

DEFAMATION

Law of Torts & Criminal Law — Complete Study Notes

These notes cover the full concept of defamation its meaning, definitions by jurists, why it exists in both tort and criminal law, its essentials, types, innuendo, all defences with illustrations, and every major case law. Suitable for LLB, Judiciary, and UGC NET exams.

1. Meaning of Defamation

The word **defamation** comes from the Latin *diffamare* meaning to spread bad news about someone. Defamation is the act of making a **false statement** about a person that injures their **reputation** in the eyes of right-thinking members of society. It may cause a person to be hated, ridiculed, avoided, or looked down upon.

Reputation is considered a **valuable legal right** almost like property. Just as a person's property cannot be unlawfully destroyed, a person's good name cannot be unlawfully damaged. Law gives a remedy for both.

2. Definitions by Jurists and Thinkers

Salmond:

"Defamation is the publication of a false and defamatory statement concerning another person without lawful justification."

Meaning: Three things are needed it must be false, it must be published (communicated), and there must be no legal excuse for making it.

Winfield & Jolowicz:

"Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally, or which tends to make them shun or avoid that person."

Meaning: The test is objective what would a *reasonable, right-thinking person* think after reading or hearing the statement?

Pollock:

Defamation is any statement that exposes a person to **hatred, contempt, or ridicule**, or causes people to shun or avoid that person.

Meaning: Even if no direct lie is told, if the statement causes people to distance themselves from the person, it is defamatory.

Fraser:

"Defamation is the wrong done to a man's reputation by the malicious publication of a false statement either written or oral tending to lower him in the estimation of others."

Meaning: Fraser specifically includes malice and falsehood. The statement must bring the person down in society's eyes.

Blackstone:

Defamation is a malicious defaming of a person in his reputation, profession, or business.

Meaning: It goes beyond personal reputation it can also harm a person's professional standing or career.

American Restatement (Second) of Torts:

"A communication is defamatory if it tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him."

Meaning: Even causing people to simply avoid the person (without hatred) is enough to be defamatory.

3. Why Defamation Exists in Both Tort Law AND Criminal Law**The Core Question: How can one act be both a civil wrong and a crime?**

Defamation is a unique legal wrong because it simultaneously harms **two different interests** the individual victim's personal reputation, and society's interest in maintaining public peace and trust. This is why the law provides remedies on both levels.

As a Tort (Civil Wrong) — Law of Torts

When a person's reputation is damaged, that person personally suffers. They may lose their job, friends, marriage prospects, or social standing. This personal suffering deserves **compensation**. The victim can go to a civil court and sue the wrongdoer for **damages (money)**.

- The focus is on **restoring** what the victim lost.
- The remedy is damages, the wrongdoer pays money to the victim.
- The victim files the suit, not the government.
- Even without criminal intent, liability may arise.

As a Crime — IPC Sections 499–500 / BNS Section 356

At the same time, defamation disturbs social order. False statements spread panic, break communities, and can lead to violence or social unrest. A man falsely called a criminal in public may face mob justice. Society has an interest in stopping this. So the **State punishes** the wrongdoer through criminal law.

- The focus is on **punishing** the wrongdoer to deter others.
- The remedy is imprisonment (up to 2 years), fine, or both.
- A complaint is filed by the victim, but the *State prosecutes*.
- Malicious or intentional defamation is a crime.

Simple Analogy to Understand This:

Illustration: A publishes a false article saying Dr. B is a quack doctor who kills patients. Dr. B loses his patients and practice (civil harm → B can sue for damages). At the same time, people in the city panic and stop trusting doctors (social harm → State can prosecute A). Same act, two separate wrongs & two separate remedies.

