

LIBEL: Reputation, reputation, reputation



"Good name in man and woman, dear my lord,
Is the immediate jewel of their souls:
Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him

(Othello:Scene 3,Act 3)

Apologies for starting a law course with a quote from Shakespeare but the great man does make the point very well. The law of defamation is all about reputation. It exists to protect the good name of the McCanns and, importantly, it also exists to give protection to the media who correctly expose false reputations.

There are two ways in which you can damage a person's reputation. The most important for journalists is Libel which is a defamatory statement in permanent form. Libel covers printed matter, TV and radio broadcasts, films and videos, the internet, right down to blogs, emails, even graffiti on a wall.

The second source of defamatory statements is transient and is known as slander. Slander is not really an important part of media law and is dealt with briefly at the back of this course.

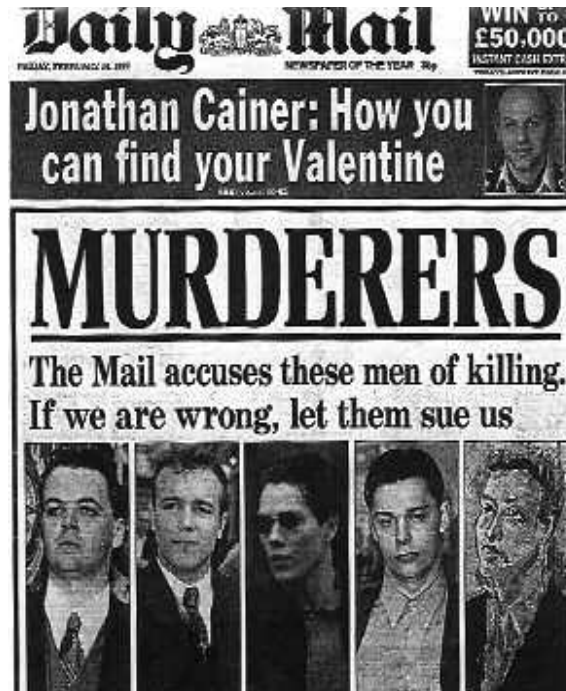
A claim for libel consists of just a couple of A4 pages but when it drops on the editor's desk it can send shockwaves throughout the office. For some in the media - investigative reporters or gossip columnists or the proprietors of sensationalist newspapers - it's an occupational hazard but for most journalists it is bad, and unexpected, news.

One of the worst effects of a libel action is that it can have a chilling effect on campaigning and investigative journalism. Where once the mood was on the lines of publish-and-be-damned it now becomes kill-it-and-be-safe. It is important to understand that both of those extreme attitudes make for bad journalism.

To rush into print or to go on air without carefully considering the legal consequences is plain stupid. Worse, to kill a story because it might, just might, get you into trouble is a betrayal of the journalist's role as the public's watchdog.

If you have a clear understanding of the basic rules of libel you will become at once more careful and more courageous. And you will make sure you get your facts right.

The building blocks of Libel



There are three elements which must be in place before a claimant wins a case for libel and we will use this extreme example to go through them. The first requirement is that you publish something defamatory, something that lowers a person's reputation in the eyes of reasonable people.

The classic legal test, using the Mail's page one as an example, is: Would being called Murderers.....

- * Expose the five to hatred, ridicule or contempt or
- * Cause them to be shunned or avoided or
- * Would it tend to injure them in their trade or profession – in other words, in this case, stop them getting jobs?

The second requirement is that the defamatory words plainly apply to the claimant. That is obviously the case here but sometimes it's not so simple and the requirement gets detailed explanation later under the heading 'Identity'.

The third requirement is that the words complained of have been published to a third-party. Third-party means that someone other than the accuser (the Mail) and the accused (each of the five separately) has read the allegation. Just one third-party would do. The Mail's readership is in the millions.

The Mail's page one is an almost unique example of a newspaper savaging the reputations of five men in the most brutal way in the hope that they would sue for libel but knowing that they would not.

They accused the five of murdering the black teenager Stephen Lawrence who was stabbed to death in a racist attack in 1993. Three of the five, Gary Dobson, Neil Acourt and Luke Knight were accused in 1996 of murdering the 18-year-old.

The building blocks of Libel

The other two, Jamie Acourt and David Norris, were also widely believed to have been in the gang which attacked the student. But after various trials and legal procedures the five walked free and – at the time the Daily Mail page was published – could not be tried for the offence in a criminal court again.

