

# Defamation in law

Law



A tort is an act/omission in instances where by law there is a duty owed by one party/ entity as against another to do or refrain from doing an act and a failure to comply results in civil liability To Establish Tort One Must Have: Duty of Care/Duty being owed Breach Harm/ Damage caused by that Breach Difference between Crime and a Tort Crimes are omissions or acts against the state while a tort is against private entities. Crime- Fine/ Imprisonment while in Tort- Damages/ Injunction.

Defamation Defamatory Statements are those which tend to lower one's estimation in the minds of right thinking persons. There are three constituent elements that one must find before an action towards defamation can be made out. First the words themselves must be defamatory or capable of defaming the plaintiff. Secondly the words must refer to the plaintiff. Thirdly, the words must be published to one other person than the plaintiff. Therefore the defamatory statements must be exposed to someone other than the plaintiff.

Intermediate liability - the channel which facilitates the defamatory statements may or may not be liable depending on the platform's involvement in endorsing the statement (directly re-quoting the statement) The law of defamation seeks to protect an entity's or individual's reputation. In doing so the law balances to fundamental rights. On one hand a person is entitled to freedom of speech or expression but this must be curtailed by respect for and recognition of a person's right to a reputation.

The concept of one's reputation is not limited to individuals it also includes corporate entities which like individuals tongue years AT service Day totaling

certain calculations or slimly Day malignantly retain practices can develop a clientele, a reputation that earns significant profit or other benefits which may or may not be tangible. The law makes a distinction between defamatory statements in a permanent as opposed to transient form.

The reason for this is perhaps because theoretically a defamatory statement in a permanent form is more likely to do more harm than one in a temporary form. It is for this reason that libel is actionable per SE. What this means is that the plaintiff may not prove damages, rather it is presumed to have occurred. This is different from slander which requires proof of damage subject to four exceptions. It is also noteworthy that the defamation act of Jamaica treats defamatory statements made by radio or other broadcasts though spoken as libel not as slander.

The four exceptions to this rule as it relates to slander are: Slander in imputing a disease Slander affecting one's professional reputation Slander imputing a crime Slander imputing impropriety on a woman Slander in imputing a disease It is actionable per SE to impute or allege that the plaintiff is infected with certain notations or repulsive diseases. For example Aids, Stirs- crabs, syphilis, gonorrhoea, leprosy and diseases presumed to be caught/contracted because of unhygienic practices.

The list is not a closed one however there are cases that illustrate what is not a disease that is actionable per SE in Murray v Williams the defendant alleged in respect to the plaintiff a shop keeper " that damn long neck consumption collie man Murray tint is him alone can get truck to trust, but him can't help it him catch the consumption from him wife, every picking him

have catch it, a it Dee kill deem out'. It was held the slander was not actionable per SE. Imposition referred to tuberculosis and the court was of the view that the rule of exceptions was best limited to venereal diseases and other contagious diseases within that category or similar to that category. In deciding whether or not an action or defamation was made out and in particular if it was actionable per SE the court had to decide 1 . Are the words defamatory 2. Are they actionable without proof of special damage 3. If they are not actionable without proof of special damage. Has special damage been proven? For slander you must always prove damages, slander actionable per SE .

The only scenario In wanly damages doesn't need to De proven Is when you nave one AT ten four exceptions. The Judge must then analyze this claim and make a Judgment. If the claim is not determined to be an exception the plaintiff must again attempt to prove special damages. In contrast in Allen v Miller, the defendant littered words of a disgusting nature which the appellant alleged to mean that the plaintiff was suffering from a venereal disease. The COO disagreed with the magistrate and held that the words did in fact ear the meaning that the appellant alleged.

The court held that in determining what the words were meant to convey the test of the purest English language is not to be used rather it is what the reasonable man in the cane pieces of wasteland would have understood by the use of the words. It will also be slander actionable per SE where a statement affects one's professional or business reputation. For example, one if the owner of a reputable restaurant uses donkey meat in his dishes,

state doctor is incompetent, if you alleged a finance minister is branding the consolidated fund.

At common law the exception is strict and the words must be spoken so that they impute that he is unfit or has committed some misconduct in respect of his calling. The strictness of the rule is illustrated in *Jones v Jones* where it was held not to be actionable per se to say that a head master was having an affair with a married woman employed at the school as a cleaner. Although the statement imputed immoral misconduct it did not allege incompetence or misconduct in relation to his profession or duties as a school master.

Section 4 of the Defamation Act of Jamaica has modified that position however so that any words spoken which can disparage the plaintiff will not necessarily need to be limited to directly affecting his calling. In order for the imputing of a crime to be actionable per se the offense must be one punishable by imprisonment in the first instance. There must be a direct assertion of guilt and crimes that merely carry a fine will not be sufficient. The imputation of a crime for which a failure to pay a fine may result in imprisonment is not sufficient to meet the exception.

An expression of mere suspicion is not sufficient therefore to say the plaintiff is a murderer would be actionable per se. But to say that the plaintiff is suspected of committing murder would not. The words must be looked at in context so that for instance saying Mr... Chin is a thief, the goods in his wholesale are always substandard and not worth what I paid for them, would not be actionable per se. Before *v Birch* I need case concerning *EAI Barrett*, then plan I t TTT In an Action Tort action.

The defendant, Birching, published a review of the plaintiffs film Frankincense impairing the monster's appearance to Before, stating that the monster was marginally better looking, while in another review the defendant blatantly referred to Before as 'notoriously hideous looking people'. The court had to decide whether the statements were defamatory. In deciding the said issue the court delineated what is defamatory and stated that defamatory words are such that expose the plaintiff to ridicule/ would tend to cause people to shun/ avoid.

In addition defamatory statements are those that adversely affect one's reputation and not simply one's feelings. In view of this definition the court held that an action for defamation was not made out as in the context the words did not affect his reputation as a film director, actor and writer. How to answer case related questions. This question raises the issue Specific- parties, issue Facts: What happened- type of action Location Time People involved What was held Issue What is the wrong/crime Which court General- relevant principles of law Specific- if the law is applicable to the specific case, apply to case.