

Media law: defamation, copyright, etc assignment



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UNIVERSITY OF SOUTH AUSTRALIA MEDIA LAW – 2007 1. DEFAMATION 1.

Why a law of defamation? Every member of society has an interest in retaining his or her personal reputation and standing. All members of the community also have an interest in a free flow of information and communication. There is a tension between these two interests. The law represents a balance between personal interests in reputation on one hand and community interests in free speech and an uninhibited flow of information and opinions on the other.

The law of defamation in Australia has, until recently, lacked uniformity. Given the advances in technology and the growth of national publications, the pressure for uniformity gained such momentum that, after many years, uniform defamation legislation has been introduced in each state and territory. Whilst the legislation is still not entirely uniform, there is much more consistency between the various Australian jurisdictions than had existed beforehand. South Australia introduced the Defamation Act 2005 (SA) which commenced on 1 January 2006.

The new Acts do not affect the operation of the general law in relation to the tort of defamation except to the extent that the Acts provide otherwise (whether expressly or by necessary implication): Defamation Act 2006 (SA) section 6. It is important to ensure that facts are correct prior to publication. Often it is the manner in which material is written, as opposed to its subject matter, which causes difficulties. Knowledge of the law of defamation will assist in framing material appropriately and avoiding claims. If in doubt journalists should consult more senior staff or seek legal advice.

Prevention of problems is cheaper (and better for career advancement) than cure. 2. What is defamatory? There is no uniformly accepted definition.

Basically, a publication is defamatory if it causes the injured party's reputation to be lowered in the eyes of ordinary members of the community, or causes them to be shunned, avoided or brought into ridicule. It is not enough that the matter injures a person's feelings or causes annoyance. Nor does the fact something is wrong necessarily mean it is defamatory. Note that the standard of opinion is that of ordinary or right thinking people generally.

So, in *Mawe v Piggott* (1869) 1 R. 4 C. L. 54, the Court rejected a claim by an Irish Priest suing for words charging him with being an informer against a certain class of Irish criminals. The priest argued that, amongst criminals or those who sympathised with crime, it would expose a person to great odium to represent him as an informer. The Court said that those circumstances which might make a person be regarded with disfavour by the criminal classes would raise their character in the estimation of right thinking persons.

Similarly, in *Byrne v Deane* [1937] 1 KB 818, the Court of Appeal ruled that to say of a man that he had put in motion the proper machinery for suppressing crime could not on the face of it be defamatory. 3. Identification Plaintiffs must prove that the publication complained of was of and concerning them. In this context, it is not how the words were intended but how they would reasonably be understood: *E Hulton & Co v Jones* [1910] AC 20. In that case the Sunday Chronicle published a piece of fiction referring to 'Artemus Jones with a woman who is not his wife, who must be, you know - <https://assignbuster.com/media-law-defamation-copyright-etc-assignment/>

the other thing! A real Artemus Jones succeeded in a defamation claim. Similarly, in *Lee v Wilson and MacKinnon* (1934) 51 CLR 276, a newspaper misreported evidence at a police inquiry. A prisoner had given evidence about a 'First Constable Lee of the Motor Registration Branch' having been involved in handing money on from the prisoner to a Detective. The paper referred to 'Detective Lee'. There were 3 detectives named Lee in the Police Force. Two issued proceedings for defamation and were successful. Extrinsic facts not referred to in or apparent on the face of an article may lead to identification??-?? eg, a number of points of similarity.

It is not necessary that the plaintiff be named. The test will be whether the words would reasonably lead people acquainted with the plaintiff to the conclusion that he was the person referred to : *Knuppfer v London Express* [1944] AC 116. If a defamatory statement made of a class or group can reasonably be understood to refer to every member of it, each one has a cause of action. In *Pryke v The Advertiser Newspapers Ltd* (1984) 37 SASR 175, a 'Letter to the Editor' published in *The Advertiser* criticised the conduct of proceedings by an Industrial Commissioner, without specifying by name which of the 4 Commissioners had been concerned.

All 4 Commissioners succeeded on the basis that the letter was defamatory of each of them. In *Bjelke Petersen v Warburton* [1987] 2 QdR 465, the Leader of the Opposition made statements about the 'government's corruption and its mismanagement', and said he would be asking questions about 'which Ministers had their hands in the till'. This was held capable of being defamatory of each of the 18 members of the Ministry. However, if the

class is composed of too many people, then the matter will be incapable of identifying any particular individual.

Inappropriate use of photographs as 'background' to unrelated publications can lead to identification. 4. Parties Not only individuals can sue.

Partnerships or corporations can, in certain circumstances, sue for injury to their trading or business reputation. Trade unions and employer associations may be able to sue and be sued, provided they are incorporated bodies. A company cannot sue for injury to its feelings or for allegations of crimes it cannot physically commit (although such allegations may reflect on individual officers and allow them to sue personally).

Unincorporated associations cannot sue, as they have no separate legal existence. The new Acts restrict the types of corporations able to sue for defamation. In particular, a corporation now has no cause of action for defamation unless: ??? the objects for which it is formed do not include obtaining financial gain for its members or corporators; or ??? it employs fewer than 10 persons and is not related to another corporation and the corporation is not a public body: see Defamation Act 2005 (SA) section 9.

The position appears to be that councils and government departments cannot sue for defamation at all (although individual officers will still be able to sue): *Derbyshire C. C. v Times Newspapers Limited* [1993] AC 534; *Ballina S. C. v Ringland* (1994) 33 NSWLR 680. In *Goldsmith v Bhoirul* [1998] QB 459 it was held that a political party could not sue for defamation. The court applied a principle that in a free and democratic society, it was contrary to

the public interest to permit those who held office in government or were responsible for public administration to sue in defamation.

It went on to rule that this principle applied to a political party putting itself forward for office or to govern. A right to sue for defamation is a personal right. In South Australia, the right dies with the individual: Defamation Act 2005 (SA) section 10. Thus, it is not possible to defame the dead (in the sense of creating a risk of being sued). However, a statement relating to a dead person may also reflect upon some living person so as to give rise to a cause of action.

5. Publication In this context publication means communicating the defamation to a third party.

Republication gives rise to a fresh cause of action ie, repeating the defamatory words of another. Where republication is a natural and probable consequence of the original publication, those persons responsible for the original publication will also be held responsible for the further publication. For example, if an interview is recorded with a view to it being republished to other persons, then the person responsible for the original interview can be held responsible for those intended republications.