BURDEN OF PROOF

In the criminal court the standard of proof required to convict them of murder was “beyond reasonable doubt.” But libel (except in a few rare areas) is not a criminal offence. It is a civil matter where the standard of proof is the less rigorous “on the balance of probabilities.”

The Daily Mail tried to get the five into a civil court by deliberately libelling them. If the five had sued, the Mail’s lawyers would have been able to question them about the Stephen Lawrence murder under civil court rules and in the end invite the libel jury to conclude that it was at least probable that they had killed Stephen.

And, importantly for a libel trial, they would have been able to concentrate on the claimant’s existing reputation and the reasons they had those reputations.

The Mail published this libel on St Valentine’s Day 1997 and the five had one year before the limitation period for suing ran out. They never sued.

Now that we have republished the page the risk of a writ for libel arises again. This time on the author and publisher of these notes. And the one-year limitation period starts again each new day we allow people to access the page.

If the five had sued for libel, they would not then have to go on to prove that the Mail’s accusation was false. The court would start off by presuming that it was false. It would be up to the Mail to prove – on the balance of probabilities – that the five, all of them, murdered Stephen Lawrence.

If the paper can prove the allegation ‘Murderers’ is true then it has the first of the seven defences to an action for libel - the defence of Justification. It is important right from the start to emphasise that when we plead Justification - “we are justified in printing this because it is true” - the burden of proof is on the paper. The Mail would have to demonstrate it was probable the five did murder Stephen Lawrence.

It is useful at this point to introduce some words of wisdom about the necessity of getting your facts right. Newspaper editor Matthew Lewin describes the day when, as a young journalist, he took a story to the renowned libel lawyer Peter Carter-Ruck.

“ As we went through the piece, line by line and word by word,” said Lewin, “ the obstinate curtains impeding my understanding of the nature of allegation, defamation, supposition and real proof were finally lifted. I don’t remember his exact words but they were something along the lines of:.....

“ It matters not what you know or believe to be true, or feel certain must be true, or is obviously true or must - as a matter of sheer logic - be true. What matters is what you can actually show to be true Whenever you are unsure imagine yourself in the witness box in a case potentially involving many thousands of pounds in damages, under cross examination by a very sharp and very hostile barrister who barks at you: ‘What proof do you have personally, Mr Lewin, **proof that you can actually show us**, to substantiate that allegation? ’ ”

Identity has to be established

Plainly you cannot damage someone's reputation if the people who read your defamatory words haven't a clue who you're writing about. In the case of the Daily Mail accusing five men of murder there is no doubt at all. Not only have they been named individually but their pictures have also been used to further identify them. But sometimes the media uses a defamatory story on the basis of "we're safe if we don't name them." The folly of this is demonstrated in the following story. Read through it and try to identify who has been libelled.



Leeds families were warned this week not to buy karate club memberships from doorstep salesmen.

These clubs are not registered with the sports governing body and so there are no checks on the standard of instruction nor on the instructors themselves.

Investigations are taking place in other UK cities after complaints about these clubs and the operation has now been reported in Leeds with residents in the south and west of the city receiving visits from these doorstep callers.

According to Mr Brian Porch,

general administrator of the English Karate Association, this is simply a "money making" operation.

"We have had lots of calls about this set-up. They are just taking people's money and then they disappear. The average person learning karate pays about £2 for a two-hour lesson. These people are charging £5 for one hour.

"Instructors are recruited from job centres or newspaper adverts and they then go round knocking on doors – particularly targeting homes with children.

"They are given basic karate

lessons, told to find a hall and then teach those who join.

"In contrast all our instructors are fully qualified, have first aid training and their backgrounds are checked to see if they have a criminal record."

Another problem was that they claimed to have full insurance cover but this was "very dubious" said Mr Porch.

Added Mr Porch: "These people are giving the sport a bad name. The UK are world karate champions and have a good reputation to maintain, but they are just ripping people off."

GKR Karate - the people who sued the Leeds Weekly News - are not once mentioned in the story. Three points arise from this:

- a. Even though no names were given, all GKR Karate had to demonstrate was that the story reasonably led people acquainted with the company to understand it referred to them.

Identity has to be established

Similarly, if you write a story about an individual without naming him all he has to demonstrate is that family or friends were able to recognise him from the story.

b. Actions for libel are not restricted to individuals. Corporations can also sue. A corporation is a set-up which has rights and responsibilities distinct from the people who form it. An incorporated company is a corporation formed for the purpose of carrying on a business. Think GKR Karate Inc. Think McDonalds Inc. – the Big Mac spent two years suing two campaigning vegans to protect its high-street trading reputation.

