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Media and the Libel Law: The Malaysian Experience

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Abstract

The media have assumed and reinforced their important role as a legitimate reflection of public interest and opinion. However, the media are peculiarly vulnerable to error of confusing the public interest with their own interest. As a matter of fact, people have increasingly begun to seek the refuge and vindication of litigation. Malaysian media have traditionally focused on nation-building, social cohesion, and “responsible journalism”. This paper aims to examine the operation of libel law on the media in Malaysia. The paper concludes that although there is no mention of press freedom in the Malaysian Federal Constitution, Article 10(1)(a) is assumed to protect press freedom. However, press freedom is not absolute.

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1. Introduction

No constraints free media system exists in the world. Except for a few countries, the states of the world invest energies, enact laws and frame regulations to keep the media performing their most desired functions, particularly the watchdog role (Weaver, Buddenbaum, & Fair, 1985). Governments- whether popular or with weak support, often feel vulnerable to media criticisms which results in media laws and regulations (Iqbal & Khan, 2009). Malaysia stands no exception. All communicators must be aware of the tort of defamation. It is probably the most serious curb to media freedom (Carey, 1996). Those working in the media must be alert to its risk at every stage of

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the publishing or broadcasting process. Every person in the chain of communication may be sued for damages. Words published by the media no longer roll over us without penetrating; instead, they sink in through the skin and work inner damage, and a consensus appears to emerge that this psychic damage is serious and must be paid for (Awad, 1999). This shows how serious libel law operates on the media. Malaysians have become more litigious and libel law is bound to gain significance.

In Malaysia, the media being a very powerful channel for conveying and disseminating information, one perhaps may argue that the media should not be regulated or controlled in order to perform this function in a healthy manner. But it is equally important to note that, if appropriate measures are not designed and effectively enforced, the media can be counter-productive. There is no doubt that there is a need for the media to exercise self-regulation, and to be a socially responsible vehicle of communication. It is unacceptable in a democratic environment for the media to spread lies about a person, which affects his reputation under the disguise of press freedom. Thus, libel law gives an avenue for a person defamed to wipe clean the mud that was slung at him (Shuaib, 1999). In other words, the law seeks to console and to put right what was wronged.

This paper examines the operation of libel law on the media focusing mainly on the Malaysian experience. In this paper, we intend to discuss the operation of libel law on the media from the perspectives of public and private figures. People who are defined as private citizens by a court must show only that the libelous information was false and that the journalist or news organisation acted negligently in presenting the information (Awad, 1999). On the other hand, public figures must show not only that the libelous information was false but that the information was published with actual malice- that the journalist or the news organisation knew the information was untrue or that the journalist or news organisation deliberately overlooked facts that would have proved that the published information was untrue (Awad, 1999). The paper is divided into four parts. The first part focuses on the concept of libel law in Malaysia. Under this part, we shall briefly address the meaning of libel as opposed to slander in the context of defamation and the requirements for filing a libel suit. The second part deals with the operation of libel law on the media. Here we intend to focus the discussion on some specific laws in Malaysia that could be invoked by both private and public figures in seeking for justice as a result of their reputation being affected by a publication appearing in the media. The third part turns attention to the defences available to the media in the event that they are being sued for publishing libelous information. The fourth part shall focus on the conclusion, which will embrace some recommendations for future consideration as far as the operation of libel law on the media is concerned.

2. The concept of libel law

In Malaysia, the concept of libel law cannot be addressed in isolation without making a cross reference to the law of defamation. The law of defamation in Malaysia is primarily based on the English common law principles except insofar as it has been modified by the Malaysian Defamation Act 1957 (Talib, 2010). The Malaysian Defamation Act 1957 is in *pari materia* with the English Defamation Act 1952 (Talib, 2010). Hence, it is perhaps vital for us to first look into the meaning of the term ‘defamation’ before focusing the discussion on the concept of libel law. The Malaysian Defamation Act 1957 does not define the term ‘defamation’. The matter is governed by common law. Under common law, defamation refers to “the publication of untrue statement of fact which reflects on a person’s reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him” (Carey, 1996, p. 39; Rogers, 2010; *Sim v Stretch* ((1936) All ER 1237, p. 1240; Williams & Skinner, 2003). The common law recognized two forms of defamation that is libel and slander. In England, libel is a tort as well as a crime whereas slander is only a tort and not a crime (Talib, 2010). In Malaysia, libel and slander are both torts and crimes (Talib, 2010). It is an established rule that defamation occurs where a material is read, heard or observed and the person defamed has a reputation to protect, not where the material originated (Aun, 2003). Thus, in the context of this paper the authors intend to pay attention to the discussion on libel rather than slander.

