

# Topic Two – Defamation (CoA)

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## 1. Defamatory Matter

[x] may be liable for the tort of defamation against [y] for [z], which aims to protect an individual's reputation (**Tolley; s 8 UDA**). It is within the 1yr limitation period (**s 5(1AAA) LAA**), which may have been extended to 3 yrs (**s 23B LAA**). The judge is to determine whether the defamatory imputations are capable of being pleaded, and at trial by either judge or jury to make the final decision.

### a. What Is Matter?

#### **s 4 Defamation Act (2005)**

'Matter' includes:

- a) Article, report, advertisement or other thing communicated by means of a newspaper, magazine or other periodical, and
- b) Program, report, advertisement or other thing communicated by means of TV, radio, Internet or any other form of electronic communication, and
- c) A letter, note or other writing, and
- d) A picture, gesture or oral utterance, and
- e) *Any other thing* by means of which something may be communicated to a person.

#### **Monson v Tussauds Ltd [1894]** *Wax figure with gun, in room of known criminals*

- Doesn't really matter how defamation is communicated
  - Publication in permanent form, but doesn't need to be words.
- Defamatory because it suggests Monson was guilty

### b. What Imputations Are Conveyed By The Material?

#### Multiple Imputations'

- **s 8 UDA**: A person has a *single cause of action* for defamation in relation to the publication of defamatory matter about the person *even if more than one defamatory imputation* about the person is carried by the matter

#### Roles of plaintiff, defendant, judge and jury

- Plaintiff: Commence COA. Particularise meaning they have relied on
  - So D knows what they are to offend
  - Put the most serious spin to enhance damages
  - Amend pleadings? If variant or nuisance and no more injurious
- Defendant: Options:
  1. Accept P's imputations and just say they aren't carried.
  2. Try have P's imputations struck out - at interlocutory stage
    - Court may strike certain imputations.
  3. Accept imputations but raise defences.
    - Assert other imputation if *variant, & no more injurious* **Hore-Lacey**
- Judge: Up to judge to decide whether imputations pleaded are capable of bearing those meanings. If yes, will go to trial. (Judge or Jury)
  - Up to judge to decide that material is capable of being defamatory?
- Jury: To decide if trial by jury

## Types of Meanings

- Natural and ordinary meaning: conveyed directly
  - *Meaning publication would convey* to an ordinary person (**Tolley**)
    - Hard for D to argue against the meaning
- Natural and ordinary meaning: inferred
  - *Implied, inferred or indirect* meaning capable of being detected from language itself by *ordinary reader* (incl public knowledge?)
- True (or legal) innuendo
  - Where a person has *extrinsic knowledge*, the otherwise innocent publication may become defamatory. (**Tolley**)
    - Prove at least 1 reader has extrinsic fact *at time of publication*

## **Tolley v Fry [1930]**

- Facts: Ad caricature of amateur golfer with chocolate bar unauthorised
- *Imputation*: P agreed to have his image used; for payment; prostituted his reputation as an amateur pro-golfer, seeking notoriety and gain; guilty of conduct unworthy of his status
- Held: In context, unauthorised caricature was regarded as imputing he had done something inconsistent with his status.
  - Capable of being drawn by ordinary reader? v true innuendo?

## Single Meaning Rule

- Court affirmed long-standing CL rule that you have to *decide on a single meaning on a single imputation* where multiple can be read. (**Cornes**)
  - i.e. Girlfriend = lesbian v friend

## c. Is The Matter Defamatory?

### Tests for Defamation:

1. Injure reputation of another by exposing to *hatred, contempt or ridicule* (**Parmiter**)
2. *Lower plaintiff* in estimation of *right thinking/ordinary members* of society (**Sim per Lord Atkin**) Issue: Moral judgement?
  - **Mallik**: Tendency test: don't need to show actual adverse damage
  - **Byrne v Deane**:
    - Facts: Report of illegal gambling. Anon note: But he who gave the game away, May he byrne in hell and rue the day.
    - Imputation: Underhand disloyalty to fellow club members.
    - Held: Even though some may consider trivial, right thinking man cannot ever view reporting a crime as defamation.
3. Cause people to *shun and avoid* (**Youssoupoff per Slessor LJ**)
  - Cf. test 2: No moral discredit, just shun & avoid. Not reputation?
    - Sexual impurity cases
    - Disease cases
    - Insanity cases
4. Display in *ridiculous light / expose to ridicule* without moral blame (**Boyd**)
  - Fat and slow couldn't play his position (NO)
  - So fat was ridiculous (YES) – In ridiculous light but not disparaging
  - Let condition to degenerate; hopeless player (YES) – impute fault (2)
  - Publish naked photo: think consented (YES) (**Ettingshausen**)