Other points: some associations are legally incorporated and can sue. Local authorities and central government cannot sue. Neither can political parties.

c. Group Defamation. The law allows groups of people, rather than individuals, to sue as a body but the courts keep the numbers as low as possible. For example: If you wrote "All lawyers are crooks" then plainly all the members of the legal profession could not sue because the reasonable man would know that many lawyers could not be crooks.

But when a former policeman alleged that he had been forced out of a police dog-handling team because of anti-semitism, all 12 members of the team sued as a group for libel and won.

So, in the case of GIVE 'EM THE CHOP, in addition to the company itself, all the canvassers for GKR Karate, provided they were few in number, might have sued as a group.

Main defences - an overview

The case histories used in this course are all from newspapers but the libel rules which apply to newspapers apply in precisely the same way to radio or television broadcasts or, indeed, to any publication which can be stored for reference – and that includes blogs and emails.

There are seven defences to defamation, four of which are essential learning for the working journalist. The four are:

- JUSTIFICATION
- FAIR COMMENT
- STATUTORY PRIVILEGE
- COMMON LAW PRIVILEGE.

The other three are:

Consent – an example of which is given later courtesy of George Galloway MP.

Offer of Amends – one for the lawyers to employ after a genuine mistake has resulted in a libel. Details in a separate chapter later.

Innocent dissemination – useful for chat shows and phone-ins where the broadcaster has no effective control over the maker of a defamatory statement. Again, details later.

A knowledge of how the Big Four defences work is essential. So is the awareness that defences might have to be combined to resist a libel claim. Each defence will be dealt with in detail later but, first, a brief overview of those four main defences starting with Justification and Fair Comment. There are two defamatory statements in the headlines on the Leeds Weekly News page one.

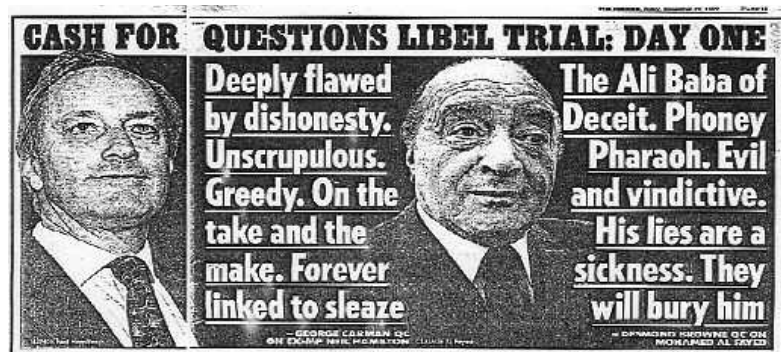


The first is a defamatory fact: “Doorstep salesmen flog dodgy karate lessons.” The newspaper’s defence here is Justification. The legal onus is on the Leeds Weekly News to prove that the karate lessons sold by the salesmen are ‘dodgy’. GKR Karate do not have to prove anything. Right from the start the law takes the view that the ‘dodgy lessons’ allegation is false.

The second defamatory statement “GIVE ‘EM THE CHOP” is not a fact to be protected by Justification it is advice to the paper’s readers - comment based on the factual claim that the lessons are dodgy. The paper’s defence to this is Fair Comment. But once again ‘dodgy’ has to be proved by the newspaper because comment can never be fair if it is presented on the back of inaccuracies.

Lesson: If you cannot prove that what you have published is substantially true you have lost the defences of Justification and Fair Comment.: Details of both defences later.

Main defences - an overview



This was how the Daily Mirror reported day one of the the libel case brought by MP Neil Hamilton against Mohamed al-Fayed over the claim by the owner of Harrods that he had paid Hamilton to ask questions for him in Parliament.

The headlines recording what George Carman QC, representing al-Fayed, said about Hamilton and what Hamilton's QC, Desmond Brown, said about al-Fayed are savagely defamatory. If the lawyers had published those words outside the confines of the legal proceedings they would have left themselves open to writs for libel.

But legal proceedings are covered by Privilege. The defence of Privilege is an acknowledgement that on certain occasions it is necessary that a person be allowed to speak freely even if, when doing so, he falsely damages another person's reputation.

The occasions on which Privilege exist have been determined by Parliament. All these many privileged occasions are listed in the 1996 Defamation Act (a statute) and the protection granted to them is known as Statutory Privilege.

