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THE DEFAMATION LAW (27 OF 1966)

(1995 Revision)

Consolidated with Laws 12 of 1975 (part) and 3 of 1985.

Revised under the authority of the Law Revision Law (19 of 1975).

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Law 27 of 1966-10th June, 1966
Law 12 of 1975-3rd September, 1975
Law 3 of 1985-25th March, 1985

Consolidated and revised this 11th day of August, 1995.

DEFAMATION LAW

(1995 Revision)

ARRANGEMENT OF SECTIONS

1. Short title
2. Definitions
3. Slander affecting official, professional or business reputation
4. Slander of title and other injurious falsehood
5. Slander of women and girls
6. Justification
7. Fair comment
8. Evidence of apology in mitigation of damages
9. Evidence of other proceedings in mitigation of damages
10. Special plea in action for libel in newspaper
11. Unintentional defamation
12. Newspaper reports of judicial proceedings privileged
13. Reports of certain public meetings
14. Agreements for indemnity
15. Consolidation of actions
16. Limitation on privilege at elections

DEFAMATION LAW

(1995 Revision)

1. This Law may be cited as the Defamation Law (1995 Revision). Short title

2. In this Law- Definitions

“broadcasting station” means a station duly licensed under the Broadcasting Law, 1977, or wholly owned by the Government of the Islands; Law 3 of 1977

“Court” means the Grand Court;

“newspaper” means a paper containing public news, intelligence or occurrences, or any remarks or observations therein printed for sale, and published in the Islands periodically or in parts or numbers at intervals not exceeding thirty-six days between the publication of any two such papers, parts or numbers and also any paper printed in order to be dispersed, and made public weekly or oftener, or at intervals not exceeding thirty-six days containing only or principally advertisements; and

“words” include pictures, visual images, gestures and other methods of signifying meaning.

3. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business. Slander affecting official, professional or business reputation

4. In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage- Slander of title and other injurious falsehood
 - (a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or
 - (b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

5. Words spoken and published which impute unchastity or adultery to any woman or girl do not require special damage to render them actionable: Slander of women and girls

Provided that in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages, unless the Court certifies that there was reasonable ground for bringing the action.

Justification

6. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

Fair comment

7. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts, alleged or referred to in the words complained of, as are proved.

Evidence of apology in mitigation of damages

8. In an action for libel or slander the defendant, (after notice in writing of his intention to do so, duly given to the plaintiff at the time of filing or delivering the plea in the action), may give in evidence in mitigation of damages that he made or offered an apology to the plaintiff for the libel or slander before the commencement of the action, or as soon afterwards as he had an opportunity of so doing, if the action has been commenced before there was an opportunity of making or offering the apology.

Evidence of other proceedings in mitigation of damages

9. In an action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

Special plea in action for libel in newspaper

10. (1) In an action for libel contained in any newspaper, the defendant may plead that the libel was inserted in that newspaper without malice and without negligence, and that, before the commencement of the action or at the earliest opportunity afterwards, he inserted in the newspaper a full apology for the said libel, or, if the newspaper in which the said libel appeared is ordinarily published at intervals exceeding one week, had offered to publish the apology in any newspaper to be selected by the plaintiff.

(2) No defendant may file such plea without at the same time making a payment of money into Court by way of amends for the injury sustained by the publication of the libel, and a plea so filed without payment of money into Court shall be deemed a nullity and may be treated as such by the plaintiff.

11. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends; and in any such case-

Unintentional
defamation

- (a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication); or
- (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends must be expressed to be made for the purposes of subsection (1), and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends shall be understood to mean an offer-

- (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words; and
- (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved-

- (a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the Court, whose decision shall be final; and
- (b) the power of the Court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a), include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question,

and if no such proceedings as aforesaid are taken, the Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if-

- (a) the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
- (b) the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) does not apply to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

Newspaper reports of
judicial proceedings
privileged

12. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged.

Reports of certain public
meetings

13. (1) A fair and accurate report published in any newspaper or by any broadcasting station of the proceedings of a public meeting or (except where neither the public nor any newspaper reporter is admitted) of any meeting of the

Legislative Assembly or religious services, or of any corporation, board or local authority formed or constituted under any Order in Council or law applicable to the Islands, or any committee appointed by any of the abovementioned bodies, and the publication at the request of the Government or the head of any Government Department of any notice or report issued by them for the information of the public, are privileged, unless it is proved that such report or publication was published or made maliciously:

Provided that the protection afforded by this section is not available as a defence in any proceedings if it is proved that the defendant was requested to publish in the newspaper or by the broadcasting station in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected so to do:

Provided further that nothing in this section limits or abridges any privilege now by law existing, or protects the publication of any matter not of public concern and the publication of which is not for the public benefit.

(2) For the purposes of subsection (1)-

“public meeting” means any meeting *bona fide* and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

14. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter is not unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

Agreements for indemnity

15. (1) It is competent for the Court, upon an application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, libel, slander, slander of title or other injurious falsehood brought by one and the same person to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel, slander, slander of title or other injurious falsehood, shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Consolidation of actions

(2) In a consolidated action under this section the Court shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be

taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the Court finds a verdict against the defendant or defendants in more than one of the actions so consolidated, the judge shall apportion the amount of the damages which he has so found between and against the said last mentioned defendants, and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he deems just for the apportionment of such costs between and against such defendants.

Limitation on privilege
at elections

16. A defamatory statement published by or on behalf of a candidate in any election to a local government authority or to the Legislative Assembly shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

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Mona N. Banks-Jackson
Clerk of Executive Council