

## **LEGAL STUFF (NUS Legal training)**

Beware of the following legal conditions:

1. Defamation;
2. Copyright.
3. Malicious falsehood
4. Harassment;
5. Privacy and data protection (*mainly relevant for cases involving children*)
6. Contempt of court;
7. Incitement to hatred;
8. Confidentiality of sources;
9. Freedom of Information

The 'golden rule' (*'when in doubt, leave out'*) or risk minimisation?  
(*Although this can mean you end up being TOO cautious.*)

### **Background: Free Speech in the UK**

English common law:

- Great value placed on the right to reputation and property rights;
- Freedom of expression sidelined.

### **Human Rights Act 1998 (HRA) and the European Convention on Human Rights (ECHR)**

Article 10 ECHR: Freedom of Expression.

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 6 ECHR: Fair Trial

Article 8 ECHR: Privacy (right to private and family life, home and correspondence)

*Steel and Morris v UK*, App No 68416/01, 15 May 2005 (ECtHR)

UK law 'failed to strike the right balance'. Although the leaflets contained untrue and damaging statements, there was 'no reasonable relationship of proportionality' between the injury to McDonald's reputation and the interference with the applicant's rights to freedom of expression. In particular, it was noted that the damages awarded were 'very substantial when compared to the modest income and resources of the two applicants and that McDonalds UK and McDonalds US were 'large and powerful corporate entities'.

## **Defamation**

Meaning of 'defamation,' 'libel' and 'slander'.

Defamation is the overall term, covering libel or slander.

Libel is the legal name for defamatory words written, printed or otherwise permanently represented, e.g. in a painting or an effigy. Slander is the name applied to defamatory words made by the spoken word. However, broadcasting of words is deemed by the Defamation Act 1996 to be publication in permanent form.

Professionally, journalists are concerned with libel, and Students' Unions with responsibility for student publications are concerned with libel. However, individual journalists also need to be careful of slander when checking allegations of wrongdoing or confronting the wrongdoer in person.

3 elements to the tort of defamation:

- i. Identification: words must refer to the plaintiff.
- ii. Publication: words must be published to a third party.
- iii. Meaning: words must be defamatory/capable of being defamatory. Reasonable person test – must 'tend to lower the plaintiff in the eyes of right-thinking members of society generally'.

### **(i) Identification**

Defamation is the wrongful publication of a false statement about a living person. The person must prove s/he has been referred to but this reference need not be direct.

If the person is named, the test of identification will almost always be satisfied.

The person may also be identified indirectly. It is important to pay attention to the circumstances and surroundings in which the reference is made, eg links between the text and accompanying photographs, whether the article is one of a series of articles.

Also applies to group identification and corporations. If a person is identified via the corporation, the individual can sue ie. Anita Roddick and The Bodyshop. Motive is irrelevant. Identification may be accidental.

ii) Publication

In order to win a libel action, the claimant must prove that the libel has been published, ie communicated to a third party. This is a minimal requirement and very easy to prove.

Repeating something already said does not cover you. Adding “allegedly” or “it is reported that” does not cover you. Publication must be intentional or negligent.

iii) *Defamatory Meaning*

The reasonable man test; ie is the term ‘gay’ defamatory? Famous gay person denied the claims and sued. Turned out later he was gay. Surely saying ‘hay’ is defamatory is no un-pc. Very difficult.

Criminal convictions; before the trial you can only say what, where, when, how, who. Cannot elaborate or give eye witness accounts, or you become in ‘contempt of court.’ If the subject of the article has a spent criminal conviction it legally must not be mentioned.

**Defences of libel** *We would look to using a, b, e, and g. God forbid we ever end up there!*

- (a) Justification (*partial; weight of allegations are true*)
- (b) Fair Comment (*Opinion not fact. Fair and without malice.*)
- (c) Absolute Privilege
- (d) Qualified Privilege
- (e) Offer of Amends under section 2, Defamation Act 1996

(f) Leave and licence

(g) Innocent Defamation under section 1, Defamation Act 1996  
(*Responsible but no editorial control.*)

### **Defamation checklist**

- If unsure of anything, ask! We can seek legal advice if need be.
- Keep a dated notebook.
- Ask the following questions:
  - 1) Is it about an individual?
  - 2) Could it be defamatory?
    - Is the story ambiguous in any way?
    - Is there a hidden or inferred meaning?
  - 3) Is it true? If so, could it be proved to be true?
    - Does it come from a good, reliable source?
    - Would that source be prepared to sign a written statement?
    - Has the person been contacted and asked for their viewpoint?  
Always make every effort to speak to the person being written about.
    - If you fail to make contact with the person you're writing about, make a note of the times and dates you tried.
    - Always give the other side of the story.
  - 4) If not, is it covered by one of the other defences to defamation?
  - 5) Is the subject of the piece likely to sue?

If the worst happened we would seek legal advice, possibly looking towards publishing an apology or a retraction, or we would make an offer of amends. We may contact the source to confirm our story. As long as notebooks have been kept we may even be able to defend ourselves!

**REMEMBER: ALWAYS GIVE EACH PARTY THE CHANCE TO COMMENT!  
RESEARCH YOUR FACTS! KEEP A NOTEBOOK! ASK IF UNSURE!**

**BUT DON'T BE OVERLY CAUTIOUS... WE'D NEVER HAVE A PAPER!**