

Libel law

Law



McNair v Hearst (1974) is a case where a newspaper was found to have published an article with a two paragraph headline indicating that an attorney had received an enormous sum of money in representing a woman in a divorce action. According to the contemporary law, the law of defamation entails the publication of a false statement regarding another person without lawful justification which tends to lower his reputation in the estimation of right-thinking members of the society. We find that defamation may be committed either by way of speech, or its equivalent.

Law provides that the wrong itself is always divided into two forms one being the libel form and the slander. The defamatory statement is libel when the defamation is in a permanent form and it is said to be in a permanent form if it is done through writing, printing carving among others. This libel is always stated to be a criminal offence as well as giving rise to civil liability, since it involves an infringement of a right and no actual damage needs to be proved in order to maintain an action i. e. it is actionable per se. (Jertz and Miller, 2004)

The law provides that in order to maintain an action for defamation it must be proved that the statement complained of is false, defamatory, referred to the plaintiff and published. Therefore according to the case between McNair v Hearst (1974) there existed the publication of a statement which claimed that the attorney had received an enormous money in order to represent a woman in a divorce court in this case we find that the newspaper was under an obligation to prove that the statement was true, since according to the law defamation of a person is always presumed to be false until it is proved to be true.

However, where the defendant justifies his statement then the burden lies on the plaintiff to prove that the statement is untrue. (Penrose, 2005) The law provides that some words used or any other medium adopted by the defendant will be deemed defamatory which exposes the plaintiffs to hatred, contempt, ridicule or shunning or injures him in his profession or trade among the people known to him, . this is also well explained in the case of: Cassidy v Daily Mirror Newspapers LTD, 1929 the defendants published in a news paper a photograph of the plaintiff and miss X with the words “ Mr. Cassidy the racehorse owner and miss X whose engagement has been announced. ”

Mrs. Cassidy sued the defendants alleging that the words imputed by innuendo that she was not the lawful wife of Mr. Cassidy and they were living in sin. Held that since there was evidence that certain of her friends thought it to be so, she was entitled to claim damages. In an action for defamation, the plaintiff must show that the defamatory statement refers to him directly or by innuendo.

It is immaterial whether the defendant intended the defamatory statement for the plaintiff or not, and if the matter might reasonably be thought to refer specifically to him, the action can be maintained. This is best illustrated in the case of: Newstead v London Express Newspapers Ltd, 1940 whereby the defendants published in their newspapers an account of bigamy proceedings against “ Harold Newstead, thirty year old Camberwell man” which was actually true of a barman there.

But it happened that there was another man of the same name and same age and living in Camberwell. This man was a hair dresser and many people

thought that statement in the newspaper referred to him. He succeeded in recovering his damages. (Penrose, 2005) However, it should be noted that unless defamation has been published, it is not actionable. Publication consists in making known the defamatory matter to someone else other than the person of whom it is written.

When libel is contained in a newspaper or magazine or book, the sale of every copy is prima facie a publication thereof, rendering the distributor and any other involved with the sale of such material liable for libel. Therefore this actually indicates that the in this case of *McNair v Hearst* (1974), the attorney has an obligation to sue the newspaper of selling a libelous material since it contained defamatory remarks against him.

Basing on such grounds therefore, he should be compensated by the newspaper and also the newspaper management will take care of the litigation costs if he succeeds in the case. (Gifford, 1980) The attorney is entitled to the some remedies as decided by the court of law. Such remedy may include; if the court will reach on a conclusion that the defamation was deliberate and malicious substantial damages will be awarded to the attorney. Also the newspaper may be required by the court of law to make a full apology at the earliest possible moment to avoid further damage to the attorney.

The court of law can also issue an injunction to the newspaper restraining the libelous publication published in there material. This will depend on the attorney proving that the statement in the so called libelous newspaper contains untrue information and only spoiling his reputation. However, the defendant who in this case is the newspaper can use the following defenses

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against their conduct: First that they did not know in anyway that the material contained libel.

Secondly, that their ignorance was not due to any negligence on their part. Thirdly, that they did not know and had no reason for supposing that the newspaper contain libelous material. This is best explained in the case of *Emmeas v Pottle*, 1885 where a newspaper vendor was held liable for libel in a newspaper sold by him in the ordinary course of his business, for he had neither knowledge of the libel nor had any reason to suppose that the newspaper contained defamatory material. (Emanuel, 2004)