Point

Civil Defamation (Tort)

Criminal Defamation (IPC/BNS)

| | | |
|---------------------|---------------------------|-------------------------------------|
| Harm caused to | Individual victim | Society / public order |
| Purpose of law | Compensate the victim | Punish and deter wrongdoer |
| Remedy | Damages (money) | Imprisonment up to 2 yrs + fine |
| Who files? | Victim files suit | Victim complaints; State prosecutes |
| Governing law | Law of Torts (common law) | IPC S.499–500 / BNS S.356 |
| Intention required? | Not always required | Malice or intention relevant |
| Defence of truth | Complete defence | Only if for public good |
| Court | Civil court | Criminal court / Magistrate |

Key Constitutional Angle:

- **Article 19(1)(a)** Right to freedom of speech and expression.
- **Article 19(2)** State can impose reasonable restrictions on speech including for defamation.
- **Article 21** Right to life includes the right to reputation and dignity. (Held by Supreme Court.)
- *Subramanian Swamy v Union of India (2016)* Supreme Court upheld criminal defamation under IPC S.499–500 as constitutionally valid. Held: Right to reputation is an inseparable part of Article 21. Free speech under Art.19 cannot be used to destroy another's reputation.

4. Types of Defamation — Libel and Slander

Libel — Defamation in Permanent Form

Libel is defamation expressed in a **permanent, visible form**. This includes writing, printing, newspapers, books, magazines, photographs, films, statues, effigies, wax figures, paintings, caricatures, and online posts. Because it is permanent, it can reach a wider audience and cause greater damage. Libel is actionable **per se** meaning you do not need to prove actual damage. The act itself is enough.

Slander — Defamation in Temporary Form

Slander is defamation expressed in a **temporary, transient form** mainly spoken words, gestures, or sounds. Because it disappears after being spoken, it is generally considered less serious. In English law, slander usually requires proof of **special (actual) damage**, except in certain cases.

Exceptions where Slander is Actionable Per Se (no need to prove damage):

1. Imputing a criminal offence punishable by imprisonment.
2. Imputing a contagious or infectious disease (like leprosy, STDs) that causes social exclusion.
3. Imputing unchastity or adultery to a woman or girl (in England, under the Slander of Women Act, 1891).
4. Words disparaging a person in their office, profession, trade, or business.

Difference: English Law vs Indian Law

- In **English law**, libel and slander are treated differently. Libel can be a crime; slander is only civil.
- In **India**, both libel and slander are treated equally both are civil torts AND both can be criminal under IPC S.499/BNS S.356.

Key Cases on Libel:

- *Youssouppoff v MGM Pictures (1934)* A film depicted a woman as having been sexually assaulted. Court held: film is a permanent form = libel. She was awarded damages even without proof of financial loss.
- *Monson v Tussauds Ltd (1894)* A wax figure of Mr. Monson (acquitted of murder) was placed near the Chamber of Horrors in Madame Tussauds. Court held this was libel the wax figure placed in that context suggested guilt.
- *Forrester v Tyrrell (1893)* Reading out a defamatory document aloud is libel, not slander because the permanent document was used.

5. Essentials of Defamation — 3 Must-Prove Elements

To establish defamation, the plaintiff must prove all three of the following:

Essential 1 — The Statement Must Be Defamatory

The statement must be one that would **lower the plaintiff in the estimation of right-thinking members of society**. It must cause people to think less of him, hate him, ridicule him, or avoid him. The test is **objective** not what the plaintiff feels, but what a reasonable person would think.

The court looks at the **natural and ordinary meaning** of the words. Even words that appear complimentary can be defamatory if understood by a reasonable person in a negative sense (see innuendo).

- Words must be understood in their full context, not just isolated.
- A mere insult or vulgar abuse is generally NOT defamation (e.g., calling someone a 'fool' in anger).
- Mere vulgar abuse without any factual imputation does not lower reputation in a legal sense.
- *Sim v Stretch (1936)* House of Lords defined the test as: would the words 'lower the plaintiff in the estimation of right-thinking members of society generally'? This became the standard test.
- *Byrne v Deane (1937)* A notice was put up in a golf club suggesting the plaintiff had informed police about illegal gambling machines. Court said: right-thinking members would not think less of someone for reporting illegal activity. Held NOT defamatory.