Turning back to the concept of libel law, the authors would like to point out from the very beginning the difference between libel and slander. The difference lies in the means or medium by which the defamatory material is communicated. Libel is defamation in a permanent form usually visible to the eye, such as items in writing which include e-mail, pictures, statutes or effigies (Talib, 2010; Rogers, 2010; Carey, 1996; Price, Duodo, & Cain, 2010). Libel is actionable *per se*, which means that a plaintiff need not prove any damages. In other words, a plaintiff who brings libel action does not have to prove that he has suffered any loss or injury as a result of the published statement. This is because the law presumes that when a person’s reputation is assailed, some damage must result

(MGG Pillai v Tan Sri Vincent Tan Chee Yioun & Ors (1995) 2 AMR 1776; Ahangar, 2007). On the other hand, slander is defamation in a temporary or transient form (Talib, 2010; Rogers, 2010; Carey, 1996). Publication is made through spoken words or gestures. It is not actionable per se since it requires proof of actual damage, e.g. that the plaintiff has lost his job.

2.1. Requirements for filing a libel suit

In order to prove a defamatory statement on the basis that it is libelous, the plaintiff must establish the element of this tort, which are: (i) the words are defamatory, and (ii) the words refer to the plaintiff, and (iii) the words have been published (Talib, 2010; Rogers, 2010; Evans, Chia, Mathiavararam, 2008; Carey, 1996). Looking at the first element, it would suffice to note that what is required on the part of the plaintiff is to establish that the statement/word that forms the subject matter of his complaint is defamatory. As a general rule, this requirement is satisfied if there is harm to reputation (SB Palmer v AS Rajah & Ors (1949) MLJ 6; Abdul Rahman Talib v Seenivasagam & Anor (1965) 1 MLJ 142; Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Berhad & Anor (1973) 2 MLJ 56). Perhaps it is important to note that statements/words may be defamatory in one or three ways, in its natural and ordinary meaning, or by way of innuendo or by juxtaposition. For example, as to the natural and ordinary meaning of the word, reference can be made to the case of *Institute of Commercial Management United Kingdom v News Straits Times Press (Malaysia) Bhd* ((1993) 1 MLJ 408), where the plaintiff claimed damages against the defendant for libel in respect of words contained in an article published by the defendant entitled 'British diploma mills step up sales racket'. The plaintiff alleged that the words were calculated to injure and disparage the plaintiff in its trade as an educational establishment and examining body; that the plaintiff had in fact been injured in its credit and reputation as such. The court held that any ordinary reasonable person reading the article would link Institute Commercial Management with one of those organisations which operated the 'diploma mills'. The words had a strong tendency to lower the plaintiff in the estimation of right-thinking members of society generally or the parents of potential students or the potential students themselves. Citing *Hough v London Express* ((1940) 2 KB 507), the court reiterated that it was immaterial whether the words were believed by those for whom the article was published.

As to the second element, the plaintiff must show that the statements/words were published of and concerning him. In other words, the statements/words must refer to him. It will be no defense that the plaintiff is not referred to by name if he would be capable of being identified by the reasonable person. Again, the words/statements used may be taken to refer to the plaintiff where he is mentioned by name, even if the defendant did not intend to refer to the plaintiff. Hence, reference to the plaintiff is obviously established if the plaintiff's name is clearly stated, irrespective of whether the defendant has the intention to defame the plaintiff or otherwise. An example of reference to the plaintiff by external or extrinsic facts can be found in *Sandison v Malayan Times Ltd & Ors* ((1964) MLJ 332), where an article was published in a newspaper claiming that a senior expatriate executive of a Rubber Industry Replanting Board had been dismissed for corruption. The court held that although the executive was not named, the date of dismissal was mentioned and indeed that was the date the plaintiff ceased holding that position. The article also reported on who succeeded the dismissed executive and the identity of the successor was well known, the defamatory words clearly indicated the plaintiff as the corrupt executive.

