

## Defamatory test

Whether the published matter would be likely to lead others to think less of the plaintiff (**Radio 2UE Pty Ltd v Chesterton (2009)**)

Whether the reader would have understood the implications as causing ordinary people to think less of the plaintiff (**Farquhar v Bottom [1980]**)

Standard of general community rather than sectional section (**Hepburn v TCN Channel Nine Pty Ltd [1983]**) (e.g. saying someone is gay is not defamatory for 'general community', even though it can be defamatory in some cultures. (**Rivkin v Amalgamated TV services Pty Ltd [2001]**, "police informer" is not defamatory as it only lets criminals think less of a person (**Mawe v Pigott (1869)**), she gets abortions is not defamatory (**Hepburn v TCN Channel Nine Pty Ltd [1983]**))

- Reputation exceptions
  - Ridicule (**Ettinghausen v Australian Consolidated Press Ltd and Honson-Young v Bauer Media Ltd**)
  - Shun and avoid (e.g. mention of infectious illnesses)
- Professional reputation:- "Impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his or her trade or business or professional activity (**Drummon Jackson v British Medical Association [1970]**)
- Bane and antidote: defamatory but reputed in an another part (**Charston v Newsgroup** (page 49)
- The intention of the author does not matter (**Lee v Wilson (1934)**)
- Previous tests
  - Expose plaintiff to hatred, contempt or ridicule (**Parmiter v Coupland (1840)**)
  - Cause plaintiff to be shunned or avoided (e.g. **Morgan v Lingen (1863)**)
  - First is too narrow and second is more of an exception to damages?? (**Radio 2UE Pty Ltd v Chesterton (2009)**)
  - E.g. **Boyd v Mirror Newspapers Ltd**: footballer "waddled" to the field. He was overweight. Defamatory because it caused people to think less of him, but not because it embarrassed him.

## Publication

- If the matter is published in a book, an ordinary reasonable person would be likely to expect that care had been taken by the author and to read the material with a high degree of attention (**Farquhar v Bottom [1980]**)
- Written material authors would have to re-read and check if what he say saying is correct (**Amalgamated Television Services Pty Ltd v Marsden (1998)**)
- Broadcasts and electric media are less serious as viewers not have the opportunity to hear the words again or to study them. The overall

impression matters more (**E.g. Gorton v Australian Broadcasting Commission (1973), Amalgamated Television Services Pty Ltd v Marsden (1998)**)

- The ordinary person is prone to lose some thinking (in digital broadcasts) (**Aqua Vital Australia Ltd v Swan Television & Radio Broadcasters Pty Ltd (1995)**)
- When analyzing transcripts, it has to be done in recording form and not in transcript (**Radio 2UE Sydney Pty Ltd v Parker (1992)**)