

Medium of defamation in the cyberspace media essay



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Defamation is potentially one of the largest areas of law which will be affected by the internet revolution as it deals, quite simply, with communication between people[1]. The internet provides a new means to facilitate this communication and so is an ideal forum for free speech, a practice which can often lead to vituperative and contumelious language[2]. A communication is defamatory if it “ tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”[3]

With the aim to injure the reputation of the victim and in particular to cause him (or her) to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem is part of the objective of the defamation[4]. The defamer or the defendant can be taken into custody for his/her action if the plaintiff thinks that the information given in the cyberspace is false, inappropriate and resulting lowering down the plaintiff reputation. Depending on different countries and regions, the punishment for defamation in the cyberspace is varies due to its law. Some country for example Brunei can take 5 years prisons for the punishment.

It is not only the author or originator of a defamatory statement that may be liable for the publication of that statement; rather, defamation law ensures that anyone who plays a significant role in the act of republication or redistribution of defamatory message will be held responsible for that message[5].

This objective of this paper is to determine jurisdiction on the regional cases of defamation in Brunei and Malaysia. Other than that, this paper also

explains medium of defamation in the cyberspace, the effects of the defamation to the victim, the punishment to the defamer and the court action with the case.

BRUNEI AND MALAYSIA DEFAMATION LAW

Both Brunei and Malaysia defamation law are based on the English Common Law[6].

MALAYSIA DEFAMATION LAW

Malaysia Defamation Act are the Malaysian Defamation Act 1957 for civil cases and the Penal Code of Malaysia Section 499 – Section 503 for criminal cases[7]. This law does not define defamation. It recognized two forms of defamation only that is libel and slander. There are distinct differences of these two forms of defamation. The difference lies in the means or medium by which the defamatory material is communicated. It used to be a fundamental distinction that between a written or printed word which is concludes as libel and spoken words which are considered as slander.

Both libel and slander are civil and criminal offences. Thus, a person who is guilty of libel or slander may be sued in court, and also face jail sentence. In civil cases, the person so defamed will normally sue the maker of the defamatory words for compensation. The amount of the compensation depends on the damage caused to the reputation of the person suing.

In criminal cases, the punishment for defamation is a jail sentence for a maximum of two years, or a fine, or a combination of a jail sentence and a fine [Section 500-502 Penal Code].

But, nowadays the general view of libel is whether the ‘ publication’ is in a permanent form, in other forms it is a slander. Defamation in a permanent forms and is usually visible to the eye, such as items in writing, email, pictures, statues or effigies. Section 3 of the Defamation Act 1957 stated that broadcasting of words by means of radio communication shall be treated as communication in a permanent form.

BRUNEI DEFAMATION LAW

The Defamation Act of Brunei Darussalam, which was revised in 2000, punishes libel or slander by means of “ broadcasting, telecommunication or publication by newspaper.”[8]Like Malaysia, the laws also governing both libel and slander are identical.

Bloggers should also be aware that under the Brunei Defamation Act, a blog post “ for the purpose of the law of libel and slander,” may be considered the equivalent to “ broadcasting of words by means of telecommunication” and as such will be treated as publication. Even though the defamatory content on the Internet can be deleted, there is a possibility that the post can be recovered through a cache, and thus can be admitted into evidence[9].

Though there has not been any major case of litigation concerning blogs and bloggers in Brunei, the neighboring countries of Malaysia and Singapore have had cases which have resulted in imprisonment for comments made by bloggers[10]. Under Section 500 of Brunei’s Penal Code, whoever defames another can be imprisoned for a term of up to 5 years and a fine[11].

MEDIUM OF DEFAMATION IN THE CYBERSPACE

Based on Lilian Edwards study, she define that there are at least four distinct sites where defamation may occur in the cyberspace that can usefully be separated out, as to some extent they raise distinct problems[12].

One to one email messages

Compared to the traditional written mail (via postal), transmission of email is virtually instantaneous and usually, once sent, is irrevocable. As a result, email correspondence is often in substance more like spoken conversation than written interaction[13]. Interaction and communication between two are becoming no limitless which can turn out to be legally actionable.

