

Internet Defamation, Reputation Management, and the Law in the Internet Age

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"Reputations are everything."

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1. Abstract

Defamation is legally defined as the act of communicating false statements about an entity or person that directly or indirectly harms its reputation. The proliferation of the internet created a new legal chapter focused on online defamation. Internet defamation lawsuits can be complex, resource intensive, and ambiguous to navigate. This results from both the fact that this is a relatively new legal discipline and reputations are intangible. Consequently, the value of a strong reputation or a lost one is inherently subjective.

As an expert witness and professional focused on solving digital crisis and subsequent reputation repair issues, I understand the amalgam of defamation, reputation, and the internet. I authored this paper to educate lawyers help them make the most informed decisions when representing plaintiffs and defendants. Including the relevant case law examples cited, I hope this whitepaper provides a resourceful framework for counsel, while also reinforcing the value of proactively building a positive online reputation to inoculate you or your business against reputation risk.

2. Introduction

Every human being is born with intrinsic rights and liberties. As philosopher Immanuel Kant said,

“ There is only one innate right, freedom (independence from being constrained by another’s choice), insofar as it can coexist with the freedom of every other in accordance with a universal law.¹ ”

Kant further explains that this innate right to freedom

“ belongs to every human being by virtue of his humanity.² ”

One of the most fundamental human rights, guaranteed in virtually every jurisdiction around the globe, is freedom of speech and expression. However, people sometimes go too far in the course of exercising this right and can violate another person’s right to privacy, and share information that can harm that person’s reputation. When such a situation escalates to the degree that legal action is taken, the alleged violation is referred to as defamation. Defamation cases are actionable as a private wrong of tort under civil law.

Defamation cases can be complex to litigate, and this white paper will unravel some of those complexities. The first section will provide a fundamental definition of defamation and a breakdown of its elements, types, and forms, including the concept of innuendo.

The second section will address the concept of reputation, which is central to defamation cases. It will examine what reputation is and the impact a damaged reputation can have on an individual or entity. It will then explore why safeguarding an individual or entity’s reputation against attack is important, and how modern reputation management practices can provide protection in the internet age.

1. Immanuel Kant, *The Metaphysics of Morals* (Cambridge: Cambridge University Press, 2017), 237.

2. Kant, 237.

The third section will deal with the concept of internet defamation as an advanced form of defamation. That discussion will include the forms defamation can take and will highlight the difference between internet defamation and defamation in the real world. The latter part of section two will contrast freedom of speech and expression with an individual's right to privacy, with a brief exploration of international principles that balance these rights. The section will conclude by addressing the effect of social media on defamation cases and how defamation differs for individuals and businesses in the internet age.

The fourth section of this white paper will analyze different strategies used in internet defamation cases and will deconstruct these strategies from the perspective of both the person or entity whose rights have been infringed and the party accused of wrongdoing. It will also weigh the two options available in these cases, namely, to take legal action or to pursue a remedy outside the courtroom.

The fifth section will assess the importance of expert witnesses in a defamation suit when the case is at trial in a court of law. It will specifically address who should be eligible to serve as an expert witness, what one can expect an expert witness to offer, and how the witness can help the party subject to the suit as well as the court and judge who have the responsibility of weighing the matter in dispute.

The sixth section will explore the unique challenges involved in maintaining a positive online reputation, compared to one's reputation in the real world. It will also introduce the principles of online reputation management, breaking its best practices down into four strategic activities.

The seventh section will offer a study of landmark defamation and internet defamation cases in major jurisdictions around the globe. It will discuss cases from seven countries, the issues raised in each case, and the decisions of the courts involved.

Finally, the author will provide a balanced summary of all the concepts, strategies, and cases examined.

3. Defamation in General

According to the Oxford Advanced Learner's Dictionary, defamation is

“ the act of damaging someone's reputation by saying or writing bad or false things about them. ”

The Merriam-Webster.com Dictionary definition differs only slightly

“ the act of communicating false statements about a person that injure the reputation of that person. ”

In simpler terms defamation refers to damage done to a person or entity's reputation when a second party says or writes an untruthful or false statement about them. Defamation is not a criminal offense; it is considered a civil wrong or tort. A person who has suffered loss of reputation due to a defamatory statement can sue the person who made the statement under the defamation laws of the country with jurisdiction.

