

ANNEX A TO 2007

GUIDELINES ON DEFAMATION

1. In law every person has, during their lifetime, the right to their reputation and good name and this is recognised by the law. The best known 'General' test is as follows:

“Would the words tend to lower the Plaintiff in the estimation of right thinking members of society generally.”
2. A person may be defamed in respect either of their personal character or their office or vocation.
3. Whether a statement is defamatory or not depends not upon the intention of the maker of the statement but upon the probabilities of the case and upon the natural tendency of the publication having regard to the surrounding circumstances. If the words published have a defamatory tendency it will suffice even though the implication is not believed by the person to whom they are published. On the other hand language which upon its face is not defamatory may become so when the circumstances are taken into account. In other words, it is not only the words used that are looked at when considering whether a statement is defamatory or not.
4. It is always a question of law for a Judge to decide as to whether the words are capable of a defamatory meaning. Two rules are to be observed. Firstly, the whole matter is to be taken into account. A person is not entitled to pick out this and that sentence which they may consider defamatory as there may be other passages which would take away that person's complaint. Secondly, words are to be taken in a sense that is most natural and obvious. The ordinary and natural meaning of words may therefore include any implications or inference which a reasonable reader would draw from the words. Words are ambiguous may also be defamatory.
5. When a person has proved a publication or defamatory matter they have in effect established their case, but there are “Defences”. These are:
 - a. Justification: It is a defence to say that the alleged defamatory statement is true. It is for the person making the statement to prove the justification of the defamatory matter as alleged but they need not prove the literal truth of every fact which they have stated. It is enough if they prove the substantial truth in every material fact.
 - b. Absolute and Qualified Privilege: Absolute privilege is judicial, parliamentary or official; reports of court proceedings, parliamentary proceedings etc. Qualified privilege arises where a person who makes the communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has the corresponding interest or duty to receive it. This reciprocity is essential. A good example here is communication between solicitors acting on behalf of their respective clients.
 - c. Fair Comment: Fair comment and criticism on matters which have become public property are protected even though involving imputations on the characters of individuals. However, to be within the defence of fair comment the statement complained of must be published honestly as criticism and as the real opinion of the writer and not from some malicious motive. Perhaps it should be said that the defence of fair comment is a controversial one.