Essential 2 — The Statement Must Refer to the Plaintiff

The defamatory statement must be **understood as referring to the plaintiff**. It is not necessary that the plaintiff be named. If people who know the plaintiff can identify him from the description, circumstances, or context, it is sufficient. Even a **fictional character** with the same name as a real person can lead to liability.

- The plaintiff must show that people who knew him understood the statement to be about him.
- Intention to refer to the plaintiff is NOT required accidental reference is enough.
- Group defamation: if a very large class is defamed (e.g., all lawyers), no individual can sue. But if a small, identifiable group is defamed, each member can sue.
- *Hulton & Co v Jones (1910)* Newspaper published a fictional story about a character named 'Artemus Jones.' A real person of the same name sued. The defendant said it was fiction. House of Lords held: intention is irrelevant. What matters is whether reasonable people identified the plaintiff. Held liable.

- *Newstead v London Express Newspapers (1940)* Report correctly stated 'Harold Newstead, 30, of Camberwell' was convicted of bigamy. Another Harold Newstead of the same age and area sued. Court held: even a true and accurate report about one person can defame another of the same name.
- *Knuppfer v London Express (1944)* An article attacked a political party. A member of the party sued. Court held: the group was too large and the article did not point to any individual. No defamation of the individual member.

Essential 3 — The Statement Must Be Published

Publication means the defamatory statement was **communicated to at least one person other than the plaintiff**. This is the most critical element. If only the plaintiff knows about it, their reputation in society is not actually damaged society never heard it.

The defendant need not intend publication. If it was **reasonably foreseeable** that a third party would come to know of it, that is sufficient. Publication can be direct or indirect.

- A sealed letter sent only to the plaintiff = NOT published = no defamation.
- A postcard, telegram, or open letter = publication (anyone can read it).
- Every repetition of a defamatory statement is a fresh publication.
- Each person who repeats or republishes is independently liable.
- Dictating a defamatory letter to a typist = publication to the typist.
- *Mahendra Ram v Harnandan Prasad (1958, Allahabad HC)* Defendant wrote a defamatory letter in Urdu, knowing the plaintiff could not read Urdu and someone else would have to read it to him. Court held: the very act of writing in a language knowing a third party would read it = publication.
- *Theaker v Richardson (1962)* Defendant sent a defamatory letter to a woman. Her husband opened and read it, thinking it was election material. Court held: it was reasonably foreseeable that a spouse would open the letter. Publication established.
- *Pullman v Hill (1891)* Defamatory letter was dictated by the defendant to his clerk. Held: dictation to the clerk = publication to a third person.
- *Duke of Brunswick v Harmer (1849)* Old newspaper article was dug up and re-read 17 years later. Court held: each fresh communication is a new publication. Limitation runs from each new publication.

6. Innuendo — Hidden Defamatory Meaning

Sometimes a statement looks perfectly innocent on the surface but carries a **hidden meaning** that damages reputation. This is called **innuendo**. The word comes from the Latin *innuendo* meaning 'by nodding', i.e., hinting without directly saying.

The plaintiff must **plead and prove** the innuendo that is, explain what the hidden meaning is and show that people who heard/read the statement actually understood it in that defamatory sense. This requires evidence from those who heard it.

Two Types of Innuendo:

1. **True Innuendo (Legal Innuendo):** The hidden meaning arises only if the listener knows certain special facts that are not in the statement itself. The statement is innocent to an ordinary reader but defamatory to someone with additional knowledge.

Example: 'X was seen coming out of the doctor's clinic.' Innocent to most. But if listeners know that the doctor only treats drug addicts, it becomes defamatory for X.

2. False Innuendo (Popular Innuendo): The statement, read in its full context and natural meaning, implies something defamatory. No special background knowledge is needed the meaning is clear from the words alone.

Example: 'Mr. X manages the accounts of our company very creatively.' The ordinary meaning sounds positive, but a reasonable reader understands 'creatively' to imply financial manipulation or fraud.