The Five Elements of Defamation

For any act to be considered defamation, the following constituent elements must be present³

— There must be a statement of fact.

— The statement must be published i.e communicated by a third party.

— The statement must cause injury to the reputation of someone.

— The statement must be false.

— The statement must not be privileged.

3. Michelle Seidel, "How to Win a Defamation Lawsuit," Legal Beagle, (December 24, 2019), <https://legalbeagle.com/8325716-win-defamation-lawsuit.html>.

All five of these elements, which this paper will examine in detail in a later section, must be proved in an internet defamation case. Put simply, however, courts deem defamation to have occurred when a person has knowingly published an alleged statement of fact (rather than a statement of opinion) that is false, and when the statement has subsequently caused damage to the subject's reputation among a class of people or the public at large.

Defamation Subtypes

Defamation is inflicted in one of two ways: in speech or in written content. Defamation has two subtypes.

Slander is defamation via spoken words. The two types of slander are: slander and slander per se. In cases of slander, an aggrieved person can successfully prove that the wrongdoer made a defamatory statement to at least one person and that this act resulted in actual loss or damage to the person.⁴ For example, Person A makes a statement that Person B, a restaurant owner, sells contaminated food to their customers, and Person B subsequently loses customers and money.

Slander per se differs in that no proof of special damage is needed because a certain category of defamatory statement is involved that is presumed to be damaging to the aggrieved person. These categories vary according to time and place.⁵ An example of slander per se would be Person A incorrectly stating that Person B has a specific communicable disease. Such a claim would presumably cause damage to Person B's reputation.

4. Coulter Boesch, "Defamation Law: Legal Elements of Libel and Slander," AllLaw, <https://www.alllaw.com/articles/nolo/civil-litigation/defamation-libel-slander.html>, (accessed May 15, 2020).

5. Boesch.

Libel is defamation that occurs when a false statement about someone is published in written form, such as in a newspaper or magazine, on a website or web portal, or anywhere else in the public sphere, and causes damage to the person about whom it is written.

Defamation Per Quod and Defamation Per Se⁶

6. Aaron Larson, "Defamation: Libel and Slander," ExpertLaw, (May 8, 2018), https://www.expertlaw.com/library/personal_injury/defamation.html

7. SLR 39_432., [1902]

From a legal perspective, the principal difference between defamation per se and defamation per quod is the burden of proof required from the plaintiff that they incurred damages from the defamatory act. In a case of defamation per se, the damage is apparent because of the character of the defamatory statement. The opposite is true in a case of defamation per quod, for which the defamatory character of the alleged statement is not immediately apparent, and the plaintiff must present facts to the court to prove they suffered damages because of it. Thus, a case of defamation per se involves proving only the elements of defamation, whereas a case of defamation per quod involves proving those elements as well as the damage sustained.

In the Scottish case of Morrison v. Ritchie and Co.,⁷ the plaintiffs—a couple—claimed that a false and defamatory statement had been published about them, saying that the wife had given birth to twins on a specified date. Claiming that someone gave birth to twins is not defamatory per se, but because the date specified was just a month after the couple's wedding, the statement was found to be defamatory. This is an example of defamation per quod. The plaintiffs in this case were required to present documentation of their marriage to the court to prove that the published statement harmed their reputation, especially that of the wife.

Innuendo

At times, a statement is not defamatory in itself, but some secondary meaning might be attached to it that could render the statement defamatory. In a legal setting, that secondary meaning is called innuendo.

For example, in the aforementioned case, the published statement that the couple had given birth to twins was defamatory only because the couple's wedding took place just one month before the day the statement was published. What the statement insinuated (that the children were conceived outside of wedlock) is what made it defamatory. Similarly, if a statement were made that an unmarried woman gave birth to a baby, it could be considered defamatory because the inference is that the child is illegitimate.

If a statement is not defamatory prima facie, but the plaintiff alleges that it has damaged their reputation, then the plaintiff must prove the element of innuendo to the court.