The source will not be protected by reason of the subsequent publication being in an altered form, provided what is subsequently published is to the same effect.

6. Construction The natural and ordinary meaning of words is the meaning in which the words would ordinarily be understood by ordinary people using their general knowledge and common sense. However, it is a question for the Judge to decide what this meaning is. The sense in which the words were intended or in fact understood is irrelevant to their proper

construction (although these matters may be important on the issue of damages).

It is not unusual for plaintiffs to attach more serious meanings to publications concerning them than an ordinary person would. The words are construed in their context. So, neither a plaintiff or a defendant can pick words out in isolation in order to bolster their case. The natural and ordinary meaning includes inferences. The law of defamation also recognises that some words have technical or slang meanings, or that words may on occasion bear a special meaning other than their natural or ordinary meaning because of extrinsic facts or circumstances. This is called an innuendo meaning.

An example would be ' Mr Jones was seen leaving 10 Brown Street at 9.00pm' That address is a well known brothel. Mr Jones is married. A defamatory innuendo arises. Another example would be the publication of a photograph of Mr C with Miss X with a caption that their engagement to marry had been announced. This was held capable of conveying a meaning defamatory of his wife Mrs C, namely an imputation on her moral character because people knowing her and her husband may think that she was living with him outside marriage – Cassidy v Daily Mirror Newspapers [1929] 2 KB 331.

Another example is Hough v London Express Newspaper [1940] 2 KB 507. Mrs Hough was the wife of Frank Hough, a professional boxer. An article commenced ' Frank Hough's curly haired wife sees every fight'. The description did not match her. The article was found capable of being defamatory by suggesting that she was a dishonest woman falsely passing

herself as Frank Hough's wife. Reporting the fact that criminal charges have been laid will not of itself be capable of conveying guilt:- Lewis v Daily Telegraph Ltd [1964] AC 234.

There newspaper stories were headed ' inquiry on firm by city police' and ' fraud squad probe firm'. The House of Lords held that the stories were capable of suggesting that there was suspicion of fraud, but not guilt. In Mirror Newspapers v Harrison (1982) 149 CLR 293, the High Court of Australia made a similar ruling. Headlines or captions may themselves give rise to a claim. 7. Triviality It is now a defence to the publication of defamatory matter if the defendant proves that the circumstances of publication were such that the plaintiff was unlikely to sustain any harm: Defamation Act 2005 (SA).

This defence will rarely be available to media publications. It is more appropriate for limited publications eg at a dinner party or essentially private conversation. 8. Vulgar Abuse The common law recognises that mere vulgar abuse by way of spoken words will not be actionable. The essence is that words which on their face may be defamatory, but are understood to have been spoken in jest or as vulgar abuse will not convey any defamatory imputation to persons so understanding them. This does not apply in respect of libel. An example would be calling a friend ' an old bastard'. . Consent At common law it is a defence if the plaintiff is shown to have authorised or acquiesced in the publication. This would require an informed consent. It would not be enough for there to be a challenge of ' publish if you dare'. The plaintiff would need to know the substance of what was to be published, not merely portions of a story proposed to be attributed to him or her. In respect <https://assignbuster.com/media-law-defamation-copyright-etc-assignment/>

of a photograph, it may be necessary for the defendant to establish that the plaintiff had consented to use of the photograph in the context in which it appeared.

So, a photograph taken between two lovers, subsequently republished in a national publication, would not be protected by a defence of consent. 10.

Innocent Publication It is a defence to the publication of defamatory matter if the defendant proves that: (a) the defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor; and (b) the defendant neither knew, nor ought reasonably to have known, that the matter was defamatory; and (c) the defendant's lack of knowledge was not due to any negligence on the part of the defendant: Defamation Act 2005 (SA) section 30.

A person is a 'subordinate distributor of defamatory matter if the person was not the first or primary distributor of the matter, was not the author or originator of the matter, and did not have any capacity to exercise editorial control over the content of the matter (or over the publication of the matter) before it was first published': sub-section 29(2). This is a defence generally open to vendors or distributors of defamatory materials such as a bookseller, newsagent, librarians and providers of postal services.

In *Thompson v ACTV Pty Ltd* (1996) 71 ALJR 131 the High Court held that a TV station in Canberra was not entitled to the defence of innocent publication when it instantaneously relayed programs from a Sydney TV station without checking the contents of those programs for defamation. 11.

Justification It is a defence to the publication of defamatory matter if the

defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true: section 23 Defamation Act 2005 (SA); section 22 Defamation Act 2006 (NT).

The use of the phrase 'substantially' was not a concept previously acknowledged by the common law. Essentially, this is the common law defence of truth. That is, the words or meanings complained of were defamatory of the plaintiff, but true. An example would be 'Smith is a convicted murderer'. That is defamatory, but if true, the plaintiff has not been injured in any reputation to which he is entitled. At common law, the defence is made out if the real sting or substance of the libel is proven true. However, a general allegation that, say, Mr?? Brown the lawyer treats his clients badly' will not be established by calling one or two clients who were treated badly. Further, to prove that a plaintiff was a murderer where the publication had alleged that he was a rapist would not establish the defence of justification. It is not enough that a source was quoted accurately. The allegations must in fact be true. Nor is it enough that an allegation has been published before without proceedings resulting. Errors may simply be perpetuated. Reliance upon presscom or cuttings from other publications should not be unqualified.

Rumours can also cause some confusion. For example, if an organization published a statement that 'rumours have circulated that Joe Bloggs, Chief Executive of Organization X, has been guilty of financial mismanagement', it would not be sufficient to prove that such a rumour had circulated. A natural inference of such a rumour is that Bloggs had in fact engaged in such conduct. That could only be proved by establishing the fact of his

mismanagement. The onus of proving truth is on the defendant. Proof is not the same as 'knowing' or 'believing' an allegation is true.

It is evidence that will stand up in court. 12. Fair Comment It is a defence at common law to prove the words complained of were published as 'fair comment' on a matter of public interest. The Defamation Act 2005 (SA) has introduced in section 28 the defence of 'honest opinion'. In summary, it is a defence to a claim for defamation if the tort-feasor can prove that the published matter was an expression of opinion rather than a statement of fact, related to a matter of public interest and the opinion was based on proper material.

