

<b>Defamation</b>
<p><b>Separate Tort.</b> In desperate need of reform – very complicated law.</p> <p><b>Protects against injury to reputation</b> Affects reputation within community &amp; what right thinking member of society will think of them</p> <p><b>Impact of HR – Art 8 &amp; 10</b> privacy &amp; freedom of speech.</p>

<p><b>(1) Libel</b> Permanent Form. <i>e.g. broadcasts</i></p>	<p><b>(2) Slander</b> temporary statements <i>e.g. gesture in a crowd.</i></p>	<p><b>(3) Defamation</b> protects against injury to reputation.</p>
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<b>(1) Libel</b>	<b>(2) Slander</b>
<p><b>Permanent – thus damage is presumed – therefore actionable.</b></p> <p><b>Permanency</b> Injury to reputation - Must take a more permanent form. <i>Youssopoff</i></p> <div style="border: 1px solid black; padding: 10px; margin: 20px auto; width: 80%;"> <p style="text-align: center;"><b>Broadcasting Act 1990 – s.166</b></p> </div>	<p><b>Must have proof of actual injury</b> Actual Injury = loss of trading/£ mere annoyance is not enough. Mere loss of reputation is not enough.</p> <p style="text-align: center;"><b>Exceptions: Imputation of...</b></p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><b>(a) Criminal Conduct.</b> <i>'I can't have you here you have been to prison'</i> <i>Gray v Jones</i></p> </div> <div style="width: 45%;"> <p><b>(b) Contagious Diseases.</b> <i>Bloodworth v Gray</i></p> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p><b>(c) Imputation of Unchastity</b></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p style="text-align: center;"><b>Slander of Women Act 1891</b></p> </div> </div> <div style="width: 45%;"> <p><b>(d) Unfitness of Business</b> statement that affects C's ability in business <i>Jones v Jones</i></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p style="text-align: center;"><b>S. 2 Defamation Act 1952</b> Need only to relate to his profession</p> </div> </div> </div>

## Defamation

4 stages:

<b>(1)</b> <b>Defamatory Statement</b>	<b>(2)</b> <b>Referred to the Claimant</b>	<b>(3)</b> <b>Published to a 3<sup>rd</sup> Party</b>	<b>(4)</b> <b>Defences</b>
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(1) Defamatory Statement	
<p style="text-align: center;"><b>Judge decides:</b></p> <p>as a matter of law whether those words are capable of being defamatory. <i>Jeynes v New Magazine</i> <i>Lait v Evening Standard</i></p> <div style="border: 1px solid magenta; padding: 5px; margin: 10px 0;"> <p style="text-align: center;"><b>S. 69 Supreme Court Act 1981</b></p> <p>Either party can require a jury. (unless the court feels that they won't use one out of convenience, say if there is much documentation etc. to be analysed)</p> </div>	<p style="text-align: center;"><b>Standard of Opinion:</b></p> <p>Must Affect Reputation.  <i>Byrne v Deane</i></p> <p>Companies – only sue if statement affects reputation.  Government Bodies &amp; Political Parties – Cannot sue</p>
<p style="text-align: center;"><b>Defamatory??</b></p> <p>Must injure a persons reputation. <i>Sim v Stretch</i> <i>Monson v Tussauds</i> <i>Berkoff v Burchill</i> <i>Charleston v News Group</i></p>	<p style="text-align: center;"><b>Innuendoes:</b></p> <p>Where a statement is not clear but can still be defamation. Implied attack on someone's reputation.</p> <p>False (popular) innuendoes      True (legal) innuendoes: <i>Lewis v Daily Telegraph Ltd</i>                      <i>Cassidy Tolley</i></p>

(2) Referred to the Claimant
<p style="text-align: center;"><b>Statement Must Refer to the Claimant:</b></p> <p style="text-align: center;"><i>Byrne v Deane</i> <i>Cassidy v Daily Mirror</i> <i>E Hulton &amp; Co v Jones</i> <i>Newstead v London Express Newspaper</i> <i>Morgan v Odham Press</i> <i>O'Shea v MGN</i> <b>Art 10 ECHR</b></p> <p style="text-align: center;"><b>When C is a Group:</b> <i>Knuppfer v London Express</i></p>