Key Cases on Innuendo:

- *Cassidy v Daily Mirror Newspapers (1929)* A newspaper published a photograph of a man with a woman, captioned 'Mr. Cassidy and Miss X, whose engagement has been announced.' In fact, Cassidy was already married. His wife sued she said people who knew her would now think she was living with him without marriage (i.e., they were not really married). Held: this was defamatory by innuendo even though the caption was literally true.
- *Tolley v Fry & Sons Ltd (1931)* A famous amateur golfer's caricature was used in a chocolate advertisement without his consent. He sued. The innuendo was that he had accepted payment, compromising his amateur status. House of Lords held: even though the ad said nothing bad, the innuendo to those in the golfing world was clear. Held defamatory.
- *Hough v London Express (1940)* A photo of the wrong woman was published alongside a defamatory story. Held: even an innocent and unintentional publication can be defamatory if the innuendo is clear.
- *Capital and Counties Bank v Henty (1882)* Defendant sent a circular to customers saying 'do not receive cheques drawn on Henty's bank.' The bank sued saying the innuendo was insolvency. House of Lords held: no reasonable person would draw that inference. NOT defamatory.

7. Is Intention Required in Defamation?

This is a very important point. In defamation, **intention to defame is generally NOT required**. A person can be held liable even if they had no intention of harming the plaintiff's reputation, or did not even know the plaintiff existed.

The law takes an **objective view**: if the natural and probable consequence of the statement is to lower the person's reputation, the defendant is liable regardless of their purpose or motive. This is especially true for libel.

- *Hulton v Jones (1910)* The defendant genuinely believed the character was fictional. Still held liable.
- *Newstead v London Express (1940)* The report was accurate about one person. Still held to defame another.

However, in **criminal defamation** (IPC S.499), intention or knowledge that the statement is false and likely to harm reputation is an important element. Malice becomes relevant especially when the defence of qualified privilege is raised.

8. Defences in Defamation — Detailed

Defence 1 — Justification (Truth)

In **civil law**, truth is a complete and absolute defence. If the statement is substantially true, no action for defamation lies even if the defendant had malicious intentions. The law says: you cannot have a false

reputation protected. Even if the truth is painful or embarrassing, speaking it is not a tort.

In **criminal law (IPC S.499, Exception 1)**, truth is only a defence if the statement was made for the **public good**. Merely proving truth is not enough the defendant must also show that publishing it served the public interest.

- The statement must be **substantially** true minor inaccuracies do not destroy the defence.
- The defendant must prove the truth the burden is on the defendant.
- *Alexander v North Eastern Railway Co (1865)* Railway displayed a notice saying the plaintiff was convicted of travelling without a ticket and fined. It was substantially true (the fine mentioned was slightly exaggerated). Held: truth is a defence; minor difference does not matter.
- *Wakley v Cooke (1849)* Plaintiff was called a 'libellous journalist.' Defendant proved the plaintiff had made one libellous publication. Court held the defence partially failed the truth must justify the whole sting of the libel, not just part of it.

Defence 2 — Fair Comment

An honest **opinion** (not a false assertion of fact) on a matter of **public interest**, made without malice, is a valid defence. Free speech in matters of public concern is protected otherwise, newspapers could not criticise government, film critics could not review movies, and sports commentators could not analyse players.

Requirements for this defence to succeed:

- (a) It must be a comment (opinion) not a statement of fact.
- (b) The comment must be on a matter of **public interest** e.g., politics, art, literature, court proceedings, public officials, published books, films.
- (c) The comment must be **fair** based on true facts. You cannot comment fairly on invented facts.
- (d) It must be without **malice** if the defendant was motivated by personal spite, the defence fails.

Illustration: A film critic writes 'This film is an insult to the audience. The director has no idea how to tell a story.' This is harsh but it is a fair comment on a public work. Not defamatory.

Illustration: A critic writes 'The director secretly takes money from distributors to give good reviews.' This is a statement of fact, not a comment. If false, it is defamatory.

