

THE DEFAMATION ACT
ARRANGEMENT OF SECTIONS

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SCHEDULE

THE DEFAMATION ACT

[30th April, 1963.]

Law
33 of 1961.
Act
47 of 1963.

1. This Act may be cited as the Defamation Act.

Short title.

2.—(1) Any reference in this Act to words shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning.

Interpreta-
tion.

(2) In this Act—

“broadcasting by means of wireless telegraphy” means publication for general reception by means of wireless telegraphy, and “broadcast by means of wireless telegraphy” shall be construed accordingly;

“telegraph” means a wire used for the purpose of telegraphic communication, with any casing, coating, tube or pipe enclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication;

“wireless telegraphy” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megacycles a second, being energy which either—

(a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received by any person or not) or for the actuation or control of machinery or apparatus; or

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(b) is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any objects of any class.

(3) The reference in the definition of "wireless telegraphy" in subsection (2) to the emission of electromagnetic energy shall be construed as including a reference to the deliberate reflection of electro-magnetic energy by means of any apparatus designed or specially adapted for that purpose, whether the reflection is continuous or intermittent.

(4) The reference in subsection (2) to the conveying of messages includes a reference to the making of any signal or the sending or conveying of any warning or information and the reference in that subsection to the reception of messages shall be construed accordingly.

(5) Where words broadcast by means of wireless telegraphy are simultaneously transmitted by telegraph under lawful authority, the provisions of this Act shall apply as if the transmission were broadcasting by means of wireless telegraphy.

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S. 2.

(6) Where words are transmitted by broadcast over—

(a) a closed circuit television system; or

(b) a re-diffusion system,

the provisions of this Act shall apply as if the transmission were broadcasting by means of wireless telegraphy.

In this subsection the expressions "closed circuit television system" and "re-diffusion system" have the same meaning respectively as they have in the Broadcasting and Radio Re-Diffusion Act.

Broad-
cast state-
ments.

3. For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

4. 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 shall not be 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.

5.—(1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage—

Slander of title, etc.

- (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.

(2) Section 3 shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

6.—(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 under this section; 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);

(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 under this section must be expressed to be made for the purposes of this section, 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 under this section 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;

(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 Supreme Court, whose decision thereon shall be final;
 - (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), shall 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 Supreme 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 the following conditions are satisfied, that is to say—

- (a) that 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) that 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) shall not apply in relation 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.

Justifica-
tion.

7. 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.

8. 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.

Qualified
privilege
of news-
papers.
Schedule.

9.—(1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule shall be privileged, unless the publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part III of the Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the

original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting before the 30th April, 1963 (otherwise than by virtue of any enactment repealed by this Act).

(5) In this section the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in this Island either periodically or in parts or numbers at intervals not exceeding thirty-six days.

10. Section 15 of the Libel and Slander Act (which relates to contemporary reports of proceedings before courts exercising judicial authority) shall apply and apply only to courts exercising judicial authority within this Island or exercising judicial authority on appeal from such courts.

Extent of section 15 of Libel and Slander Act.

11.—(1) Section 9 of this Act and section 15 of the Libel and Slander Act, as amended by this Act, shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station within this Island, and in relation to any broadcasting by means of wireless telegraphy of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to

Extension of certain defences to broadcasting.

publication in a newspaper; and subsection (2) of the said section 9 shall have effect, in relation to any such broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which".

(2) In this section "broadcasting station" means any station in respect of which a licence granted by the Minister under the Broadcasting and Radio Re-Diffusion Act is in force, being a licence which (by whatever form of words) authorizes the use of the station for the purpose of providing broadcasting or re-diffusion services for general reception.

Limitation
on
privilege at
elections.
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S. 3.

12. A defamatory statement published by or on behalf of a candidate in any election to the House of Representatives of this Island or to the Council of the Kingston and St. Andrew Corporation or to any Parish Council 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.

Agree-
ments for
indemnity.

13. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be 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.

Evidence
of other
damages
recovered
by plain-
tiff.

14. In any 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.

15.—(1) This Act applies for the purpose of any proceedings begun after the 30th April, 1963, whenever the cause of action arose, but does not affect any proceedings begun before that date.

Proceedings affected and saving.

(2) Nothing in this Act affects the law relating to criminal libel.

SCHEDULE

(Section 9)

*Newspaper Statements having qualified privilege***PART I. Interpretation**

1. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say—

“international court” means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;

“legislature” in relation to any territory comprised in Her Majesty’s dominions which is subject to a central and local legislature, means either of those legislatures;

“local authority” means—

(a) the Council of the Kingston and St. Andrew Corporation; and

(b) any Parish Council;

“part of Her Majesty’s dominions” means the whole of any territory within those dominions which is subject to a separate legislature.

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S. 4 (a).

11 & 12
Geo. 6
c. 56.

2. In relation to the following countries and territories, that is to say, India, Pakistan, Malaysia, the Republic of Nigeria, the Republic of Tanganyika, Uganda, Ghana, Cyprus, the Republic of Ireland, any protectorate, protected state or trust territory within the meaning of the British Nationality Act, 1948, of the United Kingdom, any territory administered under the authority of a country mentioned in subsection (3) of section 1 of that Act and the New Hebrides, the provisions of this Schedule shall have effect as they have effect in relation to Her Majesty’s dominions, and references therein to Her Majesty’s dominions shall be construed accordingly.

PART II*Statements privileged without explanation or contradiction*

3. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty’s dominions outside this Island.

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S. 4 (b).

4. A fair and accurate report of any proceedings in public of an international organization of which the United Kingdom or Her Majesty’s Government in the United Kingdom or Jamaica or Her Majesty’s Government in Jamaica is a member, or of any international conference to which any of those Governments sends a representative.

5. A fair and accurate report of any proceedings in public of an international court.

6. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty’s dominions

outside this Island, or of any proceedings before a court martial held outside this Island under the authority of any statute of the United Kingdom for the time being in force. 47/1963
S. 4 (c).

7. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public enquiry by the government or legislature of any part of Her Majesty's dominions outside this Island.

8. A fair and accurate copy of or extract from any register kept in pursuance of any enactment which is open to inspection by the public, or of any other document which is required by any enactment to be open inspection by the public.

9. A notice or advertisement published by or on the authority of any court within this Island or any judge or officer of such a court.

PART III

Statements privileged subject to explanation or contradiction

10. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say—

- (a) an association formed in this Island for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;
- (b) an association formed in this Island for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;
- (c) an association formed in this Island for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime, being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

11. A fair and accurate report of the proceedings at any public meeting held in this Island, that is to say, a 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 to the meeting is general or restricted.

12. A fair and accurate report of the proceedings at any meeting or sitting in this Island of—

(a) any local authority or committee of a local authority or local authorities;

(b) any justice or justices of the peace acting otherwise than as a court exercising judicial authority;

(c) any commission, tribunal, committee, or person appointed for the purpose of any enquiry by any law of Jamaica, or by Her Majesty or by the Governor-General or by a Minister;

(d) any person appointed by a local authority to hold a local enquiry in pursuance of any enactment;

(e) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any enactment, not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

13. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any enactment or incorporated by Royal Charter, not being a private company within the meaning of any enactment for the time being in force relating to companies.

14. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of the government or local authority.

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S. 4 (d).