Regarding the last element, for libel to be actionable (i.e. for the plaintiff to be able to sue the defendant) it must be communicated to a third party, i.e. some person other than the plaintiff (*Wan Abdul Rashid v S Sivasubramanian* (1984) 1 MLJ 385). Therefore, if the printed materials are not seen by third parties, and only the plaintiff sees them, publication does not arise (Evans et al., 2008). However, it is of paramount importance to note that there are exceptions to the rule that publication to a third party constitutes publication of the law of defamation. Firstly, no publication is deemed to exist if the communication is made between spouses, as husband and wife are regarded as one entity (*Wennhak v Morgan* (1888) 20 QBD 635). There is, however, publication where the defamatory words are conveyed to one spouse concerning the other spouse (*Theaker v Richardson* (1962) 1 WLR 151, CA). Secondly, mere distributors such as newspaper delivery men are also excluded from being the 'third party' for the purposes of establishing publication (Talib, 2010). Similarly, a typist or printer who hands back to the author the defamatory material to be proofread or corrected does not publish the libel to the author. The typist or printer is merely an agent of the author. The same conclusion applies where a clerk or typist or other office staff types or prints out a dictation of defamatory words by the superior (*John Lee & Anor v Henry Wong Jan Fook* (1981) 1 MLJ 108, FC). Hence,

where the words are printed in a newspaper, the element of publication would only be satisfied when they are read by readers.

3. The operation of libel law on the media

Although the media act as a powerful channel for conveying and disseminating information in a democratic environment, it is undeniable fact that the media at times are peculiarly vulnerable to error of confusing the public interest with their own interest. Hence, it is vital to note that in the process of conveying and disseminating the information, there is a need for the media to exercise self-regulation and to be a socially responsible vehicle of communication since the right to publish is not absolute. In essence, and in truth, the various laws that we have today were never intended to “kill” the creativity of journalists and media people, but to sanction and bring to book the writers who carry poison pens, and those so-called writers who love to lace their writings with innuendoes, defamation and sedition that may lead to instability and lawlessness.

Having said that, experience in Malaysia shows that there are host of laws regulating the operation of the media. The restrictions imposed on the media can be prior or subsequent, civil or criminal (Faruqi, 2002). For example, all censorship laws constitute prior restraints. Some of these laws regulating the operation of the media are: the Official Secrets Act 1972, the Printing Presses and Publications Act 1984, the Sedition Act 1948, the Communications and Multimedia Act 1998, the Defamation Act 1957, etc. It is not the intention of the authors to address all these laws. In the context of this paper, the authors only intend to address the Defamation Act 1957 and the Malaysian Penal Code concentrating mainly on libel as a form of defamation by looking at how libel law operates on the media citing the Malaysian experience.

3.1 *The Defamation Act 1957*

As mentioned earlier, although the media play a vital role in a democratic society, they can also be source of conflict through the harm that they cause to society. When media practitioners do their work unprofessionally their products can be potentially harmful to individuals, organizations, societies and the world at large (Chiyamwaka, 2008). Harmful media products can incite hatred and violent conflicts, damage people’s and organizations reputations, businesses and disrupt social and economic life in general (Chiyamwaka, 2008). This is why, although not only for this reason, governments come up with different legislation to protect the public from harmful effects of irresponsible media. In Malaysia, we have the Defamation Act 1957 playing this vital role. The Malaysian Defamation Act 1957 is in *pari materia* with the English Defamation Act 1952.

The Malaysian Defamation Act 1957 does not define the term ‘defamation’. The matter is governed by common law. Furthermore, the Defamation Act 1957 is silent on what constitute defamatory matter (Dhaliwal, 2003). The courts have followed closely the law in England (*Hough v London Express Newspaper Ltd* (1940) All ER 31; Dhaliwal, 2003). In a local case of *Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd* ((1973) 2 MLJ 56), where the defendant newspaper published among others, the following statements regarding the plaintiff: ‘The Menteri Besar considers Syed Husin Ali as wanting to arouse the hatred of the Malaysian people against the Government and the British; the University lecturer was spreading subversive ideas in order to poison the thoughts of the Malays.’ The issue before the court was whether the words were defamatory of the plaintiff. It was held that by inference or implication, the words conveyed the meaning that the plaintiff was dishonest, disloyal to the Government, a subversive element and ungrateful. The plaintiff claim was accordingly allowed. Under the Act, there are various sections addressing the law of defamation in the context of both libel and slander. For example, Section 2 of the Act is the interpretation section defining terms such as: newspaper, words, etc. Apart from Section 2 of the Defamation Act 1957, Section 3 of the Act provides that for the purpose of the law of libel and slander the broadcasting of words by means of radio communication shall be treated as publication in a permanent form (Hussain, 2009).