- *Kemsley v Foot (1952)* An article was published under the heading 'Lower than Kemsley,' criticising journalism of the Kemsley Press. Lord Kemsley sued. House of Lords held: the Kemsley Press and its standards were a matter of public interest. The criticism was fair comment.
- *Lyon v Daily Telegraph (1943)* A newspaper commented on a barrister's conduct in court. Held: conduct in court is a public matter. Fair comment defence succeeded.

Defence 3 — Absolute Privilege

Certain occasions are so important that the law gives **complete immunity** from defamation suits even if the statement is false, malicious, and causes harm. This is called absolute privilege. No action lies whatsoever. The policy reason is that in certain forums, people must be absolutely free to speak without fear of being sued.

Where absolute privilege applies:

- Parliamentary proceedings speeches in Parliament or State Legislatures. (Article 105 & 194 of the Constitution of India.)

- Judicial proceedings statements by judges, lawyers, witnesses in court during a case.
- Military and naval proceedings official military inquiries and reports.
- State communications communications between high officials of State made in discharge of official duty.
- Reports of Parliamentary proceedings official, authorised publications.

Illustration: A Member of Parliament says in the Lok Sabha: 'The Home Minister is corrupt and takes bribes.' Even if this is false and defamatory, the MP cannot be sued. This is absolute privilege Parliament must be a free space for debate.

- *Dawkins v Lord Rokeby (1875)* Statements made during a military inquiry were held absolutely privileged. Even if false and malicious, no action could be brought.
- *Munster v Lamb (1883)* A solicitor said defamatory things about a witness in court. Held: judicial proceedings have absolute privilege. No suit allowed.

Defence 4 — Qualified Privilege

Qualified privilege protects statements made in **good faith**, without malice, where the person making the statement had a **legal, moral, or social duty** to make it, and the person receiving it had a corresponding duty or interest to receive it. Unlike absolute privilege, this defence **fails if malice is proved**.

Situations where qualified privilege applies:

- An employer giving a reference about an employee to a prospective employer.
- A person reporting a suspected crime to the police.
- Statements made in protection of a common interest (e.g., committee members discussing a member's conduct).
- A teacher reporting on a student's conduct to parents or school authorities.
- Statements made in self-defence to protect one's own reputation.

Illustration: An employer tells a prospective employer: 'Mr. X was dismissed from our company for dishonesty.' If this is true and said in good faith, it is qualified privilege. But if said out of personal revenge, malice destroys the privilege.

- *Adam v Ward (1917)* A General was falsely attacked in Parliament. In response, the Army Council published a statement defending him and attacking the accuser. House of Lords held: the reply was protected by qualified privilege it was a duty to defend the General's honour.
- *Watt v Longsdon (1930)* A director wrote defamatory letters about an employee to the chairman of the company and to the employee's wife. Held: the letter to the chairman had qualified privilege (business interest). The letter to the wife did not no duty existed there.
- *Toogood v Spyring (1834)* Established the foundation of qualified privilege: a communication made bona fide in performance of a duty, or in protection of a legitimate interest, is privileged.

Defence 5 — Consent (Volenti Non Fit Injuria)

If the plaintiff **consented** to the publication of the defamatory statement, they cannot sue for it. This is the application of the general tort principle that you cannot complain of a wrong you agreed to.

Illustration: A politician agrees to give an interview and says 'You can publish whatever I say.' If the publication includes a self-incriminating statement, the politician consented to its publication.

Defence 6 — Apology and Offer of Amends

Under the Defamation Act (in England), an offer to make amends publishing a correction and apology can be a defence if the defendant proves the statement was made innocently (without knowledge it was false or that it referred to the plaintiff).

In India, under criminal law, an apology can mitigate punishment but is not a complete defence in itself.