(3) Published to a 3 <sup>rd</sup> Party		
<p style="text-align: center;"><b>Statement must be published to a person other than the person impugned.</b></p> <p style="text-align: center;"><i>Huth v Huth</i> <i>Theaker v Richardson</i></p>	<p style="text-align: center;"><b>Publication??</b></p> <p style="text-align: center;"><i>Godfrey v Demon Internet</i> <i>Loutchansky v Times Newspapers</i> <i>Bunt v Tilley</i> <i>Times Newspapers v UK</i></p>	<p style="text-align: center;"><b>Who is a Publisher??</b></p> <p style="text-align: center;"><i>Slipper v BBC</i> <i>McManus v Beckham</i></p> <div style="border: 1px solid magenta; padding: 5px; margin: 10px auto; width: 80%;"> <p style="text-align: center;">ss.1(1) – (3) Defamation Act 1996</p> </div>

**(4) Defences**

(i) Justification.	(ii) Honest comment on a matter of public interest.	(iii) Privilege.	(iv) Offer of Amends (apology)	(v) Innocent Dissemination
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**(i) Justification**

Successful – Absolute defence

**Is the allegation true in substance & fact?**

*Edwards v Bell*  
*Grobbelaar v News Group*  
*Dee v Daily Telegraph*

**What words is D seeking to justify?**

**Multiple Allegations**

*Polly Peck v Trelford*  
*Khashoggi v IPC Magazines*

**s.5 Defamation Act**

**Rumour Doctrine**

*Stern v Piper*  
*Lewis v Daily Telegraph*

**Rehab of Offenders Act 1974 s.8**

**(ii) Honest Comment on a Matter of public Interest.**

Successful – Absolute Defence

**Is the matter commented on a matter of public interest?**

*London Artists v Littler*  
*Slim v Daily Telegraph*

**Comment rather than a Fact?**

*London Artists v Littler*  
*Telnikoff v Matusevich*  
*Kemsley v Foot*  
*British Chiropractic Association v Singh*

**s.6 Defamation Act.**

**Comment must be based on facts which are true/protected by privilege.**

*London Artists v Littler*  
*Spiller v Joseph*

**Comment must be fair.**

*Turner v Metro-Goldwyn-Mayer*

**If Comment made with malice – no defence.**

**(iii) Privilege**

**Qualified**

(weaker – used more)

**Must have:**

**(a) Reciprocity:**

reciprocal duty between defamer & receiver:

**Duty from defamer:**

D under legal, moral or social duty

*Toogood v Spyring*  
*Spring v Guardian Assurance*  
*Watt v Longsdon*  
Up to the judge to decide:  
*Stuart v Bell*

**Interest from receiver:**

courts will interpret this broadly.  
Includes business & financial  
*Toogood v Spyring*

**Absolute**

(stronger defence – used less)

**must satisfy 1 of these in order to use defence successfully:**

**(a) Statements in Parliament**

*Bill of Rights 1689*

*A v UK*

*s.13 Defamation Act*

**(b) Reports, papers, votes published by Parl.**

*s.1 Parliamentary Papers Act 1840*

**(c) Judicial Proceedings**

*s.14 Defamation Act*

**(d) Communications between certain officers of the state.**

**(b) Duty – In relation to Media**

**Reynolds Privilege**

Test for reasonable journalism.

**Media do not have a special application of the Q.Privilege**

*Reynolds v Times Newspapers*

**Art 10 ECHR & s.12 HRA**

**Lord Nicholls – non-exhaustive list:**

*e.g. seriousness of allegation.*

Merely a guide - *Jameel v Wall Street Journal.*

*Kearns v General Council of the Bar.*

*Seaga v Harper*

**Qualified under Statute**

**s.15(1) Defamation Act 1996**

'the publication of any report or other statement mentioned in Sch.1 to this Act is privileged unless the publication is shown to be made with malice'

#### **(iv) Offer of Amends - Apology**

##### **s.2-4 Defamation Act 1996**

- i. D must admit that he/she is wrong;
- ii. offer it in writing
- iii. publish the correction & apology
- iv. pay the claimant such compensation

Very difficult for C to reject an offer of amends:

*Milne v Express*

#### **(v) Innocent Dissemination**

e.g. Big Issue seller, Evening Standard man, Publishing house (not the author)

##### **s.1 Defamation Act 1996 – defence if:**

- i. he was not the author, editor or publisher
- ii. he took reasonable care in its publication
- iii. He did not know & had no reason to believe it was defamatory

*Godfrey v Demon Internet*

### **Remedies**

#### **Damages**

matter for the jury.  
**Must be proportionate:**  
*Steel and Morris v UK*  
*John v MGN Ltd*  
*Grobelaar v News Group*

#### **Injunction**

preserves C's reputation rather than just compensating for the loss.  
Prevent allegation from going to print.  
*Bonnard v Perryman*

#### **Reform**

**Defamation Bill:**  
*does the current law strike the right balance between protection of freedom of speech & that of reputation??*