarding the plaintiff respondent without proper verification with the result that Manjulata and her parents were dishonoured in the society.

¹² Dr.J.N. Pandey, Remedies for defamation, 179,(3rd ed, 2002)

CONCLUSION

Defamation is tort resulting from an injury to ones reputation. It is the act of harming the reputation of another by making a false statement to third person. The law of defamation is supposed to protect people's reputation from unfair attack.

Like many areas of law, liability for **defamation** can be avoided by taking a common sense approach. there are many possible legal basis and defenses to a defamation claim. Defamation is a complex area of the law. Obviously, not all the possible defenses are set out here

In this manner, criticism is a common wrong, as other individual wounds, comprising of explanations that harm another person's notoriety. At the point when the announcements are composed, they are considered "criticism," while talked maligning is "criticize." A man who is stigmatized can sue the individual who said or composed the defamatory articulations. In any case, when all is said in done, criticism law is planned with First Amendment rights and the significance of free discourse and political or social contradiction as a main priority. Few out of every odd affront or false proclamation is noteworthy.

Each state has its own slander laws. When all is said in done, an offended party suing for slander should demonstrate the announcement was distributed, false, unsafe to him or her, and not favored. "Distribution" can imply that words were addressed someone else, composed words were transmitted to another person, or that photos or motions were imparted to someone else. A private passage in a diary isn't viewed as distributed.

The announcement must be false to be considered criticism. Truth is a sound protection to slander. An unflattering supposition won't be considered slander since it isn't valid or false from a goal angle. In this manner, for instance, a supposition on an online audit website that an

eatory's sustenance is "exhausting" or "passerby" with no bogus proclamations of certainty to help it isn't slander. In any case, if the author of the survey lied in saying that there were bits of glass in her nourishment, the audit would be noteworthy as maligning.

The announcement must reason real damage, not simply hurt sentiments. In the event that you are suing for criticism, you should be set up to demonstrate how the defamatory explanation hurt your notoriety. For instance, somebody who loses an occupation as a result of false proclamations about his or her experience meets this component. Correspondingly, if your better half documents for a separation and your youngsters avoid you on the grounds that someone else dishonestly claims to have had an illicit relationship with you, these are wounds caused by a false proclamation.

There are restricted conditions in which you can't win in a maligning claim despite the fact that the respondent has put forth a false expression that harmed you. For instance, administrators are not subject when they put forth false expressions in the authoritative chamber. So also, a witness who prevaricates him or herself and damages your notoriety can't be sued for criticism, in spite of the fact that he or she can be criminally indicted for defaming others.