It would suffice to note that, though it is not possible to make reference to all the Sections of the Defamation Act 1957, it could still be argued that the Act protects both private and public figures in Malaysia from being victims of irresponsible journalism or the media from damaging their reputation. In other words, the law of defamation seeks to protect a person’s dignity and honour. Thus, although the law recognizes that the damage to a person’s reputation cannot be undone, the law seeks to console and to put right what was wronged (Shuaib, 1999).

3.2. *The penal code*

In Malaysia, a victim of libelous publication by the media can file a criminal suit in a court of law. This is because libel is not only considered a tort, but a crime as well (Talib, 2010). Hence, at this juncture it is vital to make reference to some of the relevant provisions of the Penal Code in addressing the operation of libel law on the media. The relevant provisions of the Penal Code are: Section 499 deals with a situation where defamation is said to have taken place, Section 500 is on punishment for defamation, Section 501 is on punishment for printing or engraving matter known to be defamatory and Section 502 provides for punishment for sale of printed or engraved substance containing defamatory matter. Again, the main purpose of the Penal Code based on these penal provisions is to protect the reputation of a person i.e. from being harmed or destroyed. We should by all means avoid irresponsible reporting by the media since it can cause irreparable personal harm both to private and public figures.

Apart from the Defamation Act 1957 and the Penal Code, reference must be made to the recent amendment i.e. Section 114A of the Evidence Act 1950. The amendment was passed by Parliament with little debate in April 2012. The Section provides for “Presumption of Fact in Publication” and it states that “any owner, administrator, host, editor, subscriber of network or website, or owner of a computer or mobile device is presumed to have published or republished its content”. A careful study of this new law perhaps could be viewed as harsh in the context of its application to the ordinary Internet users. The authors feel that this new law should be viewed from the perspective of libelous statements/words focusing mainly on the electronic media since defamation requires that the plaintiff must establish the element of publication i.e. communication to a third party.

4. Defences available to the media against a libel suit

The media ought to serve the public with thoroughness by providing them with fact-based and accurate information. True and accurate information helps the public to understand issues and therefore able to develop informed opinions and make informed choices (Chiyamwaka, 2008). Hence, it is vital to note that it does not mean that every publication that caused a person to be ridiculed by right-thinking members of the public or lower him in their estimation would result in liability for defamation. The law provides for some defences i.e. if the fact that was published is the truth, then it would be a complete defence.

4.1. *Justification/Truth*

The defence of justification or truth, is an absolute defence. Once the defamatory statement is proven to be true, the law will not protect the plaintiff (*Institute of Commercial Management United Kingdom v New Straits Times Press (Malaysia) Bhd* (1993) 1 MLJ 408). The state of mind of the defendant at the time of the publication is irrelevant. Malice therefore, does not defeat the defence of justification. The burden of proof lies on the defendant to prove his allegation. The defendant is required to prove the truth of all his allegations which are defamatory and materially injurious. Hence, a defendant may escape liability for his defamatory allegation if he can prove the truth of the facts within the allegation. In the context of several allegations being made, the defendant is not required to prove the truth of all the allegations. For example, in *Voon Lee Shan v Sarawak Press* ((2004) 5 MLJ 430), where the defendant made only one allegation of harbouring illegal immigrant and the court held that its truth must be proven. This defence of justification or truth is provided under Section 8 of the Defamation Act 1957.

4.2. *Fair comment*

It is in everyone’s interests in a free society that the media should be able to comment without constraint on matters of public interest. The courts will give protection to such comment as long as it arises from an honestly held belief and is not made maliciously. Thus, a comment which is honestly and fairly made may absolve the media from liability. This defence is provided under Section 9 of the Defamation Act 1957. In order to rely on this defence, the media must fulfil the following conditions: the words are in the form of comment and not a statement of fact (although it may consist or include inference of facts); the comment must be based on true facts (*Mohd Jali Haji Ngah v The New Strait Times Press (M) Bhd & Anor* (1998) 5 MLJ 773); the comment is fair and not malicious; and the comment concerns an issue of public interest (*Pustaka Delta Pelajaran Sdn Bhd v Berita Harian Sdn Bhd*

(1998) 6 MLJ 529). All these elements must be satisfied by the media in order to rely on this defence.