The plaintiff can defeat this defence by showing that the opinion was not held honestly. While this appears similar to the common law defence of fair comment, it only requires that the defendant show the opinion was based on proper materials, rather than true facts. The defence will not be defeated by the plaintiff showing that the statements were made maliciously. The defence of fair comment is often raised, for example in relation to editorials, cartoons, politics, current affairs, restaurant reviews, criticism of plays or artistic works.

It gives very wide latitude, provided that the contents of the works criticised are not misrepresented and no personal attack is made on the plaintiff.

Where however facts are misstated, liability will arise. Comment should be confined and directed to the facts. A comment often takes the form of setting out the facts and then saying something like 'On those facts, I think

... ' or ' In my view ... '. If the facts are wrong or not based on ' proper material', then the comment cannot be fair.

If the facts are right and based on ' proper materials', then the test is whether any person, however prejudiced and obstinate, could honestly have held the views expressed: *Telnikoff v Matusevich* [1992] AC 343. That is an objective test. Even if the defendant makes out the three elements of the defence (see above), the defence can be defeated if the plaintiff proves the defendant was actuated by express malice, ie, that the comment was made for an improper purpose or with the sole or dominant motive of causing harm: *Horrocks v Lowe* [1975] AC 135.

Knowledge of falsity will generally be conclusive of malice. Recklessness or indifference to the truth of what is published will also be treated as if the words were known to be false. But indifference is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. Courts consider they should be slow, if not reluctant, to find malice; otherwise the shield would become too fragile and public debate unreasonably fettered: *Mayes v Hudson* (1993) 168 LSJS 390 at 398. 13.

Absolute Privilege

Court documents, counsel and witnesses in Court proceedings have absolute privilege for their remarks. Parliamentary proceedings also attract absolute privilege. No matter how defamatory, remarks made in the course of such proceedings cannot give rise to an action for defamation. However, if the same remarks are repeated outside of Court or parliament, proceedings may be taken. Absolute privilege has been applied to a variety of tribunals which,

although not courts, nevertheless act in a similar manner eg. a military Court of Inquiry or a Solicitors Disciplinary Committees.

The absolute privilege can extend not only to what is said in the course of proceedings before the court or tribunal but also to the preliminary documents such as pleadings and proofs of evidence: This will not protect media reports of the contents of these documents. A fair and accurate report by newspaper, radio or television of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged (provided no blasphemous or indecent matter is included) – Section 6 Wrongs Act.

This section protects reports of proceedings heard before a Court exercising judicial authority anywhere in Australia: *Bunker v James and Downland Publications Ltd* (1980) 26 SASR 286. The same decision indicated that the requirement that the report be published ‘contemporaneously’ does not require a literal interpretation, but rather a judgement in the circumstances of each case, having regard to the evident policy of parliament that the section should not apply to reports that are stale and in that sense no longer news.

See also section 25 of the Defamation Act 2005 (SA) which states that it is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege. 14. Qualified Privilege Report of Proceedings of Public Concern It is a defence to the publication of defamatory matter if the defendant proves that the matter was, or was contained in, a fair report of any proceedings of public concern: section 27

Defamation Act 2005 (SA). It is also a defence to the publication of defamatory matter if it can be proved that that: a) the matter was, or was contained in, an earlier published report of proceedings of public concern; and (b) the matter was, or was contained in, a fair copy of, a fair summary of, or a fair extract from, the earlier published report; and (c) the defendant had no knowledge that would reasonably make the defendant aware that the earlier published report was not fair. Those defences will be defeated, however, if the plaintiff can prove that the defamatory matter was not published honestly for the information of the public or the advancement of education: see sub-section (3). Proceedings of public concern” are defined in sub-section (4) as being: ??? proceedings in public of a parliamentary body; ??? various prescribed proceedings of international organisations, international governments; ??? proceedings in public of a court or arbitral tribunal of any country; ??? proceedings in public of an inquiry held under the law of any country or under the authority of the government of any country; ??? proceedings in public of a local government body of any Australian jurisdiction certain proceedings of learned societies or of a committee or governing body of the society; ??? certain proceedings of a trade association; ??? proceedings of a public meeting of shareholders of a public company; ??? proceedings of an ombudsman; ??? proceedings in public of a law reform body of any country; or ??? other proceedings conducted by, or proceedings of, a person, body or organisation of another Australian jurisdiction that are treated in that jurisdiction as proceedings of public concern under a provision of a law of the jurisdiction corresponding to this section.

Fair reports of the proceedings of public meetings and of certain bodies and persons (such as either House of Parliament, select committees, Royal Commission proceedings, general meetings of a company council meetings held in public, etc) attract qualified privilege pursuant to section 27 of the Defamation Act 2005 (SA). It should be noted that courts have taken the view with respect to the mirror common law qualified privilege defence that as the protection of qualified privilege extends to statements about individuals which may be untrue and highly damaging when republished by the media, the obligations of fairness and accuracy are substantial ones: see eg *Moriarty & Wortley v Advertiser Newspapers Ltd* (1998) 198 LSJS 31 at 44. Fair and accurate reports of parliamentary proceedings are also protected by qualified privilege at common law: see eg Judge Sulan in *Moriarty & Wortley v Advertiser Newspapers Ltd* at 48. Political Discussion There has been a good deal of judicial consideration in recent times to the concept of political discussion being protected by qualified privilege. In *Lange v Australian Broadcasting Corporation* (1997) 142 ALR 96, the High Court ruled that an expanded defence of qualified privilege should now be recognised.

A publisher would have a defence to a defamation action where the material published discussed 'government or political matters', and the publication of the material was reasonable in the circumstances. The protection would however be lost if a person defamed can prove that the publisher was actuated by malice. At 116, the Court said that discussion of government or politics at State or Territory level and even at local government level is amenable to protection by the extended category of qualified privilege, whether or not it bears on matters at the Federal level.

At 118, the Court said: ‘ Whether the making of a publication was reasonable must depend upon all the circumstances of the case. But, as a general rule, a defendant’s conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing that the imputation was true, took proper steps, so far as they were reasonably open, to verify the accuracy of the material, and did not believe the imputation to be untrue. Furthermore, the defendant’s conduct will not be reasonable unless the defendant has sought a response from the person defamed and published the response made (if any) except in cases where the seeking of publication of a response was not practicable or it was unnecessary to give the plaintiff an opportunity to respond. ‘ In *Theophanous v Herald & Weekly Times Ltd* (1994) 124 ALR 1 at 13, the High Court had ruled that political discussion includes discussion of the conduct, policies or fitness for office of government, political parties, public bodies, public officers and those seeking public office.