Defence 7 — Reports of Court and Parliamentary Proceedings (Fair and Accurate Report)

A fair and accurate report of judicial proceedings, parliamentary proceedings, or public meetings is protected. The policy reason is that the public has a right to know what happens in courts and in Parliament. As long as the report is accurate and fair, it is not defamatory even if it contains defamatory statements made by others.

- *Slipper v BBC (1991)* — A BBC programme dramatised a real event, but went beyond accurate reporting. Held: the protection does not extend to dramatised re-enactments.

9. Illustrations — 8 Detailed Examples

Illustration 1 — Defamation by Photograph (Innuendo)

A newspaper publishes a photograph of an honest businessman next to a headline: 'City's biggest fraudsters exposed.' The businessman has nothing to do with the fraud, but his photo appears on the same page. Any ordinary reader would connect him to the fraud. This is defamation by innuendo through a photograph. The newspaper is liable even though it never mentioned his name in the article.

Illustration 2 — Repeating a Defamatory Statement

A tells B: 'I heard that Mr. X takes bribes.' B then tells C, D, and E the same thing. Even if A started it, both A and B are independently liable for defamation. Each fresh communication is a new publication. Saying 'I only repeated what I heard' is no defence.

Illustration 3 — Defamation by Omission

A shopkeeper puts up a notice: 'Do not give credit to Mr. Y.' He later removes it but by mistake, one notice remains on a notice board for another 3 months. The shopkeeper is liable for those 3 months of continuing publication. Failing to remove a defamatory notice is as bad as putting it up.

Illustration 4 — Group Defamation

A journalist writes: 'All police officers in Mumbai are corrupt.' This is too vague no individual officer can sue because the group is too large and no one person is specifically identified. BUT if the journalist writes: 'The three senior officers of XYZ Police Station A, B, and C regularly take bribes,' then each of the three can individually sue for defamation.

Illustration 5 — Defamation of a Dead Person

In tort law, a dead person's reputation cannot be defamed the legal right dies with the person. So no civil suit can be filed on behalf of a deceased person's estate for defamation. HOWEVER, under IPC S.499, if defaming a dead person would harm the feelings or reputation of their living family members, it can still be a crime. Example: 'The late Mr. X was a thief and passed his criminal genes to his children' this harms the children and is actionable.

Illustration 6 — Defamation in a Novel

An author writes a novel set in a fictional city with a character named 'Judge Ramlal Sharma' who takes bribes. If a real Judge Ramlal Sharma exists in that state, and readers can identify him, the author is liable for defamation even though it was labelled 'fiction.' Intention is irrelevant. This is the Hulton v Jones principle applied.

Illustration 7 — Defamatory Statement in a Private Letter That Becomes Public

A writes a private letter to B saying 'Our mutual friend C is a fraudster.' He marks it confidential. But B reads it to a group of friends. A is still liable once A communicated it to B (one third party), publication happened. What B does next may also make B separately liable for republication.

Illustration 8 — The Sting Remains (Partial Truth is Not Enough)

A newspaper publishes: 'Dr. P was convicted of fraud in 2010 and is now running a hospital.' Dr. P was convicted in 2010 (true) but had his conviction overturned on appeal in 2011 (the newspaper omits this). Even though part of the statement is true, the overall impression that Dr. P is a fraudster is false. The defence of truth fails because the sting of the libel is not justified.

10. Criminal Defamation — IPC & BNS Provisions**Section 499 IPC — Definition of Defamation**

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person **intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person**, is said to defame that person.

Section 499 also provides 10 Exceptions (these are defences in criminal law):

Exception 1 — Truth for public good: Imputation of truth made for the public good is not defamation.

Exception 2 — Public conduct of public servants: Opinion on the public conduct of a public servant is not defamation.

Exception 3 — Conduct of person touching public question: Opinion on public conduct of any person on a public question is not defamation.

Exception 4 — Reports of court proceedings: A fair report of proceedings in a court of justice is not defamation.

Exception 5 — Merit of decided cases: Comment on the merits of a case decided in court is not defamation.

Exception 6 — Merit of public performance: Opinion on the merits of any public performance is not defamation.

