

# TIPTOEING THROUGH THE LIBEL MINEFIELD



TRAINING FOR **TRANSPARENCY INTERNATIONAL**  
IN CONJUNCTION WITH **ROTH COMMUNICATIONS**

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# WHAT IS LIBEL?



## WHAT IS LIBEL?

The Merriam Webster dictionary defines it as:

- (a) a written or oral defamatory statement or representation that conveys an unjustly unfavourable impression
- (b) a statement or representation published without just cause and tending to expose another to public contempt
- (c) defamation of a person by written or representational means
- (d) the publication of blasphemous, treasonable, seditious, or obscene writings or pictures
- (e) the act, tort, or crime of publishing such a libel

<https://www.merriam-webster.com/dictionary/libel>

# WHAT IS LIBEL?



## WHAT IS LIBEL?

Cornell Law School in the US defines it as:

*... a method of defamation expressed by print, writing, pictures, signs, effigies, or any communication embodied in physical form that is injurious to a person's reputation, exposes a person to public hatred, contempt or ridicule, or injures a person in his/her business or profession.*

<https://www.law.cornell.edu/wex/libel>

# WHAT IS LIBEL?



## WHAT DOES THIS MEAN?

- (a) The identity of the person who is the subject of the defamation must be clear.
- (b) The person has to have a reputation to impugn or damage.
- (c) It has to be fair. There has to be a reason to say it.
- (d) The statement has to have been published to a third party.

# WHAT IS LIBEL?



## WHAT DO WE CARE ABOUT LIBEL AS JOURNALISTS?

- (a) Because everyone involved in the process will be sued.
- (b) It costs money – and reputation – if you lose.
- (c) It's a great form of lawfare to muzzle media.

# POP QUIZ



## POP QUIZ #1

Question: Are we allowed to hold negative views of people?

## POP QUIZ #2

Question: Are we allowed to express those views?

# THE TRUTH



## LET'S EXPLORE

Facts and opinions

Truth and 'public interest'

What interests the public isn't always in the public interest.

# POP QUIZ



## POP QUIZ #3

What examples are there of *what interests the public* overlapping with *the public's interest*?



# POP QUIZ



## POP QUIZ #4

Can a picture be defamatory?

So how do we publish such a picture?



**YOU  
SAID IT**



## **LIBEL, DEFAMATION & SLANDER**

Defamatory per se statements

- Saying/writing that someone is involved in criminal activity – or committed a crime.
- Saying/writing that a person is infected with a loathsome communicable disease.
- Saying/writing that a person is involved in behaviour incompatible with the proper conduct of their business/trade/profession.
- Saying/writing that a person was an adulterer or unchaste or engaged in sexual misconduct.
- Especially in South Africa, saying or writing that someone is a racist, rapist or wife beater (GBV).

# THE DAMAGE



## DAMAGES

- General damages
- Special damages
- Nominal damages
- Punitive or exemplary damages

# THE DAMAGE



## AGGRAVATING FACTORS FOR DAMAGES

- Repeated publication
- Repeated reliance on public interest but the statement is false
- Malice
- Delay, inadequate or no apology at all

# CRIMINAL LIBEL



## DEFAMATION AS A CRIME

Criminal libel in South Africa, which is defined as

*the act of “unlawfully, intentionally and seriously impairing the dignity of another.” Racial insults using racially offensive language and emotional or psychological abuse are considered as crimes under criminal libel.*

# THE DEFENCE



## DEFENCES FOR DEFAMATION

There are three broad categories

1. Truth
2. Public interest

Reasonableness is also a key factor to both of these.

3. The statement was protected by privilege: either parliamentary, court, commission of inquiry or other similar public body (but beware of inaccurate or incomplete reporting which negates the privilege. Remember too that what lawyers tell you outside the courtroom is not covered by privilege).

# FAIR COMMENT



## AND THERE IS FAIR OR PROTECTED COMMENT

- It must be marked as comment or opinion.
- The commentary must be fair, even if it is extreme. It must be objectively speaking qualify as an honest, genuine (even if prejudiced or exaggerated) opinion relevant to the facts upon which it is based – not the malice of the author.
- The facts on which it is made must be true or substantially true and stated as such in the commentary – unless these facts are widely known.
- The commentary should be on a matter of public interest.

# PRIVATE MATTERS



## DEFAMATION V INVASION OF PRIVACY

The two are separate areas of law but do interrelate. There needs to be the same justification for both:

- Truth
- Public interest
- Fairness

# PRIVATE MATTERS



## EXAMPLES OF INVASION OF PRIVACY

- Intercepting, recording, monitoring communications (in SA law you can record a communication in which you are participating)
- Surveillance, stalking, harassment
- Entering a private home
- Eavesdropping
- Searching a person
- Interrogating a person
- Hacking (unauthorised access) into a computer

# PRIVATE MATTERS



## PUBLISHING 'PRIVATE FACTS'

- Health and medical information (such as HIV status, terminal disease)
- Financial affairs
- Sexual life (sexual orientation)
- Family life
- The contents of private correspondence

# INFO ALERT



## LET'S EXPLORE

How did you get the information?

Whistleblowers and the public interest defence



**BE**  
**AWARE**



### **BEWARE THE ALLURE OF SOCIAL MEDIA**

- ‘Retweets are not an endorsement’ is not a get-out-of-jail-free card.
- Beware of hashtags
- It’s all trackable
- Own it or the law will own you

# THE LINKS



## RESOURCES

<https://www.freedomforuminstitute.org/first-amendment-center/primers/libellaw/>

<https://hamiltonfraser.co.uk/knowledge/avoid-claim-defamation/>

<https://www.johnsflaherty.com/blog/five-steps-to-avoid-online-defamation>

[https://www.newmediarights.org/best\\_practices\\_avoiding\\_defamation\\_social\\_media](https://www.newmediarights.org/best_practices_avoiding_defamation_social_media)

**THANK  
YOU**

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