

The role of defamation law law general essay

Law



Sports LawPart 1In this essay I am going to critically discuss the role of defamation law as guardian of the truth, focussing on the inaccurate reporting which led to The Sun newspaper publishing a front page article headlined " The Truth" on 19th April 1989. Defamation is an area of law that protects a person reputation; it involves making a statement which is likely to lower other people's opinions of an individual or group of people[1]. There two types of defamation, slander and libel; slander refers to defamation through speech and libel refers to lasting publication of defamatory comments. However a simple comment of abuse will not be enough to be defamatory. An example of slander would be if a person makes a false statement such as " John is a thief, but it was incorrect information, whereas an example of libel would be if a person publishes false information on the internet or broadcast a television program. To prove a claim in slander, the claimant must prove the defamation has actually been damaging to them. When it comes to prove defamation subject to the differences in slander and libel, the claimant must prove three elements; (1) that the statement was defamatory (2) that it referred to the claimant and (3) that it was published to a third party. In relation to the first element for the statement to be defamatory the words must lower a person's reputation in the eyes of people generally, not just in relation to a particular group; this can be seen in the case Youssouf v MGM,[2]and Tolley v JS Fry & Sons Ltd[3]Also in the case Parkins v Scott[4]and Thorley v Kerry[5]it stated vulgar abuse is not defamatory. Mansfield CJ stated " For mere general abuse spoken no action lies. However, in certain aspects some statement might contain an innuendo, which has a defamatory meaning. There two types of Innuendo " false" which is the use of slang Allsop v Church of England Newspaper[6]and " true"

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words that have a hidden meaning. In *Lewis v Daily Telegraph*[7]it stated that the hidden meaning must be one that could be understood from the words themselves by people who knew the claimant. In relation to the second element if the statement refers to the claimant, an object test must be applied, meaning would reasonable person someone who is fair-minded, who is not avid for scandal, nor overly suspicious nor unduly naïve, would understand that the statement pointed to the claimant, *Morgan v Odham*[8]. The statement does not have to refer directly to the claimant *Hulton v Jones*, [9]*Newstead v London Express Newspapers*[10]also defamation can be unintentional *Hulton v Jones*. Also in *Eastwood v Holmes*, if a class of people is defamed, there will only be an action available to individual members of that class if they are identifiable as individuals[11]In relation to the final element the statement must be published and seen by at least one person, husband and wife are not included; this can be illustrated in *Hinderer v Cole*[12]In addition the defendant might apply these five defences towards a defamation claim; (i) Justification (ii) Fair comment (iii) Qualified Privilege (iiii) Absolute privilege and Innocent dissemination. It can be argued that defamation is the guardian of the truth; it protects individuals' reputation by providing remedies such as injunctions that prevent any private information being published to the public domain. Defamation claims are very expensive; they are normally used by high profile athletes or wealthy individuals whom have the funds to support their claim. Therefore this creates a disadvantage for ordinary people who cannot afford to defend these claims. In relation to inaccurate report on the Hillsborough disaster which claimed 96 innocent lives, the Sun newspaper publishing a front page article headlined " The Truth", this article had blamed the Liverpool fans stating that there were "

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drunk", pushed their way into the ground and some of them had no tickets. It went on to state that: 'some fans picked pockets of victims; some fans urinated on the brave cops; some fans beat up PC giving life kiss'[13]. This report had angered the majority of the family victims, they wrote to the Sun challenging the truth about the article, but in response the Sun replied that it was their duty to report such information for the public interest. However, after 23 years the real truth of Hillsborough had been published in the report by an independent panel, the report of Hillsborough, the independent panel, September 2012. The report found that up to forty one victims of the 1989 FA Cup semi-final horror could have been saved if emergency services had acted faster.[14] It also released 400,000 documents which exposed how 164 police statements were altered 116 to remove criticism of the operation. [15] The report also stated that the stadium failed to meet minimum standards under the Safety of Sports Grounds Act 1975 and established in the Guide to Safety at Sports Grounds, this meant poor inspection was carried out, and no consideration was taken into account to the safety of the crowd[16]. In conclusion the law of defamation is the guardian of the truth, with no requirement to prove that any defamatory statement has caused damage, it remains as an easy tool for wealthy individuals to bring a claim of defamation, to protect their reputation. However, on the one hand we can see how damaging when important information is hidden from the public; even though the police in the Hillsborough disaster never used the law of defamation in covering their evidence, it is visible to see the main function of defamation law. Part 2 In this essay I am going to explain what football specific legislation was introduced in the years after the disaster of Hillsborough to help combat football hooliganism and analyse the

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effectiveness of the legislation, whether the measures were justified.