4. Reputation and Its Relevance in the Internet Era

8. Law Commission of Ontario, "Defamation Law in the Internet Age," (March 2020), <https://www.lcocdo.org/wp-content/uploads/2020/03/Defamation-Final-Report-Eng-FINAL-1.pdf>.

Every state and country has laws protecting an individual or entity's reputation from being wrongly defamed. The primary goal of these laws is to strike a balance between providing that protection and allowing for freedom of expression.⁸ This section will clarify the concept of reputation, its relevance in the online world, its impact, and the protections that exist for it. This section will also address the concept of reputation management and offer detailed measures one can take to manage their online reputation.

The Merriam Webster Dictionary defines reputation as

“overall quality or character as seen or judged by people in general or recognition by other people of some characteristic or ability”⁹

9. Merriam Webster Dictionary, "reputation," <https://www.merriam-webster.com/dictionary/reputation>, (accessed April 26, 2022).

10. Jane Bailey and Valerie Steeves, "Defamation Law in the Age of the Internet: Young People's Perspectives," Law Commission of Ontario, (June 2017), <http://www.lco-cdo.org/wp-content/uploads/2017/07/DIA-Commissioned-Paper-eQuality.pdf>.

11. Ibid.

Different people have different views about reputation. One survey of various age groups found that from ages 15 to 21, people's definition of reputation is very individual.¹⁰ "For some people, reputation is less about character and more about conforming to a set of shared values and expectations, such as having a good life, having a career, having a job, [or] having a family."¹¹ Yet however varied people's understanding of reputation might be, the common element is that one's reputation is based on opinions that might be different from reality.

12. Ibid.

So, a person could have a reputation for being generous or kind, but the truth might be otherwise.¹²

Therefore, reputation can be broadly defined as an opinion held by a person or people about another person, entity, or thing. Generally speaking, what people think of someone can give one a sense of how to interact with that person.

Online Reputation

In the internet era, reputation is an important tool that helps us navigate the social world. And an online reputation is distinctly different from an offline reputation. Real-world reputations are informed solely by people's opinions, but online reputations depend less on the social relationships among the people on a platform and more on the platform's design. For example, on Instagram, people want others to see how artistic or full of life they are. On Facebook, people want others to see their social side, social concerns, and social connectivity. On LinkedIn, people want to be noticed for their professional capabilities, endorsements, and connections. And businesses want the same things when they interact with customers on these platforms.

Online reputation is also quantified on different platforms in different ways—such as by the number of followers, likes, and hashtags one has. These quantifiers encourage people to post content that attracts more views and followers. Many internet users become anxious when they compare their popularity with that of others on the same platform.

Safeguarding Your Online Reputation

Simply developing a positive online reputation is not enough to prevent your brand being involved in an online reputation or defamation crisis. You must also maintain it and safeguard it against harm. This can be done in several ways:

Limit visibility: Limited visibility has benefits. The core idea of limited visibility is to seek attention without appearing to be seeking attention. Greater visibility leads to more activity on social media, which in turn attracts more attention, and that exposure could ultimately harm your reputation.

Keep privacy in mind: Not everything should be made public. Privacy settings limit the number of people who can access your information and posts. When privacy settings are enabled, the chance that someone who is intent on harming your reputation can misuse your information is lesser.

Be judicious about language: When using social platforms, consider self-censoring. Language plays a vital role in conveying your character and building your reputation.

Enlist the help of friends: Friends can help you maintain your online reputation by giving you content ideas that are acceptable to others and that are not demeaning or potentially humiliating for others.

Avoid some posts completely: Keep in mind that you should not post anything that could create trouble in real life. For example, when someone posts a nude photo of themselves, it can often remain on social media, even if the person deletes the original post, and this could damage the person's online reputation long into the future.

The Impact of Your Online Reputation

One's online reputation and their real-life reputation are quite different from each other, but the relationship between them is clear:

Inferences can sometimes be drawn about a person in real life from their online reputation. For example, a person might portray themselves as decent and kind in real life, but on social media, they might have a contrary reputation because of the nature of their posts and tags. In such a case, the person's online reputation could spoil their real-life reputation.