Exception 7 — Censure by authority: Passing censure in good faith by a person having authority is not defamation.

Exception 8 — Accusation to authorised person: Accusation made in good faith to a person having authority over another is not defamation.

Exception 9 — Imputation for protection of interest: Imputation made in good faith to protect one's own interest is not defamation.

Exception 10 — Caution intended for good: Caution conveyed in good faith for the good of the recipient is not defamation.

Section 500 IPC — Punishment for Defamation

Whoever defames another shall be punished with simple imprisonment for a term which may extend to **two years**, or with fine, or with both.

Section 501 IPC — Printing or Engraving Matter Known to Be Defamatory

Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for up to **two years**, fine, or both.

Section 502 IPC — Sale of Printed or Engraved Substance Containing Defamatory Matter

Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished similarly.

Under BNS 2023 (Bharatiya Nyaya Sanhita — New Law):

- **Section 356 BNS** replaces IPC Sections 499–502. The definition, exceptions, and punishments remain substantially the same.

Key Criminal Defamation Case:

- *Subramanian Swamy v Union of India (2016, Supreme Court)* — Constitutional validity of criminal defamation under IPC S.499–500 was challenged. The Supreme Court upheld the provisions. It held that the right to reputation is an integral part of Article 21 (right to life and personal liberty) and that criminal defamation is a reasonable restriction under Article 19(2). This case is the leading case on constitutional validity of criminal defamation in India.

11. Special Topics in Defamation**(a) Defamation of a Company or Corporation**

A company can sue for defamation if the defamatory statement relates to its **business or trade** reputation. For example, saying 'XYZ Company sells adulterated products' can be sued by the company. However, a company cannot sue for defamation regarding matters that only affect individual feelings, since a company has no feelings.

- *South Hetton Coal Co v North Eastern News Association (1894)* — A company successfully sued for a newspaper article that damaged its reputation as a landlord. Held: a corporation has a reputation in business and can sue for libel affecting that reputation.

(b) Defamation and the Internet / Social Media

Online posts, tweets, WhatsApp messages sent to groups, Facebook posts, and YouTube videos are all forms of **libel** (permanent form). Each forward or share of a defamatory post is a fresh publication, and each person who shares it can be separately liable. Platform owners may also be liable if they were notified and failed to remove the content.

(c) Defamation vs Malicious Falsehood (Slander of Title / Goods)

Malicious falsehood (also called injurious falsehood or slander of goods/title) is different from defamation. In malicious falsehood, the false statement targets the plaintiff's **property, goods, or title** not personal reputation. The plaintiff must prove malice and actual damage. Example: falsely saying a competitor's product is dangerous.

(d) Damages in Defamation

Courts award damages after considering: the status and reputation of the plaintiff; the nature and gravity of the defamatory statement; the extent of publication (how many people saw it); the conduct of the defendant (whether they apologised or aggravated the harm); and the effect on the plaintiff's profession, business, or social life.

- General damages — presumed from the act itself (in libel and slander per se).
- Special damages — actual financial loss proved by the plaintiff.
- Aggravated damages — where the defendant's conduct was malicious or reckless.
- Exemplary/punitive damages — where the defendant calculated that profit from publication would exceed damages paid.