Mailing List

The format of an electronic mailing list is that various parties subscribe by email to the list, which is administered by some central host. The subject of discussion of the list may be anything from Internet law to real ale to homosexual fantasies. Usually the list is set up so that, by default, any email message sent by any one subscriber to the list is “ bounced” or “ exploded out” to every other subscriber. Carelessness can lead to the user think they reply only to the maker but actually the user sends their reply to the every member in the list. The embarrassment factor can be considerable, particularly where the members of the list form a small professional community within which the professional reputation of the person defamed can be severely damaged[14].

Newsgroup

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Newsgroups are discussion forum which are made up of comments from their subscribers, sorted by subject matter. All it takes is to subscribe and post comments to the newsgroup[15]. Collectively, the newsgroups available to Internet users are sometimes known as the “ Usenet”[16]. There are something like 14, 000 Usenet newsgroups subscribed to en masse by millions of subscribers, located in every country where there is Internet access. As a result, any comment posted to a Usenet newsgroup is virtually guaranteed to be published, and read, within days if not hours, in many hundreds of national jurisdictions. As can be imagined, the volume of material published in these forums is enormous – one estimate is that around 4 million articles are available at any particular time[17]. Therefore, the probability of defamation cases in the newsgroup is higher.

The World Wide Web

Like newsgroups, Web sites can be accessed and read in multiple jurisdictions, and they therefore share many of the problems of transnational publication discussed above. But perhaps the major unique problem with the Web is how far it allows any individual to mimic traditional publishing at very low cost. “ Home pages” can be set up which do a good job of looking like electronic journals or glossy magazines and which can be extremely attractive, with good design and graphic content[18]. However many of the parties setting up Web sites – often fans of popular music or TV programmes, students, pressure groups, or amateur associations – are not already hard copy or traditional publishers, have no knowledge of the law of defamation or libel, and may well find themselves publishing defamatory statements without fully appreciating their potential liability[19].

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LIABILITY OF INTERNET SERVICE PROVIDERS

The key role of ISPs is to provide access to the Internet for their subscribers.

This access includes allowing subscribers both to read and write to Usenet newsgroups and to surf the Web. ISPs also sometimes host “ local” discussion forum and almost invariably agree to act as physical hosts to Web pages set up by their subscribers (generally to a maximum storage of a few megabytes)[20].

In all these cases, the ISP runs the risk of being regarded as the publisher of libelous remarks, originated by another person, but published by them in one of these forums. As per mention before, any repetition or re-publication of a defamatory statement is in itself actionable. Action is possible against all intervening persons who are responsible for repeating, publishing or otherwise circulating the defamation[21].

Therefore, any republish or repeating, the victim can choose whether to sue original defamer or the re-publisher or both – and in many cases, ISP were usually being sued due to the money issue rather than suing the original author.

HOW IS DEFAMATION PUNISHED

Defamation is usually a civil offence, although it can be a criminal matter under special circumstances.[22]

CIVIL DEFAMATION

Most complaints of defamation are dealt with under civil law. That means that cases go to a civil court and are punished by awarding money (called

damages) against the person found to have committed the offence, usually called the defendant. If someone takes you to court for defamation, they will be the plaintiff, you will be the defendant.[23]

In civil defamation, the principle is the same as for someone who has been physically injured as a result of someone else's actions, either through carelessness or a planned attack. The injured person may take the other person (or people) to court. If successful, the injured person will be awarded a sum of money as compensation. This money will be paid by the person who did the damage.[24]

DAMAGES

There are several kinds of damages a court can award, either separately or together.[25]

General or Compensatory damages – which a court may award for a person's loss of reputation, shame or hurt feelings. The payment to the plaintiff may be at small amount of money.

Special damages – compensate for any loss of business or earnings the plaintiff may have suffered as a result of the defamation. These could also include any money the plaintiff has spent as a result of the defamation, for example in sending letters to clients denying the allegations.

