

Compare law of defamation in us and britain media essay



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Introduction

The purpose of this report is to compare the law of defamation in the United States and the United Kingdom. Considering the defense is open to a journalist accused of libel, an analysis will be given as to which system better serve society. In considering a comparison of defamation law in the United States and the United Kingdom, it is useful to consider points of advantage and disadvantage. An assessment of the advantages and disadvantages will help to demonstrate which system better serve society.

An overall assessment shows that, while the United States may have disadvantages associated with the defamation law system, the British system has many glaring problems that undermine free speech and equity. This means that the British system does not serve society better. Such analysis will be supported by referring to the sources of free speech guarantees, which in the US are guaranteed by the Constitution, the burden of proof, which in the US wife with the plaintiff, and the cost and ease of access, which in Britain is a situation that has spiraled out of control.

Sources of Free Speech Guarantees

In critically investigating the advantages of defamation law in the United States for journalists, Crook (2010) indicates that the existence of the First Amendment is advantages for journalists, a point well voiced by other legal practitioners (Meiklejohn, 1961; Byrne, 1989). The reason why is because it guarantees them, through the Constitution, the right of free speech. This means both at the federal level or otherwise cannot block the freedom of speech and that is the fundamental guarantee. In America, the case that sets the constitutional principles for libel is the case of New York Times versus Sullivan (Crook, 2010). Because of the constitutional right of the freedom of expression in the United States, there is more of a “ positive culture for the freedom of expression” (Crook, 2010, p. 237), a perspective again voiced by other writers like Fiss (1988) who said the freedom of speech amendment to the constitution defines we America is as a nation. Indeed, there is more room given to the rights of the freedom of the press as a result, among other advantages.

In the United Kingdom, there are not a constitutional principles established. In other words, in the UK, there are not any constitutional provisions on free speech law like the United States. Crook (2005) explains the reason for this being is because the UK does not have a federal legal system or Constitution. As well, the UK is subject to unique forces like the European Court and the European communities. Still, the legal framework with regard to the freedom of speech and United Kingdom is found in the rulings of Reynolds versus Times and Turkington v Times.

Burden of Proof

Another advantage of the defamation law within the United States is the burden of proof for journalists is on the plaintiff. The evidence the US plaintiff has to present during cases of defamation includes the following. In particular, a U. S. plaintiff has to prove that the communication was executed to purposely injure reputation, that the message is false and publish to a third-party (Watts, 2004). Further, if the definition is associated with public officials or in the interests of the public, the requirements extend further. In such cases, the US plaintiff will have to prove actual malice and negligence (Crook, 2010).

This is not the case in the United Kingdom where the burden of proof is said to lay with the defendant. With the burden of proof lying on the defendant rather than the plaintiffs, such the underlying assumption is that any offending speech has the potential to be untrue and the writer or author has to prove that it is true (Crook, 2010). Again, this is in contrast to the United States where, in order to succeed, the plaintiffs have to prove this speech is false and has been published with a disregard for the truth. The thoughts of the disadvantages because, when compared with the United States system, the plaintiff is in charge of providing evidence of an injury to reputation.

Costs and Ease of Access

Another disadvantage that has been associated with the defamation law for UK journalists are the costs involved. Crook (2010) documents the fact that attempting to defend against libel is way expensive, and as a result those who are able to defend against any attacks on reputation or against libel are generally those who are more powerful or who are wealthier in society. As a <https://assignbuster.com/compare-law-of-defamation-in-us-and-britain-media-essay/>

related concern, there has also been in the documentation of substantial awards of damages, and the amount of awards that are given are thought to heighten the risks associated with defending against libel actions and place on pressure journalists to settle even if they have a chance of winning the case. The situation is not helped by the introduction of what are called contingency agreements and conditional fee agreements, abbreviated CFA, which means more people are able to sue in cases of libel (Crook, 2010). Thus, the amount of damages awarded, the costs involved, and the lack of barriers, present a disadvantages situation, and these issues are further explored in the paragraphs that follow.

Indeed, some statistics are instructive in pertaining a picture of the current situation as pertaining to costs and restrictions on speech. According to the Libel Reform campaign (Libel Reform, 2010), more than 30% of editors supported medical and scientific journals say they have been threatened with libel' more than 40% have been asked to change the articles to protect from libel, and more than a third have an' his work from journalists because of the fear of libel action. Moreover, the report, Free Speech Is Not For Sale, has also documented a long list of criticisms against the wealthy in society as the report documents how those who are in power have filed their suit in London because of the fact that 90% of such cases are usually won by claimant (The Guardian, 2010). The total costs have been documented to be above more than 1, 000, 000 pounds, 140 times more than the little cases that are held in the mainland of Europe (The Guardian, 2010). Because journalists and scientists are not able to afford such extraordinary costs, they usually end up withdrawing their comments, apologizing to publish material

that they believe true information and are important to contributing to an informed public debate on issues that matter to society (BeVier, 1980).

There are efforts for change in place. In 2009, the Justice Secretary in Britain, Jack Straw, indicated the introduction of the government plans to reduce the fees to launch defamation cases so as to make the system more equitable (Mulholland, 2009). If such reforms are implemented, this will represent an important step forward in making the British system more equitable because the press is a vital element of democracy (Shiner, 2008). According to the media and legal literature (Petrova 2008), the press serves the function of informing the public and providing information that enables them to make choices as good citizens (Dahlberg, 2001). Therefore, being able to publish information and not restrict the freedom of expression is seen as being a critical component of democracy but presently this situation is constrained in Britain because of the libel law (Loper, 1974; Hensley, 2001).