People who have connected only through the internet will judge one another on the basis of their online representation. Because they are completely unfamiliar with the real lives of others, they might make quick, negative, or harsh judgments.

Statements made online can be true, concocted, or a mix of the two. A fictitious story or false information can damage both your online and real-life reputation.

Rumors can be easily created and spread by internet users, and rumors can disturb a user's peace of mind by damaging their online and real-life reputations.

Group-based hatred and attacks - such as racist slurs and homophobic statements - made on through your social media or other digital platforms might harm your reputation as the perception that you believe these ideas in real life might be formed.

Experiencing online defamation could put you at risk of mental health issues or of losing your job. It could ultimately harm your career or your social relationships.

These are just some of the many reasons why some kind of monitoring of the internet is important to create a balance in society between one person's reputation and another person's freedom of expression.

Online Reputation Management

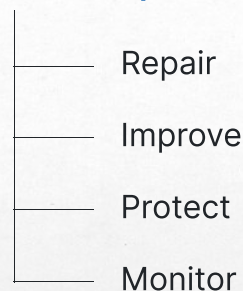
13. **Lori Randall Stradtman**, *Online Reputation Management for Dummies* (Hoboken, NJ: John Wiley & Sons), 2012.

14. **Reputation X**, *The 2018 Online Reputation Management Guide for Business*, <https://www.reputationx.com/hubfs/orm-guide-for-business.pdf>.

Online reputation management¹³ is the process of monitoring and protecting the way others perceive you and your profile (or your business's profile) online. It ensures that the majority of information people associate with you is positive and accurate. If you properly manage your content, when someone encounters content about you or your company via a search engine or on a social media platform, they can find minimal negative information.

Google Alerts is an automated service that can help you know when negative information about you arises and needs to be counteracted, but using this service alone is not enough to protect your reputation. Specialists in the field of online reputation management (ORM) use research, strategy, content development, and promotion to protect people's and entities' good names and can strongly influence branding and business decisions in the corporate world.

The four phases in the ORM process are:¹⁴



Repair

15. Steven W. Giovinco, "Online Reputation Management Strategy," Recover Reputation, https://www.academia.edu/37789871/Online_Reputation_Management_Strategy.

Online reviews have a great influence on people who are deciding their purchases, with data showing that up to 84% of customers consider reviews important. Not only that, online reputation is also important to stand out in job competition today. 35% of recruiters choose not to shortlist candidates based on their digital image or information about them on the web, while as many as 77% report using search engines to find more about job applicants.¹⁵ This is how online reputation affects businesses and individuals' careers.

When negative information about you or your company reaches cyberspace, two important actions should be taken: assess and strategize. After doing some research on what shows up about yourself or your firm on the internet, you must create a customized, targeted repair strategy to counteract any negative, publicly available information.

The most effective strategy involves suppressing and removing the negative content, then flooding the web with targeted, positive, and effective content that can be shared on social media. The content can be in the form of blog posts, social media posts and comments, pictures, videos, or anything else containing accurate, positive information that can be made publicly accessible. The repair phase consists of four steps in the repair phase:

- Remove negative and inaccurate content.
- Suppress reputation-damaging content, such as rumors that appear high in search results.
- Push down anonymous posts.
- Neutralize negative media reports and articles that have been published on the web.

Improve

16. Reputation X.

Although having no negative content that could affect your reputation online would be helpful and ideal, this is uncommon. The next step is brand building.¹⁶ Online brand building is the process of growing visibility for one's business on the internet and attracting clients. It involves using social media to drive traffic to your site so that you appear at the top of Google search results, which will help you reach more potential clients and generate new business.

To build an online presence and develop your brand, begin with social media and then progress to image- and text-based content creation with SEO. Proactively address any negative news or content that could cause reputational damage.¹⁷

17. Ibid.

Improve

Protection is the third stage of ORM. Safeguarding and strengthening your optimized search results to ensure that any negative content that might appear in the future can be reduced or eliminated, helps to protect your investment in your business.¹⁸

Continuously developing designed content and scheduling your efforts to promote it is always beneficial to individuals or brands that wish to protect their online reputation.¹⁹

18. Ibid

19. Reputation X, "The Online Reputation Process," <https://www.reputationx.com/orm/techniques/process>, accessed May 29, 2020.