The concept includes discussion of the political views and public conduct of persons who are engaged in activities that have become the subject of political debate: eg trade union leaders, aboriginal leaders, political and economic commentators. The concept is not exhausted by political publications and addresses that are calculated to influence choices. It would be difficult to envisage a situation where the mass media would not be obliged to satisfy the test of reasonableness. Relevant considerations will be:

1. Contact with the subject plaintiff Did you act reasonably in the steps you took prior to publication? ??? Was the subject of the article given a reasonable opportunity to respond – how many times did you attempt to

telephone the subject? ??? Did you leave the call until just prior to publication? ??? Was it adequate to publish that the subject was unavailable for comment? ??? Should the article have been held over, to enable a response? ??? A failure to publish the subject's actual denial when made, would almost certainly make the publication unreasonable. Are you sure that the statements of fact in the article are accurate - consider any ulterior motive the source may have had eg interest groups - are you confident you can persuade a court that you were thorough in checking the facts and allegations - will the article stand up to objective analysis as being balanced, impartial and fair?

2. Sources ??? It is unlikely to be held reasonable to publish the allegations, based on only one source. ??? Were you comfortable with the accuracy of the allegations being made by the source? You must take steps to check the accuracy of the material. Were you comfortable that the source was genuine? ??? Will the source give evidence, if pressed? ??? Are the source's claims provable in court, with or without the source's assistance? ??? Is it necessary to quote anonymous source? Why won't the source go public? Wouldn't the article have more credibility if the source was named? Unless it is absolutely essential, you should not offer confidentiality to the source. It is difficult to envisage circumstances in which a court will accept that you acted reasonably, if you cannot name or produce your sources. Is there a potential source who will give evidence to confirm the material supplied by the confidential source?

3. Enquiries ??? Any enquiry made before publication is relevant to the court's decision about whether you had a belief in the truth or falsity of the defamatory material. Thus notes can be of great assistance.

4. The article ??? Can it be established that - the conclusions were right, after proper enquiries and checking of the accuracy

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of the available material? ??? Do the conclusions follow logically, fairly and reasonably from the information obtained? Does the manner and extent of publication exceed what was reasonably required in the circumstances? A judge is unlikely to be sympathetic. The article will be considered with the benefit of hindsight, without regard to tight deadlines or other pressures. Consideration of 'reasonableness' will be decided by reverse logic in that it will already have been decided that the article is false and defamatory, with the onus then being on the media defendant to show that it acted reasonably despite the mistakes.

Statements Made in Pursuance of a Legal, Social or Moral Duty

Statements made in pursuance of a legal, social or moral duty to a person who has a corresponding duty or interest to receive them will be subject to qualified privilege. This principle means that the defence will normally only be available in respect of limited publications (eg, a report to police of a suspected criminal offence, or remarks made concerning a former employee to a prospective employer). It will be unusual for all readers of a newspaper or viewers of a television program to have the requisite duty or interest.

Responding to an Attack Where a person is subjected to public attack, their defence will attract qualified privilege, provided it is reasonably proportionate. The privilege will also extend to the media publisher. See *Adam v Ward* [1917] AC 309; *Wright & Advertiser Newspapers Ltd v Lewis* (1990) 53 SASR 416.

Defence for Publication of Public Documents

It is now a defence to the publication of defamatory matter if the defendant proves that the matter was contained in: (a) a public document or a fair copy of a public document; or b) a fair summary of, or a fair extract from, a public document:

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section 26(1) Defamation Act 2005 (SA). This defence will be defeated, however, if the plaintiff proves that the defamatory matter was not published honestly for the information of the public or the advancement of education: sub-section (3). A “ public document” is defined in sub-section (4) to mean: (a) any report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law; or b) any judgment, order or other determination of a court or arbitral tribunal of any country in civil proceedings and including??? (i) any record of the court or tribunal relating to the judgment, order or determination or to its enforcement or satisfaction; and (ii) any report of the court or tribunal about its judgment, order or determination and the reasons for its judgment, order or determination; or (c) any report or other document that under the law of any country??? (i) is authorised to be published; or ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body; or (d) any document issued by the government (including a local government) of a country, or by an officer, employee or agency of the government, for the information of the public; or (e) any record or other document open to inspection by the public that is kept??? (i) by an Australian jurisdiction; or (ii) by a statutory authority of an Australian jurisdiction; or (iii) by an Australian court; or iv) under legislation of an Australian jurisdiction; or (f) any other document issued, kept or published by a person, body or organisation of another Australian jurisdiction that is treated in that jurisdiction as a public document under a provision of a law of the jurisdiction corresponding to this section. This provision should provide great relief to media organisation who

previously, it could be argued, had to rely solely on the defence of truth when publishing the contents of pleadings merely filed with a court.

It would appear that some care is still required when publishing the contents of what may, on the face of it, appear to be a public document. More precisely, consideration of how the document was actually accessed needs to be considered, rather than just merely considering what type of document it is. For example, pleadings in some courts and tribunals cannot necessarily be obtained by members of the public. That is, such documents cannot necessarily be obtained by inspection of the court file. If that is the case, it would appear that the protection contained in these provisions would not apply. 15. Damages The general rule is that damages are assessed on a compensatory basis operating both as a vindication of the plaintiff to the public and as consolation for a wrong done. In determining the amount of damages to be awarded in any defamation proceedings, the court is to ensure there is an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded: section 32 Defamation Act 2006 (SA).

Potential awards for damages will, it would appear, now be reduced significantly given the introduction of the new Acts. In particular: ??? Unless the court is satisfied that the circumstances of the publication of the defamatory matter to which the proceedings relate are such as to warrant an award of aggravated damages, the maximum amount of damages for non-economic loss that may be awarded in defamation proceedings is \$250, 000 (as adjusted over time): section 33 Defamation Act 2005 (SA); In awarding damages, the court is to disregard the malice or other state of mind of the
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defendant at the time of the publication of the defamatory matter to which the proceedings relate or at any other time except to the extent that the malice or other state of mind affects the harm sustained by the plaintiff: section 34 Defamation Act 2005 (SA); ??? A plaintiff cannot be awarded exemplary or punitive damages (which are aimed at 'punishing' the defendant for the conduct) for defamation: section 35 Defamation Act 2005 (SA).