4.3. *Qualified privilege*

Statements made on an occasion to which the defence of qualified privilege attaches cannot be the subject of a successful libel action unless it can be shown that the defendant i.e. the media acted with malice in publishing the statement complained of. Therefore, the defence is limited to fair and accurate reporting and can be defeated by showing that the defendant was actuated by express malice (Williams & Skinner, 2003; Evans et al., 2008). Extraneous libellous matter cannot be intertwined. The plaintiff will usually be able to prove malice where he can show that the defendant did not believe the truth of the statement he made. This defence is provided under Section 12(1) and (2) of the Defamation Act 1957. However, it should also be noted that publications by newspaper or broadcasting station or other agent and for purposes other than those listed in the Schedule to the Defamation Act 1957 may still be privileged under common law principles of qualified privilege. The courts have recognized that mass media has a duty to inform the society on matters of public interest. This does not constitute a departure from common law principle or transplantation of principles from other jurisdiction (Shuaib, 1999). It is now clear that defendants in many common law jurisdictions can seek to rely on qualified privilege (Kenyon & Leng, 2010). This defence is available through the test set out in *Reynolds v Times Newspapers* ((2001) 2 AC 127, HL) and protects “responsible journalism” (Kenyon & Leng, 2010).

4.4. *Absolute privilege*

This privilege perhaps could be understood better if it is put in the words of the media language i.e. privilege of reporting. It is a fact that one has to acknowledge that there are instances where words which are harmful to a person’s reputation are not actionable, as the publication of these words are protected by absolute privilege. In the context of the media, the defence of privilege of reporting flows from fair and accurate reporting of official proceedings i.e. coming from the legislative, executive and judicial bodies. Obviously, this defence is often cited by reporters covering such proceedings. If, for example, during a court testimony, a judge accuses a director of a company of embezzling the company’s fund, the reporter is free to report that the charges were made so long as the story accurately conveys what the judge said. Any elaboration or interpretation of the judge’s remarks by the reporter would not necessarily be protected. This defence of privilege applies to all participants in official proceedings such as a remark during a parliamentary proceeding, the testimony of a witness during a trial, etc. Hence, this privilege extends to any reports, papers, votes or other matters that Parliament orders or authorizes to be published. The availability of this defence can further be seen from Sections 11(1) and 12(1) of the Defamation Act 1957.

4.5. *Unintentional defamation*

This defence is provided under Section 7 of the Defamation Act 1957. The defence is appropriate in a situation where a reporter writes what is alleged to be defamatory article in a magazine, and the plaintiff sues both the reporter and the publisher of the magazine. The defence may only be raised in the following circumstances: Firstly, if the words are defamatory of the plaintiff in their natural and ordinary meaning which includes a false innuendo, innocent publication is proved when the publisher can show that- (a) he did not intend to publish them of and concerning the plaintiff; (b) he did not know of the circumstances in which the words might be understood to be referring to the plaintiff; and (c) he had exercised all reasonable care in relation to the publication (Talib, 2010; Evans et al., 2008). Secondly, if the words are defamatory of the plaintiff due to certain external factors by way of true innuendo, innocent publication is proved when the publisher can show that- (a) he did not know of the circumstances in which the words might be understood to be defamatory of the plaintiff; and (b) he had exercised all reasonable care in relation to the publication (Talib, 2010). In both cases, any reference to the publisher includes his servant or agent who is involved with the contents of the publication. Once innocent publication is established, the defendant may make an offer of amends. Offer of amends is defined under Section 7(3)(a) of the Defamation Act 1957. If the offer of amends is accepted by the plaintiff and is duly performed no action may be taken or continued against the defendant, although this acceptance by the plaintiff does not affect his rights to claim against and other person jointly responsible for the publication.

4.6 Apology

Where the defence of unintentional defamation is not available (for example because the publisher had reason to believe that the article referred to the plaintiff and was false and defamatory of him) it may still be advisable in certain circumstances to make a prompt correction and apology (Carey, 1996). Such action may have the effect of placating many would-be plaintiffs. A further advantage is that where the plaintiff is not dissuaded from litigation, publication of a prompt apology should reduce any damages eventually awarded. Hence, an apology may be an effective defence although the facts of the case may need to be scrutinized in order to determine the effectiveness of any purported apology by the defendant.

4.7 Mitigation of damages

The amount of damages awarded by the court may take into consideration what is known as mitigating factors, which if accepted by the court will result in a lower award of damages to the plaintiff. Mitigating factors include the existing reputation of the plaintiff, the plaintiff's behaviour towards the defendant and the extent of publication. Thus, in a situation where the defendant offered to make an apology to the plaintiff, this could also be considered as a factor in mitigating the amount of damages. This is provided under Section 10 of the Defamation Act 1957.