12. All Important Cases at a Glance

| Case | Year | Key Principle |
|----------------------------|------|--|
| Hulton & Co v Jones | 1910 | Fictional character with real name = liable. Intention irrelevant. |
| Youssouppoff v MGM | 1934 | Film is permanent form = libel. Actionable per se. |
| Cassidy v Daily Mirror | 1929 | True caption + innocent photo = defamatory by innuendo. |
| Tolley v Fry & Sons | 1931 | Using person's image in ad without consent = innuendo re: amateur status. |
| Sim v Stretch | 1936 | Standard test: lower in estimation of right-thinking members of society. |
| Byrne v Deane | 1937 | Reporting crime to police = not defamatory in eyes of right-thinking people. |
| Mahendra Ram v Harnandan | 1958 | Writing in language knowing third party will read = publication. |
| Theaker v Richardson | 1962 | Spouse opening letter was foreseeable = publication. |
| Newstead v London Express | 1940 | Accurate report about one person can defame another of same name. |
| Knuppfer v London Express | 1944 | Large group defamed = no individual member can sue. |
| Monson v Tussauds | 1894 | Wax figure near Chamber of Horrors = libel. |
| Forrester v Tyrrell | 1893 | Reading out written document = libel, not slander. |
| Pullman v Hill | 1891 | Dictating defamatory letter to clerk = publication. |
| Duke of Brunswick v Harmer | 1849 | Each fresh communication = new publication. Time runs afresh. |

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| Kemsley v Foot | 1952 | Criticism of press standards = fair comment on public interest. |
| Alexander v NE Railway | 1865 | Substantially true statement = complete defence. |
| Wakley v Cooke | 1849 | Truth must justify the whole sting, not just part of it. |
| Dawkins v Lord Rokeby | 1875 | Military proceedings = absolute privilege. |
| Munster v Lamb | 1883 | Statements in court = absolute privilege. |
| Adam v Ward | 1917 | Reply to public attack = qualified privilege. |
| Watt v Longsdon | 1930 | Qualified privilege: letter to chairman OK; to wife not OK. |
| Toogood v Spyring | 1834 | Foundation of qualified privilege — duty + interest test. |
| Capital & Counties Bank v Henty | 1882 | Circular re: cheques — no reasonable inference of insolvency = not defamatory. |
| South Hetton Coal Co v NE News | 1894 | Company can sue for defamation affecting its business reputation. |
| Subramanian Swamy v UOI | 2016 | Criminal defamation constitutionally valid. Reputation = Art.21. |
| Hough v London Express | 1940 | Wrong photo published = defamation even if unintentional. |
| Kemsley v Foot | 1952 | Fair comment on publicly known media organisation. |
| Lyon v Daily Telegraph | 1943 | Barrister's court conduct = public matter = fair comment. |

13. Quick Revision — Key Points at a Glance

1. Defamation = False statement + Published to third party + Lowers reputation in eyes of right-thinking people.
2. Libel = Permanent form (writing, print, film, online). Slander = Temporary form (spoken words, gestures).
3. In India, libel and slander are both civil torts AND criminal offences — unlike in England.
4. Three essentials: (1) Statement must be defamatory, (2) Must refer to plaintiff, (3) Must be published.
5. Intention is NOT required in civil defamation. Even accidental defamation gives rise to liability.
6. Innuendo = hidden meaning that makes an innocent statement defamatory. Two types: true innuendo and false innuendo.
7. Defences: (1) Truth/Justification, (2) Fair Comment, (3) Absolute Privilege, (4) Qualified Privilege, (5) Consent.
8. Truth = complete civil defence. In criminal law, truth must also be for public good.
9. Fair Comment = honest opinion on matter of public interest, without malice.
10. Absolute privilege = complete immunity. No suit possible even for malicious lies (Parliament, court, State).
11. Qualified privilege = good faith + no malice + legal/moral/social duty. Malice destroys the defence.
12. Each repetition of a defamatory statement = fresh publication = fresh liability.
13. Defamation of dead persons: no civil remedy; criminal remedy possible if family's feelings are harmed (IPC S.499).

14. IPC S.499 defines criminal defamation with 10 exceptions. S.500 punishes with up to 2 years imprisonment + fine.

15. BNS S.356 (2023) replaces IPC S.499–502 with same provisions.

16. Article 19(2) allows defamation as a reasonable restriction on free speech. Article 21 protects reputation.

17. Subramanian Swamy v UOI (2016): Criminal defamation upheld as constitutionally valid by Supreme Court.

18. Company can sue for defamation if its business/trade reputation is harmed.

19. Online posts, social media, WhatsApp group messages = libel (permanent form). Every share = new publication.

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