Section 36 of the Defamation Act 2005 (SA) outlines factors in relation to which evidence may be taken to support a plea of mitigation of damages for the publication of defamatory matter as including: (a) the defendant has made an apology to the plaintiff about the publication of the defamatory matter; or (b) the defendant has published a correction of the defamatory matter; or (c) the plaintiff has already recovered damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter; or (d) the plaintiff has brought proceedings for damages for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter; or (e) the plaintiff has received or agreed to receive compensation for defamation in relation to any other publication of matter having the same meaning or effect as the defamatory matter. Awards in South Australia have traditionally been less than in the eastern states.

In *Chakravarti v Advertiser Newspapers Ltd* (1998) 193 CLR 519, Kirby J at 603 commented that awards of general damages made in South Australia were 'parsimonious' compared to modern Australian standards. It appears that this advice has been heeded, as awards increased significantly.

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Evidence of general bad reputation can be given. This is not to be confused with evidence of justification. It goes only to a person's general reputation, whether deserved or otherwise. A person with a generally good reputation could be expected to recover more than a person with a generally bad reputation.

Recent awards in South Australia include: ??? In *Chapman v Conservation Council of South Australia* (2002) 82 SASR 449, the plaintiffs, who were developers of a marine and real estate project that would be serviced by the development of the Hindmarsh Island Bridge, were the subject of a campaign by the Conservation Council aimed at the issue which was found to infer that the plaintiffs had been attempting to stifle debate on the issue and had dealt with Aboriginal people in an appropriate manner. The plaintiffs were awarded \$75 000. In *Selecta Homes & Building Co Pty Ltd v Advertiser-News Weekend Publishing Co Pty Ltd* (2001) 79 SASR 451, the 'Sunday Mail' was held liable for a letter it published in which the writer had expressed dissatisfaction with a house purchased from the plaintiff. The letter imputed that the plaintiff conducted its affairs dishonestly and in an unscrupulous manner, produced transportable homes of inferior quality and took no pride in its transportable homes. An award of \$80 000 was made on appeal. In *Redford v Nationwide News Pty Ltd* [2000] SADC 155, the plaintiff was a Liberal Party MP. Two articles were published in 'The Australian'. The first article imputed that the plaintiff encouraged another person to commit perjury. The second article imputed that the plaintiff had improperly obtained another person's private medical records and had lied to cover up his improper conduct. An award of

\$85 000 was made by the District Court (\$60 000 for the first article, \$25 000 for the second article).

An appeal to the Supreme Court against this award was dismissed (Nationwide News Pty Ltd v Redford 214 LSJS 294). ??? In Chakravarti v Advertiser Newspapers Ltd (1995) 181 LSJS 218, Cox J awarded \$268 000. This was made up of \$175 000 economic loss, general damages of \$75 000 and interest of \$18 000. The claim related to a report of the State Bank Royal Commission proceedings, in the course of which evidence was given that there was ' a question of either civil or criminal misconduct to be looked at' in relation to the plaintiff.

The Court found that the two articles in question did not constitute a clear and accurate report of the proceedings. In January 1996 the Full Court by majority reduced the judgment to \$40 000: (1996) 65 SASR 527. Doyle CJ dissenting would have reduced the award to \$85 000. Perry and Williams JJ found that the first article did not give rise to the meanings pleaded by the plaintiff. Williams J also found that the defendant had made out a defence of truth and fair and accurate report in respect of the first article.

The matter went to the High Court, which upheld an appeal by Mr Chakravarti. The claim was sent back to the Full Court for reconsideration of damages. The Full Court awarded a total judgment of \$796 000 made up as follows: General damages pre-judgment\$90 000 Post-judgment\$50 000 Economic loss pre-judgment\$175 000 Post-judgment\$450 000 Interest\$31 000 This amount only included interest to the date of trial (April 1995). ??? In Bob Gilbert Pty Ltd v S. A. Telecasters (1999) 205 LSJS 398 the plaintiff was

awarded \$139 927. 7 which included an award of general damages (including aggravated damages) of \$100 000 and an award of exemplary damages in the sum of \$20 000. This award related to a broadcast on the Today Tonight program on 24 November 1997. A report was aired concerning the difficulties experienced by a customer who purchased a vehicle from the plaintiff. ??? In *Junius & Kumar v Messenger Press Pty Ltd* (Supreme Court, Nyland J, 16 March 1999) the plaintiffs were awarded the sum of \$510 300 inclusive of interest.

This included an award of \$285 000 general damages, aggravated damages of \$100 000 and damages for general economic loss of \$20 000. The claim related to a series of articles published in the 'Messenger Newspaper' in the period from August to October 1992 concerning the Australian School of Ayurveda, of which the plaintiffs were the proprietors. ??? In *Bass v Roberts & Case* (District Court, Lowrie J, 24 March 2000), the plaintiff, a former parliamentarian, was awarded \$70 200 damages as a result of three election pamphlets distributed prior to the State election held in October 1997.

The award was increased on appeal to an amount of \$100 000: *Roberts v Bass* (Supreme Court, Prior, Williams and Martin JJ, 8 September 2000), although the decision was reversed and a new trial ordered on appeal to the High Court. Companies cannot recover for hurt feelings. Individuals can. Aggravated damages may be awarded in appropriate cases. They may be awarded where the injury done to the plaintiff has been exacerbated by the conduct of the defendant. An example would be a plea of truth without proper evidence to warrant it.

High handed, malicious, insulting or oppressive conduct by the defendant would justify a court in going to the top of the bracket in assessing damages: *Broome v Cassell & Co Ltd* [1972] AC 1027 per Lord Reid at 1085. In order for an award of aggravated damages to be made, there must be conduct on the part of the defendant which was improper, unjustifiable or not bona fide: *Triggell v Pheaney* (1951) 82 CLR 497 at 514. The conduct of a defendant will influence the size of an award. A prompt apology may do much to reduce damages, or avoid litigation altogether.