A second branch of Privilege, Common Law Privilege, has built up over the years by judicial precedents in the courts. Until comparatively recently Privilege, as far as the media was concerned, was confined to occasions which could be foreseen, like sessions of Parliament or court proceedings where the need for free speech is paramount. **Details later.**



Reynolds v Times Newspapers afforded the media the chance to gain Common Law Privilege for public interest stories about events, like that in the headlines above, which no one could possibly foresee. A public interest story provides information which the citizens of a democratic society are entitled to know - information in which citizens have a legitimate interest, not just a story which the public may find interesting.

This allegation that a British MP, a vehement critic of the Iraq war, had been in the pay of Saddam Hussein was of huge public interest. But was also hugely defamatory of George Galloway. The Daily Telegraph could not prove that the allegations were correct so could not employ the defence of Justification. When George Galloway sued, the Telegraph had to rely on Common Law Privilege, basically saying that while they could not prove the allegations it was their duty, in the public interest, to reveal them. **Details later.**

Words that spell danger

NEWS

Currie wins libel award for paper's 'vilest lady' slur

By Sally Pook

EDWINA Currie, the former Tory MP, received a public apology and a substantial libel damages award after a newspaper referred to her as "the vilest lady in Britain".

Mrs Currie, now a novelist, refused to confirm that the "substantial" libel award was in the region of £50,000.

The High Court heard that an article in the Daily Express in September 1997 mentioned Mrs Currie was about to join the Labour Party to breathe new life into her "clapped out" political career.

Peter Oborne, the newspaper's political columnist, wrote that she would be no more acceptable to Labour than "a mass murderer", a "serial rapist" or "an active officer in Radovan Karadzic's death squad".

Mrs Currie was particularly upset by the headline: "How Edwinas is now the vilest lady in Britain", which could have been taken to compare her unfavourably with Myra Hindley and Rosemary West, her counsel, Edward Garnier, QC, said.

Other offensive allegations in the article had been put to Mrs Currie in television and radio interviews as though they were established facts, he told Mr Justice Morland.

Mr Garnier added that Mrs Currie was unaware of the rumours that she was about to leave the Conservative Party and the suggestion was untrue.

Kate Macmillan, representing the newspaper, expressed its "sincere regret" that the article had caused Mrs Currie any upset and damage.

She said: "The article and headline in particular were not meant to be taken literally but were intended to be a strong piece of political comment."

The newspaper now accepted without reservation that the headline, which was not written by Mr Oborne, and parts of the article went beyond the acceptable ambit of fair comment, Mrs Currie, MP for South Derbyshire from 1985 to 1997 and junior health minister from 1986 to 1988, also received her legal costs.

"After the hearing, Mrs Currie, who was with her daughter Debbie, said: "I am delighted it is done and delighted it is over. I never wanted a fight with the Express."

Asked to confirm if the damages were in the region of £50,000 she would only comment: "It is enough. I am satisfied. Awards are not as high these days as the amount Lord Archer received."

She added: "It is nice that I am no longer Britain's vilest woman. It has taken two and a half years, so it has been a long time, but I received an apology in court which is what I wanted."

"The amount of damages was substantial. I am very happy with it and have just spent some of it on a celebratory lunch."



Delighted, Edwina Currie with her daughter Debbie outside the

There are key-words in every story, words that add colour, words that accuse, words that mock, and, most critical of all as far as libel is concerned, words that can be read two ways, one way by a journalist, the other way by a lawyer.

What follows is a perfect example of the danger of using words imprecisely.

It all began when the Express reported rumours that Currie was about to join the Labour Party to breathe new life into her "clapped out" political career.

A columnist wrote that she would be no more acceptable to Labour than a "mass murderer", "a serial rapist", or "an active officer in Radovan Karadzic's death squad."

Currie's lawyer indicated that she was particularly upset by the headline which read

HOW EDWINA IS NOW THE VILEST LADY IN BRITAIN

This, he said, meant she was a nastier piece of work than even the notorious Myra Hindley and Rosemary West.

The Express accepted that the article went beyond the acceptable ambit of fair comment but claimed: "The article and headline in particular were not meant to be taken literally but were intended to be a strong piece of political comment."

Currie's lawyer argued that the words had to be taken literally and the jury agreed.

That careless use of words cost the Express substantial damages, believed to be £50,000, plus, of course, Currie's legal costs.

"I am very happy with it and have just spent some of it on a celebratory lunch," she said.

The reaction in the Express newsroom was not reported.

Next: How to weigh up words.