Lord McNally — Justice Minister of the United Kingdom — has raised this concern recently. McNally indicated the urgent need to allow different forms of journalism or scientific research be able to be published “ without the fear of unfounded, lengthy and costly defamation and little cases being brought against them’ (Sweeney, 2010, p. 1). However, to achieve this, the government as well as the justice minister is of the belief that what it requires is to reform the UK law on defamation to strike a balance “ between freedom of expression and the protection of reputation (Sweeney, 2010, p. 1). Attempting to achieve this balance is very typical in considering the present system where costs are extremely high and where awards serve as a deterrent to achieving justice in the system.

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Moreover, there has been a great deal of discussion regarding the ease of launching a lawsuit in Britain and how the rich are involved in it (Lahlou, 2009). In fact, it has led to what is called libel tourism (Howard, 2008). With the term refers to is instances in which a company operating in for example Iceland complains about a newspaper that published information in Denmark, and then a London lawyer will be called to handle the case, and the court is held in Britain (Carvaja, 2008). One report launched, called Free Speech Is Not For Sale, showed how dangerous the law of defamation is in this respect (Libel Reform, 2010). According to the English law for example, any writer who contributes to blogs or journalists, can be sued in London irrespective of where they live or work and regardless of where the blog was published (The Guardian, 2010). This means that citizens in America or a citizen of Russia can be sued in Britain who are exercising their right of free speech in their own country. Obviously, this is a system that is not in the interest of free speech and is not in the interests of equity.

The situation described above is not just theoretical. Many cases have resulted from libel tourism. The disadvantages stemming from the system in the UK can be seen in the case of writer, racial Ehrenfeld, who published a book about a Saudi billionaire entrepreneur and accused the entrepreneur of providing financial support to Islamic terrorist groups (Carvaja, 2008).

Although the book was not published in Britain, only copies of the book had been purchased their online, the judge in the case ruled that the writer had to pay more than \$200, 000 and apologize for the allegations in the book as well as destroy existing copies of it. (Carvaja, 2008) The outcome of this particular case has not only affected the writer in question but is also

affected other publishers because they are now afraid, according to Ehrenfeld, to publish information about potential terrorist or Saudi financiers even if the evidence is there. So because of the way the burden of proof operates, this can have an effect on limiting the amount of free speech.

Globalization does not ease the burden on journalists. Because of globalization, where telecommunications are increasing the amount of information dispersal and access, the potential to sue in Britain is increased all around. For example, a television network that is based in Dubai and broadcast in Arabic was sued by a businessman in Tanzania who was disputing against allegations to ties to a terrorist group in a British court (Ungoed-Thomas & Gillard, 2009). The British court was involved because the program was accessible through a satellite in Britain. The man from Tunisian was awarded more than \$160, 000 (Ungoed-Thomas & Gillard, 2009).

In the United States, there have been some legislative protections passed to protect U. S. journalists from the British system. New York State implemented the libel terrorism prevention act (Carvaja, 2008). The law that has been passed in New York is important for many reasons, one of which is that it helps to provide protection for her journalists to publish information. Essentially, what the Bill has done is to declare any judgments that may be made with regard to a US journalist unenforceable unless the country that is deciding on the case has free speech protections that are similar to the United States Constitution's First Amendment (Libel Reform, 2010).

British citizens are not much happier with the current system, either. In fact, there is even a campaign that has been ongoing for some time, which can be found on libelreform.org (Libel Reform, 2010), and is urging individuals as well as politicians and businesses to reform libel laws. Those participating on the reform campaign see the system as unjust because it enables too many individuals to launch cases and silent claims that others do not agree with.

This is not to say the system in the U. S. is perfect. For example, in the past there have been cases in which, in the United States, companies have open suits of commercial defamation when journalists have listed companies among those who face bankruptcy risk. Hertz did this by suing a journalist publishing information about Hertz, questioning its financial performance (Starkman, 2009). This brings up issues of whether those involved in market research and other research firms can criticize a company that is publicly listed without fearing defamation claims. The issue also demonstrate how commercial and publicly listed companies have involved federal courts to punish those who speak out on company performance ((Starkman, 2009). The issue is disturbing because it shows an abuse of the system as it pertains to defamation law, and it also undermines the freedom of speech, while bringing up very disturbing implications about what is journalists can publish about companies — obviously, having access to accurate information about company performance is something that should be able to be published (Crook, 2010). However, in the end, it appears the system in Britain presents far more concerns and undermines democracy.

Conclusion

The purpose of this report was to compare the law of defamation in the United States and the United Kingdom to determine which system serves society better. In considering the defamation law in the United States and the United Kingdom, one could conclude that the system in the United States is better. The reason why is mainly because in Britain there are too many ways for journalists to be sued and it compromises free speech guarantees. In contrast, in America, such are solely rooted in the foundations of the country. To be sure, this does not mean that the system in the United States is without flaw. But from the perspective of the present writer, it does appear that the system in the United States is better serve society than the system in the United Kingdom because in the UK so many people can be sued and it serves the rich better. This undermines equity and undermines free speech. Such analysis may coincide with others who have criticized the British system; even the Minister for Justice, Lord McNally, has indicated that the libel law in England is not “ fit for purpose” and is striving throughout his career in the justice system to reform the system (Libel Reform: Justice Minister tells campaigners libel law “ is not fit for purpose” , 2010).