The conduct of a plaintiff may also be relevant – eg the extent to which the plaintiff encouraged or precipitated the defamatory publication. The new uniform legislation also now introduces a scheme aimed at assisting parties to resolve civil disputes without recourse to litigation: see Defamation Act 2005 (SA) sections 12 – 19. This framework allows parties to make an offer to make amends. This offer may be made at any time unless 28 days or more have elapsed after the publisher of the alleged defamatory statement has been given a concerns notice or a defence has been served.

The offer must: ??? be in writing; ??? include an offer to publish a reasonable correction of the matter in question; ??? if the material containing the matter has been given to someone else with the publisher's knowledge, include an offer to take reasonable steps to tell that other person the matter is or may be defamatory; ??? state any limitations on the offer; and ??? include an offer to pay expenses incurred by the aggrieved person up to that date and any expenses incurred in reasonable consideration of the offer.

The offer may also include any other kind of offer that will redress the harm sustained by the aggrieved person. If the offer is accepted and a publisher carries out the terms of the accepted offer, the aggrieved person cannot assert, continue or enforce an action for defamation against the publisher in relation to the matter in question (even if the offer was limited to particular defamatory imputations). A court may make costs orders in relation to proceedings up to, and including, acceptance of an offer to make amends.

If a publisher makes a reasonable offer as soon as is practicable after becoming aware the published material may be defamatory, and the publisher is ready and willing to carry out the terms of the offer at any time before trial, the unaccepted offer will constitute a defence to an action for defamation. Of particular importance to media organisations is that all statements and admissions made in connection with making or accepting an offer are inadmissible, except in relation to certain matters including orders for costs, defences based on the offers made and other 'offer-related' issues.

6. Criminal Defamation This is dealt with in Section 257 of the Criminal Law Consolidation Act which provides: ' 257 (1) A person who, without lawful excuse, publishes defamatory matter concerning another living person- (a) knowing the matter to be false or being recklessly indifferent as to whether the matter is true or false; and (b) intending to cause serious harm, or being recklessly indifferent as to whether the publication of the defamatory matter will cause serious harm, to a person (whether the person defamed or not), is guilty of an offence. Penalty: Imprisonment for 3 years. 2)A person charged with an offence against this section has a lawful excuse for the publication of the defamatory matter

concerning the other person if the person charged would have a defence to an action for damages for defamation if such an action were instituted against him or her by the other person in respect of the publication of the defamatory matter. (3) On a trial before a jury of an information for an offence against this section- (a) the question whether the matter published is capable of bearing a defamatory meaning is a question for determination by the judge; b) the question whether the matter published does bear a defamatory meaning is a matter for the jury; and (c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.

(4) Proceedings for an offence against this section must not be commenced without the consent of the Director of Public Prosecutions. (5) In any proceedings for an offence against this section, a certificate apparently signed by the Director of Public Prosecutions certifying his or her consent to the proceedings is, in the absence of proof to the contrary, to be accepted as proof of the Director's consent. Defences are available as in an ordinary defamation case. Proceedings for criminal defamation must not be commenced without the consent of the Director of Public Prosecutions. In 1994 two Queensland men were sentenced to 12 months gaol after being convicted of criminal defamation. They had distributed leaflets against a rival in the domestic water supply industry alleging their rival had been convicted of 59 child molesting offences, 40 burglaries, assault and attempted rape in 'recent times' and had been convicted of having sex with animals when a juvenile.

The leaflet also claimed he had met his wife in gaol while she was serving a sentence for fraud. The judge stated the purpose of the publication was '

clearly to destroy the character of (the rivals) and drive them out of business'. He said the pamphlet contained 'baseless and scurrilous accusations of the worst kind. They were a farrago of filth and fiction from beginning to end; a monstrous lie'. The judge said the case justified the continued existence of the offence of criminal defamation (see report in Gazette of Law and Journalism December 1994 at page 5). 17. Injurious / Malicious Falsehood

Necessary elements for plaintiff to prove: 1. That the published matter was false. 2. That the matter was published maliciously. 3. Actual damage, eg, general loss of business. This does not include injury to feelings. In relation to the media, the difference in onus of proof from a defamation claim can on some occasions in fact make this a more attractive approach to plaintiffs, particularly those interested in finding out the source of media allegations. It may also be a more attractive option for corporate plaintiffs who are excluded from suing for defamation under the new uniform defamation legislation. . CONTEMPT AND STATUTORY RESTRICTIONS 1. Introduction The power to punish for contempt of Court exists to protect and preserve a system of justice administered by the Court which provides for impartial determination of disputes: R v David Syme & Co Ltd [1982] VR 173. While the type of conduct that can constitute a contempt is almost infinite, 4 broad categories can be identified: ??? interference with proceedings; ??? contempt by publication; ??? non compliance with orders and undertakings; and ??? contempt relating to tribunals and commissions. 2. Interference with Proceedings

This covers three distinct, although overlapping types of behaviour: ??? interference with the progress of proceedings; for example indulging in disruptive conduct in a court room so as to prevent the court from continuing to hear the case before it; ??? interference with participants in proceedings; for example, threatening or attempting to bribe a judge, juror or witness, or punishing a litigant for having been involved in proceedings; and ??? interference with material items involved in proceedings; for example, destroying a vital document. 3.

Contempt by Publication This involves publishing material to the public or a relevant section of the public. Liability may arise irrespective of any intention to interfere with the administration of justice. In some instances the basis of liability is that the publication tends to influence or prejudice particular legal proceedings. In others, it is that the publication tends to interfere with the administration of justice as a continuing process. 4. **Non-Compliance with Court Orders and Undertakings** This may be treated as a contempt of court. However, it is not automatic.

If the order can be enforced by other means (eg. by execution against the defaulting party's goods or lands) the question of contempt may never arise. Proceedings for this type of contempt are normally instigated by the party in whose favour the order or undertaking was made or given. The primary aim of proceedings would be to coerce obedience to the order or undertaking. More is mentioned about some of these below. 5. **Contempt Relating to Tribunals and Commissions** The law of contempt does not apply to non-judicial bodies, except for Houses of Parliament.

However, numerous statutes create offences for conduct which would, if the body were a court, amount to contempt of court. 6. Sub Judice Doctrine – When Does it Apply? In Australia, the publication of matter likely to affect a criminal trial is not punishable as a contempt if at the time of publication there are no proceedings on foot. The appropriate time seems to be when an arrest is made or a charge is laid: *AG (NSW) v TCN Channel 9 Pty Ltd* (1990) 20 NSWLR 369; *James v Robinson* (1963) 109 CLR 593. Proceedings end for the purposes of this rule when the time for an appeal has expired.