Hooliganism is defined as disorderly, aggressive and violent behaviour that is committed at sporting events. The sport that people associate the term hooliganism in the UK is football; disorderly behaviour has been common amongst football supporters since the birth of the sport[17], but however in only became a major concern in the 1960s and the late 1980s. One of the earliest crises in history of English football hooliganism was the Heysel disaster of 1985, where the Liverpool fans and Juventus caused a wall to collapse resulting 39 deaths. The incidents of Heysel and Hillsborough had caused concern over the safety of football matches, and it was for this reason football legislation such as; - Football Offences Act 1991, Sporting Events (Control of Alcohol) Act 1985, Football Spectators Act 1989, Football (Offences and Disorder) Act 1999 and Football (Disorder) Act 2000 were introduced to battle football hooliganism. The Public Order Act 1986 allowed courts to ban supporters from grounds, while the Football Spectators Act 1989 banned convicted hooligans from attending international matches. However, the Football (Disorder) Act 1999 changed the law from a discretionary power of the courts to a duty to make orders, then a year later, the Football Disorder Act 2000 abolished the distinction between domestic and international bans and finally the Football Offences Act 1991 created specific offences of throwing missiles onto pitches, participating in indecent or racist chanting and going onto the pitch without lawful authority.[18] Since the introduction of these legislations, cases and incidents have occurred testing the effectiveness of football legislation. In relation to the Football Offences Act 1991, offences of throwing missiles onto pitches, a 24-year-old man had been given a three-year ban order and fined £200 after admitting

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throwing a " missile" during the derby between Cardiff and Swansea in 2009[19]. Whether the punishment fitted the crime is for the court to decide, but the important area to look at is whether the Football Offence Act has established what it set out to do, and in this case it has by punishing individuals who proposed danger to others. In relation to the Sporting Events (Control of Alcohol) Act 1985, it's difficult to establish whether the act enforces what it sets out to prevent. This act seems to be inconsistency and lacks conviction, one of the areas that it aimed to prevent is the consumption of alcohol on certain coaches, trains and motor vehicles travelling to a designated football match[20]. However there is a lack of awareness of this legislation, it does not explain whether you cannot drink publicly to a football match or privately and therefore creates confusion in applying it to everyday football scenarios. Furthermore in a report published in 1999, by the National Criminal Intelligence Service (NCIS) showed that football hooliganism had increased and the arrest for violent disorder had doubled over the last season. In the 2010 article from the BBC " Increase in young football hooligans" reported that there are now 290 teenagers across the UK banned from football grounds. However the report did state that the violence were not in the levels of the 1970s to 1980s, but there concerns that almost half (47%) of incidents of disorder last season in England, Wales and Northern Ireland involved youths. In conclusion the introduction of the football legislative have been effect in terms of punishing criminals who behave disorderly in sporting events, banning orders and arrest have increased since, but however statistics show hooliganism still exists in the modern society, and maybe more acts are required to deter more hooliganism behaviour.

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Part 3

In this essay I am going to explain what criminal prosecutions have arisen or may now be brought following the Independent Hillsborough Panel Report and highlight the difficulties that are involved in bringing criminal prosecutions in respect of the Hillsborough Disaster. Since the Hillsborough Panel Report, the truth about Hillsborough had been established and possible criminal prosecutions have been brought up to the attorney general. With the new evidence, that shows the reason for the disaster were due to unsafe stadium, a chaotic emergency response and police failing, means criminal prosecutions towards the police is possible. The Independent Police Complaints Commission (IPCC) stated criminal prosecutions including charges of manslaughter; perjury and attempting to pervert the course of justice could be brought against serving and retired police officers involved in the Hillsborough tragedy such as Sir Norman Bettison, and currently West Yorkshire's Chief Constable. Sir Norman was accused in the Hillsborough Independent Panel report, the reported stated that he blame the Liverpool fans and prepared a video presenting the police's version of events to MPs. He was accused by the Labour MP Maria Eagle of being part of a "black ops" unit. In conclusion no actual trials of cases have occurred, and the rest lies with the Independent Police Complaints Commission.[21]

Part 4

In this essay I am going to discuss in the context of *Alcock v Chief Constable of South Yorkshire* explain how the law on psychiatric injury has developed since. The disaster of Hillsborough brought a lot of claims from the relatives of the victims who had witnessed the events. In addition in proving that there must be an actual psychiatric injury, where mere emotions of fear, worry, grief or sorrow are not sufficient, the case of *Page v Smith*[22] had established a

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distinction between a primary victim and a secondary victim. Lord Oliver described a primary victim as a " participant of an accident, someone who is involve in an accident who suffers from what they see and hear, and this person is usually within the range of foreseeability". He then described a secondary victim as someone who is not a " direct participant, but who merely witnessed an accident or arrives in the aftermath of an accident".

[23]It is for the secondary victim to prove the for Alcock criteria in order to establish liability. A secondary victim must prove a close tie of love and affection, witness the event with their own unaided senses, there must be proximity to the event itself or its immediate aftermath and psychiatric injury must be a result of a shocking event. In relation to close tie of love and affection it will be presumed a child or a spouse would be suitable to prove the relationship, in witness the event with own unaided senses, it is not enough just to witness the event on television. Furthermore in proximity or its immediate aftermath, the case of McLoughlin v O'Brian held that although not present at the time of accident, it was a reasonably foreseeable consequence of the defendant's negligence. Finally in psychiatric injury must be caused by a shocking event, the case of Sion v Hampstead Health Authority[24]father's claim failed due to lack of 'shocking event". The law on psychiatric injuries in relation to rescuers had developed since in the case Chadwick v British railways Board[25], Lord Oliver had classed rescuers as primary victims, but however in White v Chief Constable of South Yorkshire it was decided not to give rescuers special privilege if they had not been exposed to personal danger. The court also stated that it was difficult to establish who was a rescuer or a mere bystander[26].