

# Libel: Bringing a Libel Suit Part I

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## Introduction

- What is libel?
- Establishing libel
- Who may bring an action in libel?
- Who may be sued for libel?
- Defences to libel
- Libel remedies



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## Introduction

- Defamation
  - Civil Law
  - No consolidation
    - Common Law
    - Defamation Act 1952
    - Defamation Act 1996
    - Defamation Act 2013



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## What is defamation?

"He that filches from me my good name,  
robs me of that which not enriches him,  
but makes me poor indeed"

Othello, Act iii, Sc.3

- ECHR Article 10 & Reputation



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## What is defamation?

- *Parmiter v Coupland* (1840) 6 M amp 105  
– "...calculated to injure the reputation of another..."
- *Youssouffoff v MGM* (1934) 50 TLR 581
- *Sim v Stretch* [1936] 2 All ER 1237  
– "...in the estimation of right-thinking members of society generally..."



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## What is defamation?

- *Report of the Faulks Committee on Defamation*  
Cmnd 5909 (1974)  
– "...publication to a third party...likely to affect a person adversely in the estimation of reasonable people..."
- Defamation Act 2013, Section 1  
– A definition of defamation?
  - "...not defamatory unless...publication..."
- Classification: Libel v Slander?



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## Requirements

- Defamatory Meaning...
  - Direct or innuendo
  - Likelihood of serious damage to reputation  
(See S1, Defamation Act 2013)
- Identification
- Publication



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## A. Defamatory Meaning

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## Defamatory Meaning



- *Berkoff v Burchill* [1996] 4 All ER
- Natural and Ordinary meaning
  - *Mapp v News Group Newspapers* [1997] NLJR 562
  - *Goldsmith v Bhoynul* [1998] QB 459
- Article to be assessed as a whole
  - *Charleston v Newsgroup Newspapers* [1995] 2 All ER 313



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## Defamatory Meaning

- ‘Bane and antidote’
  - *Norman v Future Publishing* [1999] EMLR 325, CA



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## Defamatory Meaning

- Context of the publication
  - *Bookbinder v Tebbit* [1989] 1 All ER 1169, CA
  - *Cruise v Express Newspapers* (1998) EMLR 780
- Likely reasonable viewer/ reader
  - *Emaco v Dyson Appliances* (1999) *The Times*, 8 February



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## Defamatory Meaning

- Meaning to be determined from item
  - *Charleston v Newsgroup Newspapers* [1995] 2 All ER 313
  - (but note SC in *Lachaux* – to be clarified?)
- Not actionable if not taken seriously
  - E.g. *Vodafone v Orange* [1997] FSR



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## Is the natural and ordinary meaning defamatory?

- Importance of context
  - *Berkoff v Burchill* [1996] 4 All ER
  - *Winyard v Tatler Publishing* (1991) *The Independent*, 16 August
- Reasonable members of society generally
  - *Byrne v Dean* [1937] 2 All ER 204



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## Is it defamatory?

- Changing cultural perceptions over time
  - E.g. implication that a sportsman had taken money for advertising
    - *Tolley v JS Fry* [1931] AC 333
  - E.g. implications or allegation of homosexuality
    - *Liberace v Daily Mirror Newspapers, The Times* June 18, 1959
    - *Jason Donovan v The Face Magazine* (1992, Unreported)
    - *Howard K Stern v Rita Cosby et al* (2009) 07 Civ. 8536 (DC) USDC SDNY
- See also comments in caselaw on S1



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## Innuendo

- Innuendos in defamation law
- Supporting facts & publication
  - *Grappelli v Derek Block* [1981] 2 All ER 272
- *Cassidy v Daily Mirror* [1929] 2 KB 331
- Claiming an innuendo



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## Innuendo

- Innuendos in defamation law
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  - *Grappelli v Derek Block* [1981] 2 All ER 272
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- Claiming an innuendo



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## Distinguishing Meaning

- *McAlpine v Bercow* [2013] EWHC 1342 (QB)
  - Tweet: “Why is Lord McAlpine trending?  
\*Innocent face\*”
  - Meaning of “\*Innocent face\*”
    - Tugendhat J
      - “insincere and ironical”
      - “the Tweet meant...that the Claimant was a paedophile...”
      - or innuendo to the same effect
      - Why does it matter if natural and ordinary or innuendo?



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## Serious Harm

- Defamation Act 2013 Section 1
  - Requirement of serious harm
    - “publication has caused or is likely to cause serious harm to the reputation of the claimant.”
    - For commercial companies (“trade for profit”) “serious harm” = event or likelihood of “serious financial loss”



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## Serious Harm

- Leading case now Supreme Court judgment in:
  - *Lachaux v Independent Print & Evening Standard* [2019] UKSC 27
  - <https://www.supremecourt.uk/cases/uksc-2017-0175.html>
    - S1(1) DA 2013 Act interpretation
      - Cause of action arises at point of publication
      - “has caused or be likely to cause” “Serious harm”
      - “Serious harm”
        - Consequences of publication
        - Inherent tendency of words and actual impact on audience
        - (BUT – note *Charleston*)
        - “Likely to” – potential future damage
        - Damage and subsequent damage: timing