The rule does not seek to prohibit publications but to postpone them until litigation has been properly determined. 7. What Is A Contempt By Publication? All publications, whether written, oral or pictorial, which tend to pervert the course of justice or to prejudice the prosecution or defence in a pending trial may constitute a contempt of court. Remarks which undermine the public's confidence in our system of justice may also constitute a contempt. So, alleging a Judge is corrupt, lacks integrity, propriety or impartiality may constitute a contempt.

Similarly, an allegation that a Judge bowed to the wishes of outside individuals. An example of the latter is *Gallagher v Durack* (1983) 152 CLR 238 where Norm Gallagher had stated in an interview that in his view the “main reason for the Court changing its mind” on an appeal had been support of the rank and file of the union. He was sentenced to three months imprisonment. An application to the High Court for special leave to appeal was refused. The law of contempt applies to Judges acting in their judicial capacity. It does not apply to them acting in some other capacity eg. buse of a Judge as Chairman of an Arts Committee would not be a contempt. 8. The <https://assignbuster.com/media-law-defamation-copyright-etc-assignment/>

Tendency To Prejudice Must Be Real And Substantial This is laid down in many cases. eg. R v David Syme & Co Ltd [1982] VR 173; Victoria vABC & BLF (1982) 152 CLR 25, 56. A remote possibility will not suffice. 9. The Tendency Of The Publication Must Be Judged As At The Time Of Publication Thus, the tendency of the publication to cause harm is not determined by the fact that for some reason no harm has resulted. However, substantial delay between publication and hearing would minimise any tendency to prejudice. 10.

Intention To Interfere With The Course Of Justice An intent to prejudice proceedings is not essential. However, the absence of any intention to prejudice is capable of being relevant to any and what punishment should be imposed. While a contempt may be committed without any intent to do so, it is clear that a publication or conduct which was intended to interfere with proceedings will be a contempt, even if as a matter of practical reality it would not have that effect (eg. sending \$5 to a Judge to alter his decision). In determining the tendency, the status of the person making the remarks is a relevant consideration.

The more prominent the person, the greater the risk their remarks will carry weight. For example, in DPP v Wran (1986) 7 NSWLR 616, Neville Wran was fined \$25, 000 and Nationwide News \$200, 000 over a report of remarks made by Wran the day after a re-trial of Justice Lionel Murphy had been ordered. Wran had stated, inter alia, that he had “ a very deep conviction that Mr Justice Murphy is innocent of any wrong doing”. 11. Contempt Does Not Stop Public Debate On Important Issues This principle was made clear in the important decision of Ex Parte Bread Manufacturers Ltd re Truth & <https://assignbuster.com/media-law-defamation-copyright-etc-assignment/>

Sportsmen Ltd (1937) 37 SR (NSW) 247, 249: If in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed ... The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant. " For example, there will always be cases before the Courts involving child abuse, sexual offences or violence.

This of itself does not stop those topics being the subject of public discussion. However, publications relating directly to specifics of actual cases currently before the courts would be inappropriate. If interference was intended, the defence will not apply. If the interference was unintended, and occurred in the course of discussion of a matter of public importance, then a balancing exercise will be appropriate. If pending proceedings are central to the discussion, it is unlikely that the interference will be excused.

Even if not central, the seriousness of the interference may outweigh any public interest in the freedom to discuss the matter. For example, if the media pre-judges issues to be litigated in a proceeding or canvasses the evidence so as to engage in a trial by media – see *Hinch v AG (Vic)* (1987) 164 CLR 15 at 43 per Wilson J. 12. Public Court Hearings In the ordinary course, it is permissible to publish fair and accurate reports of Court hearings heard publicly. It is open to publish prejudicial material eg. to publish fair reports of preliminary court proceedings, including bail applications and

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committal proceedings – see *Hinch v AG (Vic)* (1987) 164 CLR 15 at 43 per Wilson J. A fair, accurate, uncoloured and contemporaneous account of proceedings in a Court of justice will not be held to be a contempt (*Victoria v ABC & BLF* (1982) 152 CLR 26 at 132). The Australian Law Reform Commission Report No 35 on contempt states (page 151-152) that publication of prejudicial material will not amount to contempt if it constitutes a fair and accurate report, published in good faith, of Court or committal proceedings.

In determining whether material is published in good faith, it is appropriate to take account of the motive of the publisher – for example, whether the publication was made for its “news value”, irrespective of its effect on the relevant trial. Where proceedings which took place some considerable time earlier are resurrected shortly before a trial, this may constitute evidence of lack of good faith. Absolute accuracy in all particulars is not essential. But a significant inaccuracy, or the insertion of prejudicial comment, will be relevant.

Great care should be taken to avoid prejudicing a fair trial. 13. Court Proceedings Where The Jury Is Absent It would be improper to report any portion of a criminal trial which took place in the absence of the jury, eg. argument over the admissibility of a confession. The publication may bring matters to the attention of jurors, when the purpose of excluding them was to avoid just that. 14. What Can Be Published Once charges have been laid, any report of events going beyond bare uncontested facts of the matter may be a contempt.

At the time of publication it may be very difficult to say whether or not an issue such as identity might be in dispute at trial. Even if it ultimately is not, a contempt may still be committed by publication of a photograph of the accused. So also, a confession may be contested and ruled inadmissible. Reference to an “alleged confession” may still amount to a contempt: *AG (NSW) v TCN Channel 9 Pty Ltd* (1990) 20 NSWLR 368, 373. In *Packer v Peacock* (1912) 13 CLR 569 at 588 the High Court said:- In our opinion the public are entitled to entertain a legitimate curiosity as to such matters as the violent or sudden death or disappearance of a citizen, the breaking into a house, the theft of property, or any other crime, and it is, in our opinion, lawful for any person to publish information as to the bare facts relating to such a matter. By “bare facts” we mean (but not as an exclusive definition) extrinsic ascertained facts to which any eye witness could bear testimony, such as the finding of a body and its condition, the place in which it is found, the persons by whom it was found, the arrest of a person accused, and so on.