Quick fixes are much less effective than a meaningful, careful approach that includes the following:²⁰

- Brand research, customer research, content research, competitor research, and trending content research that can help you understand what your Google results mean
- A strategy for targeting the ideal results you seek related to content or SEO
- Tracking your content's effectiveness
- Positioning and publishing new content on multiple platforms

Monitor

Maintaining your online reputation is a job that never ends. Your reputation must be proactively managed over the long term by addressing negative news and content as needed and continuing to add positive content that reinforces your personal or business brand. A simple way to monitor your reputation is conducting regular checks by Googling your name and related keywords and analyzing what shows up in search result pages. You can also hire professional reputation monitoring firms to assist you with the process. Regularly monitoring your online reputation will allow you to stay updated and spot problems before they turn into a full-blown crisis.

²⁰. Reputation X, "Protect Online Reputation," accessed May 29, 2020.

5. Internet Defamation

Internet defamation, sometimes referred to as cyber defamation or online defamation, involves harming a person or entity's reputation by publishing a defamatory statement online. The tort of cyber defamation is an act of offending, insulting, or defaming an individual or entity or of otherwise causing harm to their reputation by making false statements, either negligently or maliciously, on the internet. Such a false statement can be considered defamatory no matter where it is published online (e.g., email, blog, website, forum, instant message). All cyber defamation is considered libel even if it is published as an audio or video file, meaning the defamatory statements are heard rather than read. These types of defamatory statements are considered libel rather than slander because posting the file is essentially publishing, and all forms of publication on the internet receive the same basic protections as print media. To prove a claim of internet defamation, a plaintiff is required to prove that all the elements of defamation exist just as in any other defamation case.

The Components of Internet Defamation

For a tort of cyber defamation to be valid, all the constituent elements of defamation must be present, and the defamatory content must have been published online. The following section explains the details of all these elements along with quoting relevant defamation lawsuits where verdicts were passed based on the presence or absence of one of these.

The published statement is a false statement presented as though it is a statement of fact.

For a statement to be defamatory, it must be presented as a statement of fact rather than an expression of opinion.²¹ An opinion, even if controversial, does not qualify as defamation. To determine whether a statement is one of supposed fact and not an opinion, looking at the essence of the statement rather than merely the words used is necessary.

Courts generally make determinations on this issue by analyzing whether the statement describes a verifiable fact.²² Any statement that can be proved true or false is considered a verifiable fact. For example, the statement “Christina stole an important document from the office” is a verifiable fact. Note that the statement “I think Christina stole an important document from the office” would still constitute a verifiable fact and not an opinion because despite the inclusion of “I think,” the declaration is sufficient to allow someone to form an impression of Christina and could therefore harm her reputation. A statement that “XYZ movie is really bad, and the direction is very poor” would be considered an individual’s opinion, however controversial, and would therefore not amount to defamation.

In the case of *Vogel v. Felice*,²³ the California Courts of Appeal explained what constitutes a statement of fact. The defendant made an allegedly defamatory statement that the plaintiffs were among the top ranking “dumb asses” in the defendant’s list of “Top Ten Dumb Asses.” The court opined that even if the term “dumb ass” meant a “contemptible fool” or someone “lacking in intelligence,” it was not susceptible to any factual proof or refutation. The court therefore held that even though the defendant’s statement insulted the plaintiffs, it could not be held to be libelous because it was not a verifiable fact.

21. **Traverse Legal**, “What Is Defamation, Libel, and Slander?” <https://www.traverselegal.com/defamation-libel-slander/#clip=2e7f1ot0gvdw>, (accessed May 21, 2020).

22. **Electronic Frontier Foundation**, “Online Defamation Law,” <https://www.eff.org/issues/bloggers/legal/liability/defamation>, (accessed June 5, 2020).

23. ***Vogel v. Felice***, 26 Cal. Rptr. 3d 350 (California Court of Appeals, 6th District, March 24, 2005).

The statement should be published i.e communicated to a third party.