Aggravated damages – this can be awarded if the court thinks that the defamation was deliberate, possibly out of ill-will or any other improper motive (usually referred to as malice, which we discussed earlier).

Punitive or Exemplary damages – which may sometimes be awarded if the defamation is so extreme that the court feels the need to punish you or warn other journalists against similar conduct.

Damages are usually large in the case of media organisations because the courts think that they can pay more for their mistakes than individuals can.

CRIMINAL DEFAMATION

Defamation can also be a criminal offence, which means that those found guilty could be fined or sent to prison or both. This is much less common than civil defamation.[26]

A charge of criminal defamation can be brought if the words, pictures or gestures use provoke resulting riots, mob violence or other breaches of the public peace. For this reason, the prosecution does not have to prove publication to a third party. It is enough that the person the defendant are referring to hears the words (or sees the gestures) and reacts violently. However, unlike civil defamation, the prosecution will have to prove that the words complained of were malicious. In civil defamation the words may be malicious, but in criminal defamation they must be.[27]

SOCIAL MEDIA TECHNOLOGIES

Social media technologies are part of the cyberspace. It include blogs, picture sharing, email, instant messaging, vlogs and other medium that allow to be democratically interactive in ways unlike radio, television, or highly edited letters pages of newspapers and magazine. Below is some case law

and summaries that happen in Brunei and Malaysia which relate with defamation in cyberspace.

Facebook is a popular free social networking website that allows registered users to create profiles, upload photos and video, send messages and keep in touch with friends, family and colleague[28]. One recent and well-known case in Brunei with regards to Facebook Upload is Adi Adip[29]case where the defendant had uploaded his ex-girlfriend's (Miss X) obscene picture and video clip on the Facebook. The reason for his action is to insult Miss X's modesty as well as to get her attention after she had broken off her relationship with the defendant.

The plaintiff report this issue to the police once she discovered the Facebook account is under her name, managed by the defendant and containing the obscene pictures and video clips involving herself. The court ordered for the iPhone used by the defendant to be forfeited and all photos and videos related to the case was seized and disposed of, including copies, immediately. This is one case example from Brunei of the defamation in cyberspace. Other than that, the defendant was send to jail for 10 months.

In Malaysia, over the past years, Malaysians have been increasingly engaged in virtual communities and online interactions. Some have led to positive outcomes, but some of these virtual arenas have been exploited, tarnishing the true potential of the Internet[30].

In case of Jeff Ooi and Rocky Bru[31]case, this is the first time in Malaysia that a prominent media organization filed a suit against bloggers. Jeff Ooi's

Screenshot become a topic of debate when he retracted all his libelous allegations in weblog against the New Straits Times.

Raja Petra Kamaruddin is a Malaysian editor known for running Malaysia Today website. He published a series of commentary article on Malaysia politics in the website. There are a lot of cases relate to him which include both Civil and Criminal offences. Some of his cases are:

Nordin Kardi & UUM v RPK (2008)

Lt-Col Aziz Buyong & Lt-Col Norhayati Hassan v RPK (2008)

Datuk Muhammad Shafee Abdullah v RPK (2008)

Public Prosecutor v RPK (2008)

Due to large number of cases he was being suit, he was arrested by the authorities. He was detained under the Internal Security Act on 12th September 2008 under section 73, 60 days detention by Police Officer and again on 24th September 2008, under section 8(1) which he was detained for 2 years by the Minister.

CONCLUSION

As mention earlier in this paper, the objective of this paper is to determine jurisdiction on the regional cases of defamation in Brunei and Malaysia. This paper also explains medium of defamation in the cyberspace, the effects of the defamation to the victim, the punishment to the defamer and the court action with the case.

We've found that there are 4 distinct medium of defamation in the cyberspace - one to one email messages, mailing list, newsgroup and the World Wide Web[32]. As we know, defamation can result to injure the reputation of the victim and in particular to cause him (or her) to be regarded with feelings of hatred, contempt, ridicule, fear, dislike or disesteem.