But as to alleged facts depending upon the testimony of some particular person which may or may not be true, and may or may not be admissible in a Court of Justice, other considerations arise. The lawfulness of the publication in such case is conditional, and depends, for present purposes, upon whether the publication is likely to interfere with a fair trial of a charge against the accused person. Comment adverse to him upon the facts is certainly not admissible. ” This test is not always easy to apply. In every case the facts reported will depend upon the testimony of someone. 5.

Photographs The publication of a picture of an accused person is ordinarily

regarded as carrying a risk of interference with the due course of justice, unless one can rule out the possibility of any dispute as to identification. As at the time a story is published, it is often very difficult to rule out this possibility. Where photographs have been widely published of an individual prior to charges being laid (eg,?? photographs of a suspect during the course of a manhunt, prior to capture), no contempt may be committed: *AG (NSW) v TCN Channel 9* (1990) 20 NSWLR 368, 381.

This will however be a decision requiring careful consideration. The recent prosecution of the publisher of “Who” magazine illustrates how serious the consequences of publishing a photograph may be. 16. Statements By The Police Statements by the police outside of court proceedings are treated by the law in the same way as statements made by any other person. There is no special protection given to the media for publishing statements made by the police (eg,??” we’re glad we caught the right man” or “ he’s admitted his involvement”). 17. Suppression Orders

Section 69a Evidence Act provides the power to suppress evidence. A breach is punishable under Section 70. In 1989 Section 69a was amended to reduce the availability of suppression orders. Following that amendment, a court can suppress evidence either to prevent prejudice to the proper administration of justice or in order to prevent undue hardship to a victim of crime or a witness or potential witness who is not a party to proceedings. The section was further amended recently so that a high threshold test is now required to be met before a suppression order can be made.

Where the question of making a suppression order is under consideration by a Court:- (a) must recognise that a primary objective in the administration of justice is to safeguard the public interest in open justice and the consequential right of the news media to publish information relating to court proceedings; and (b) may only make a suppression order if satisfied that special circumstances exist giving rise to a sufficiently serious threat of prejudice to the proper administration of justice, or undue hardship, to justify the making of the order in the particular case.

Journalists can appear personally before a Court to make submissions under Section 69a: *Hull v Taylor* (1989) 51 SASR 356. Bollen?? J held this construction of the section was supported by a literal reading of the legislation together with Parliament's presumed realisation of the need for urgency sometimes associated with such proceedings.

18. Sexual Offences Section 71a of the Evidence Act contains important restrictions on reporting committal hearings and information about sexual offences. A "sexual offence" is defined in Section 4 to mean: (a) rape; (b) indecent assault; (c) any offence involving unlawful sexual intercourse or an act of gross indecency; (d) incest; or (da) any offence involving sexual exploitation or abuse of a child, or exploitation of a child as an object of prurient interest; (e) any attempt to commit, or assault with intent to commit, any of the foregoing offences. The restrictions go beyond names, and applies to reports from which the identity of an accused or victim might reasonably be inferred. Note that where the alleged victim is a child, identification of the victim can never be permitted.

19.

Questions Of Law After Acquittal Section 71c of the Evidence Act provides that where a question of law is referred to the Full Court of the Supreme Court after a person tried on information is acquitted, the acquitted person cannot be identified without his or her consent. 20. Juvenile Offenders The ordinary rule is that young offenders should not be identified: sections 13 and 63C of the Young Offenders Act 1993. Note that the latter restriction extends to “in need of care or protection” proceedings, and to identification of children who are parties or witnesses (eg victims).

Section 59 of the Children’s Protection Act 1993 prohibits reports of family care meetings held under the Act, or of anything said or done at such a meeting. 21. Family Court And De Facto Proceedings Section 121 of the Family Law Act contains significant restrictions upon reporting proceedings in the Family Court. Even if all parties to an action want publicity identifying them, an offence can still be committed. The provisions are sometimes lifted by a Court where a child has been abducted (eg. the Gillespie case).

Care should be taken to ensure publications comply with any conditions imposed by the Court. The provisions will normally be reimposed once the child has been located. In 2004, the Statutes Amendment (Courts) Act 2004 (SA) came into force. Among other things, it inserted section 14A into the De Facto Relationships Act 1996 (SA). It provides a barrier on identification of parties and witnesses to proceedings under that Act. It is akin to section 121 of the Family Law Act 1975 (Commonwealth). 22. Refusal To Disclose Sources A journalist has no right to refuse to disclose his sources to a Court.

It is a contempt to refuse to do so. Courts will however be slow to require a journalist to reveal sources unless necessary. *John Fairfax & Sons Ltd v Cojuangco* (1988) 62 ALJR 640. Cases on this topic include: ??? In 1989, Perth journalist Tony Barrass was gaoled for five days for contempt after refusing to reveal his source for stories in corruption in the Perth Taxation Office. ??? In 1992, Brisbane Courier journalist Joe Budd was gaoled for refusing to disclose his source for a story which had resulted in defamation proceedings. Former ABC journalist Chris Nicholls was gaoled in 1993 for 4 months by the District Court after refusing to identify the person who he claimed provided him with confidential banking records used in ABC Radio Reports. ??? David Hellaby was fined \$5, 000 after refusing to disclose his source of information for two stories about the State Bank of South Australia. ??? Deborah Cornwall received a suspended prison sentence and was ordered to perform 90 hours of community service after she refused to name a source to the Independent Commission Against Corruption in New South Wales.

You should think very carefully before undertaking to keep a source confidential. 23. Jurors Jurors should not be interviewed during a trial. Nor should they be approached. Contact may be misunderstood, and lead to a trial being aborted. Sections 246 and 247 of the Criminal Law Consolidation Act impose restrictions on dealings with jurors after a trial. Note jurors cannot be offered or paid a reward for disclosing information about jury deliberations. 25. Public Justice From time to time issues can arise as to the closure of a court or tribunal or the reporting of evidence, regardless of section 69a of the Evidence Act.

The ordinary principle is clear, namely that courts should be open to the public. *Scott v Scott* [1913] AC 417 is authority that a court may be closed where to do otherwise would amount to a denial of justice. The issue of closed courts or suppression orders, other than under section 69a can arise. For example, under section 596f Corporations Act 2001, a Court may give a direction about who may be present or excluded, and whether, ' by reason of special circumstances' it is desirable to hold the examination in private. 26.

Access To Court Documents

For the purpose of court and court proceedings, note that in many courts requests can be made for inspection and copies of al