The plaintiff needs to prove that the statement in question was heard, seen, read, or somehow reached to a party other than the defendant and the plaintiff. This could be in the form of print media, digital assets, articles, videos or pictures, or even received in person.

The false statement harms the plaintiff's reputation.

The third element that needs to be proved for a defamation case is that the published false statement must be related to the plaintiff and must adversely affect the plaintiff's reputation. A false statement that has no negative effect on the plaintiff's reputation does not constitute libel.

In addition, for defamation to be actionable, the false statement must refer directly to the plaintiff and not to their friends or relatives.²⁴ In the case of *Newstead v. London Express Newspapers Ltd.*,²⁵ a newspaper published that a Harold Newstead, a Camberwell barman, had been convicted of bigamy. This declaration allegedly had a negative effect on the reputation of a different Harold Newstead, a barber. The barber filed a suit for defamation against the newspaper because the statement was false with respect to him and therefore constituted libel. The court clearly held that to qualify as defamatory, the statement must relate specifically to the plaintiff and harm his reputation. Because the statement referred instead to someone else with the same name, the suit could not be sustained.

The false statement must be made without due diligence.

For a false statement to be deemed defamatory, one must prove that the defendant made it either without any due diligence or intentionally knowing it was false. Two approaches are generally taken to prove the libelous character of an alleged statement, as will be discussed later in this paper.

24. *Harsh Mendiratta v. Maharaj Singh* 95 (2002) DLT 78.

25. (1940) 1 KB 377.

Proof of malice (in cases that involve those in the public eye).

Proving that a defamatory statement was made maliciously or with wrongful intent is not always necessary. It is sufficient that the defamatory statement was made without due diligence or proper research and that any “reasonable person” would not publish the statement in question. But if the statement relates to a celebrity or public official, proving actual malice is essential. In such cases, the statement must have been published despite the defendant knowing that it is false or with absolute disregard for the truth.²⁶ Who is considered a celebrity or public official is decided on a case-by-case basis, depending on the person’s general public reputation, the importance of their views, and their access to media. Corporations are judged by the same standards as people and are not always considered public figures.

Internet Defamation versus Defamation in the Real World

Defamation occurs when a false statement is published about an individual or entity and damages that person or entity’s reputation, financial standing, business, or even health.²⁷ In the physical world, the identity of someone who makes such a statement can be easily determined, and one can quantify the damage caused by the statement by determining the number of people the statement might have reached. With internet defamation, both identifying the alleged wrongdoer and assessing the extent of reputational damage are often more complex.

As a publication medium, the internet has great potential for encouraging libelous statements, including those made accidentally. The large number of unmonitored avenues through which the public at large is invited to express their opinions, such as discussions, comments, and posts creates a defamation breeding ground. Internet defamation cases can also be complicated because the identity of the publisher might not be knowable because of their privacy settings.

26. **Electronic Frontier Foundation**, <https://www EFF.org/issues/bloggers/legal/liability/defamation>, (accessed June 5, 2020).

27. **David Goguen**, “Online Defamation & Libel: Legal Issues,” AllLaw, <https://www.alllaw.com/articles/nolo/civil-litigation/defamation-slander-internet.html>, (accessed June 21, 2020).

Moreover, the reach of libelous online content can be massive. Therefore, what might be an ordinary defamation issue in the physical world can become more complex online.

Defamation versus Freedom of Speech

The basic human right of freedom of speech and self-expression has always been in conflict with the legislation and principles established to prevent defamation and protect individual privacy. The internet's expansion has created an online world that empowers individuals to share their thoughts and ideas with large audiences. Any post or comment can reach an extremely large audience in a matter of minutes. For better or worse, that is the power of the internet, and power always comes with repercussions.

Individual expressions published online are protected under the principles of freedom of speech, but they can also threaten others' privacy and reputation. Developing laws related to online defamation becomes necessary to meet the urgent need to strike a balance between these two forces. Unfortunately, instances of nascent defamation laws being misused by powerful and politically connected people to curb dissenting voices have also been seen.²⁸

28. Center for Democracy and Technology, "Defamation in the Internet Age: Protecting Reputation without Infringing Free Expression," (September 11, 2012), <https://cdt.org/wp-content/uploads/pdfs/Defamation-Internet-Age.pdf>, (accessed January 14, 2020).