5. Conclusion and recommendations

It is evident from the above discussion that although the media play an important role as a channel for conveying and disseminating information, there is a need for the media to exercise self regulation and to be a socially responsible vehicle of communication. Self regulation helps the media respond to legitimate complaints and therefore correct the errors and mistakes that are a genuine concern of the public. When the media act irresponsibly several things happen i.e. unnecessary harm is done to people; the media loses credibility; it weakens the media's vital role as watch dogs; the well being of democracy suffers, etc. It is unacceptable for the media to spread lies at the disguise of press freedom while harming others reputation. Defamation law is a significant feature of social processes of news production, influencing the development and practice of responsible journalism.

By looking at the Defamation Act 1957 and the Malaysian Penal Code above, it would suffice to note that we have these laws in order to protect a person's reputation regardless of the notion of press freedom since the right to publish by the media is not absolute. In Malaysia, freedom of speech which includes freedom of the press is qualified. This is by virtue of Article 10(2) of the Federal Constitution and one of the restrictions is that of defamation. Despite this restriction, the law still provides the media with some defences in case they are being sued for libel. Hence, it does not mean that every publication that caused a person to be ridiculed by right-thinking members of the public or lower him in their estimation would result in liability for defamation.

Having said that, perhaps it is timely in the context of this study to look into the issue of mega-defamation suits and how it could be resolved in Malaysia. It should be noted that the Defamation Act 1957 highlights the gross discrepancies between damages awarded by the courts in relation to physical injuries and defamation cases and evidences the urgent need to amend the law dealing with defamation. There is lack of balance under the present law as the loss of a limb or the loss of a man's quality of life is worth much less than a slight to one's reputation. For example, in *Ling Wah Press (M) Sdn Bhd v Tan Sri Dato' Vincent Tan Chee Yioun & Ors* ((2000) 3 AMR 2991), the Federal Court in affirming an enormous award of damages stated that while an award in personal injury cases is to compensate the plaintiff for his pain and suffering, past, present and future; the element of punishment or deterrence does not enter into the award, as in awards in defamation cases. The decision of the Federal Court in this case does not really help to overcome the problem of mega-defamation suits especially against the media because it allows the plaintiff to quantify claims for general damages in a defamation suit.

In addition to the above, apart from the quantum of the awards claimed, the quantification of general damages is another disturbing trend that has developed from these mega-defamation suits. This issue arose in the High Court Decision of *MBf Capital Bhd v Tommy Thomas (No.2)* ((1997) 3 MLJ 403, where it was held that an award of damages for defamation cannot be based or compared with awards of damages for personal injuries. The court stated that awards in personal injury cases and defamation actions serve different purposes, have different elements and

different histories. As such, awards for pain and suffering in personal injury actions do not provide guidance as to what amounts to a reasonable award damages in a defamation action. Based on the court's decision above, it is sad to note that the quantification of general damages is left in the hands of the plaintiff. In other words, a plaintiff in a defamation action may stipulate the sum he is claiming for as a measure of his worth in the form of loss of reputation. Thereafter it is for him to establish that claim (and its corresponding monetary value) by way of proof in court. The authors are of the opinion that parties should not be allowed to quantify their claims for general damages as a matter of public policy since quantification of a figure particularly one that is high may be oppressive to the defendant and the public at large, especially the media and unjustifiably stifle freedom of speech. Thus, it is submitted that, although libel is a tort actionable per se i.e. without proof of actual harm, evidence ought to be adduced by the plaintiff to enable the court to assess the damages suffered and to make a reasonable award, otherwise the measure of damages awarded by the court may be speculative.

Apart from mega-defamation suits and quantum of the awards claimed, perhaps it is also an opportune time to look into the drawbacks of defamation especially in the context of the right to privacy. The first drawback is that, truth is a complete defence enabling personal information about the claimant, however embarrassing, to be published with impunity provided the defendant can prove that what he said was true. The second drawback is that to sustain a libel case the words complained of must lower the claimant's reputation in the eyes of right-thinking members of society (Rozenberg, 2004). It is easy to think of information about a person that is not defamatory but which he would rather keep private: for example, that he suffers from piles (Rozenberg, 2004). It seems therefore defamation law cannot protect someone's right to privacy.

As a concluding remark, defamation law is one specific area in which tensions around what constitutes responsible journalism, and who decides, have long existed. It is therefore important that for the media to carry out their important role effectively and efficiently, the media should operate within a well defined code of ethics while maintaining their freedom and editorial independence. Since irresponsible journalism invites restriction, robbing off the media its freedom, professional conduct and ethical practice are vital to safeguarding freedom of the media and ensuring that public trust invested in the media is sustained.

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