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## Defamation Act 2013

- Effect of Section 1
  - Libel no longer actionable *per se*, unless \*serious harm\*
  - What can constitute ‘serious harm’?
    - *Cooke v MGN* [2014] EWHC 2831 QB
      - Bean J, @para 43: “Some statements are so obviously likely to cause serious harm that this likelihood can be inferred. If a national newspaper...wrongly accuses someone of being a terrorist or a paedophile, then in either case...the likelihood of serious harm to reputation is plain...”
    - *Jack Monroe v Katie Hopkins* [2017] EWHC 433
      - False allegation of support for defacing a WW2 memorial
    - *Lachaux v Independent Print & Evening Standard* [2019] Allegations of domestic abuse made by ex-wife during custody case



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## Libel Week 1: Bringing a Libel Suit Part II

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## B. Identification

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## Identification

- Defamation / Libel must refer to claimant
- Intention of publisher is irrelevant
  - *Hulton v Jones* [1910] AC 20
- Identification of groups
  - *Knupffer v London Express* [1944] AC 116
- Unintentional Identification
  - *Hulton v Jones* [1910] AC 20
  - *Newstead v London Express* [1940] 1 KB 331
  - *Kerry O'Shea v MGN* May 4, 2001
- Identification by Association
  - *Cassidy v Daily Mirror* [1929] 2 KB 331



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## C. Publication

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## Publication is...

- Communication to a third party
  - *Pullman v W Hill & Co Ltd* [1891] 1 QB 524
- Subject has a duty to pass material to others
  - *Theaker v Richardson* [1962] 1 All ER 229
- In a form which recipient can understand
  - *Jones v Davers* (1596) Cro Eliz 496
  - *Price v Jenkins* (1601) Cro Eliz 865



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## Online Publication

Website “hits”

- *Buddhist Society of Western Australia v Bristle* [2000] WASCA 210

Separate Publications in one website?

- *Charleston v Newsgroup Newspapers Ltd, The Times* March 31, 1995
- *Cruise v Express Newspapers* (1998) EMLR 780



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## Intentional & Unintentional Publication

- Negligence is sufficient
  - Reasonably foreseeable in all relevant circumstances
  - Or
  - Natural and probable result of responsible party’s actions
- *Pullman v W Hill* [1891] 1 QB 524, Lord Esher
  - Theft of a letter from a locked drawer not publication
- *Slipper v BBC* [1990] All ER 165
  - BBC’s liability also covered republication in newspaper review



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## Intentional & Unintentional Publication

Application to the Internet:

- Forwarded emails
- Potentially defamatory email hacked
- Email sent to non-specific business address



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## The Multiple Publication Rule

The Rule:

- *Pullman v W Hill* [1891] 1 QB 524
- *Shevill v Press Alliance SA* [1995] 2 AC 18 at p 41

Application to the internet:

- Commonality of online archives in news media
- *Loutchansky v Times* [2002] 1 All ER 652
  - The Limitation Period
  - *Duke of Brunswick v Hamer* [1849] 14 QB 185



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## The Single Publication Rule

- Defamation Act 2013, Section 8

– Single publication rule

- “publishes a statement to the public (‘the first publication’) and
- Subsequently publishes (whether or not to the public) that statement or a statement which is substantially the same”
- “includes publication to a section of the public”
- Limitation period to run from “date of first publication”
- “does not apply in relation to the subsequent publication if the manner of that publication is materially different from the manner of the first publication”
- Court retains discretion under Limitation Act 1980 S32A 

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## Place of Publication

Internet & jurisdiction rules

- Brussels Convention 1968, Brussels Regulation 2002
- *Shevill v Press Alliance SA* [1995] ECR I-415
- *Berezovsky v Michaels* [2000] 1 WLR 1004
- *Gutnick v Dow Jones* [2002] HCA 56 (Aus)
  - Web content uploaded in US, down loaded in Victoria
  - Publication a two-stage process
- *Harrods v Dow Jones* 2003 WL 21162160, [2003] EWHC 1162
- *Don King v Lemox Lewis* [2004] EWCA Civ. 1329 (UK)
- *Jameel v Dow Jones Inc* [2005] EWCA Civ 75



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## Place of Publication

- Defamation Act 2013, Section 9
  - “Action against a person not domiciled in the UK or a Member State etc”
    - i.e. outside the Brussels Regulation et al
  - No jurisdiction unless court satisfied:
    - Of all places of publication E&W is most appropriate place for action



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## D. Likely Libel Claimants?

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## Who may sue for libel?

- Living persons
- Those on the run??
  - *Polanski v Conde Nast Publications* [2005] 1 WLR 637
- Companies
  - *Lewis v Daily Telegraph* [1964] AC 234
- Government bodies and local authorities
  - *Derbyshire CC v Times Newspapers* [1993] AC 534
- Political parties
  - *Goldsmith v Bhoyrul* [1998] QB 459
  - (Note also impact of Deregulation Act 2015, re repeal of Section 13 Defamation Act 1996).
- Nationalised industries
  - *British Coal Corp V NUM* (1996)



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## Concluding Remarks



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