The Debate between Defamation Laws And Freedom of Speech

29. United Nations Human Rights Committee, “General Comment No. 34 - Article 19: Freedoms of opinion and expression,” para. 2, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed January 14, 2020).

30. 126 DLR (4d) 129, para 120 and 121.

The conflict between defamation laws and people’s right to freedom of speech continues because on one hand, freedom of speech and expression is considered indispensable for one’s full development.²⁹ On the other hand, defamation laws restrict that freedom with the goal of preventing individuals from inflicting harm on others. Most international human rights instruments recognize the restrictions that must be imposed on speech in the interest of protecting individuals’ reputations and privacy, but at times, local defamation laws are not crafted carefully enough and ultimately pose a threat to free expression. Striking a balance has proved to be a difficult undertaking, yet it is the need of the hour. In *Hill v. Church of Scientology of Toronto*,³⁰ the Supreme Court of Canada, through Justice Peter Cory, explained the importance and necessity of striking such a balance:

“The publication of defamatory comments constitutes an invasion of the individual’s personal privacy and is an affront to that person’s dignity. The protection of a person’s reputation is indeed worthy of protection in our democratic society and must be carefully balanced against the equally important right of freedom of expression.”

as cited in the above text is referenced from Hill v. Church of Scientology of Toronto, 126 DLR (4d) 129, para 120 and 121.

31. Notably, this was the decision in the case of **Snyder v. Phelps**, wherein the question was whether a protest involving hate speech near the funeral of a gay soldier had invaded the privacy of a gay soldier.

32. **Center for Democracy and Technology**, accessed January 14, 2020.

The solution, therefore, lies in implementing defamation laws cautiously. An opinion should not be considered defamation, public figures must be more tolerant of criticism, and situations causing mere emotional distress should not be brought under the purview of privacy and defamation laws.³¹ Defamation laws should therefore be limited to protecting the reputation of individuals and entities rather than protecting feelings and public order.³²

Internationally Recognized Principles on Balancing Free Expression and Reputation Protection

33. **United Nations**, "Universal Declaration of Human Rights," <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed May 15, 2020.

34. **Article 19 of the International Covenant on Civil and Political Rights** (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) reads as follows:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

35. **Equality and Human Rights Commission**, "What is the European Convention on Human Rights?," <https://www.equalityhumanrights.com/en/what-european-convention-human-rights>, accessed June 15, 2020.

Article 19 of the Universal Declaration of Human Rights (UDHR) recognizes the right to free expression, but Article 12 restricts it by stating, "No one shall be subjected to . . . attacks upon his honor or reputation."³³ The International Covenant on Civil and Political Rights (ICCPR) also imposes certain restrictions on freedom of expression in Article 19(3).³⁴

In the European Convention on Human Rights and Fundamental Freedoms (ECHR), which binds the 47 member states of the Council of Europe, Article 10³⁵ protects freedom of expression to allow individuals to express an opinion and impart information and ideas without interference by public authorities and regardless of frontiers.

36. Article 10 of the European Convention on Human Rights (https://www.echr.coe.int/documents/convention_eng.pdf) reads as follows: **Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (cont.)

37. The First Amendment to the Constitution of the United States (<https://www.google.com/url?q=https://www.ala.org/advocacy/intfreedom/censorship%23:~:text=%3D%25E2%2580%259C%2599Congress%2520shall%2520make%2520no%2520law,Amendment%2520of%2520the%2520U.S.%2520Constitution&sa=D&source=docs&ust=1651089194871138&usg=AOvVaw0AodrZn-yqGEXmMliB3P05>) **asserts:** "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

38. Media Division, Directorate General of Human Rights, "Defamation and Freedom of Expression: Selected Documents," Council of Europe, (March 2003), <https://rm.coe.int/1680483b2d>, (accessed June 17, 2020).

39. 376 U.S. 254 (1964).

40. Media Division, Directorate General of Human Rights, <https://rm.coe.int/1680483b2d>, (accessed June 17, 2020).

It also imposes restrictions on such freedoms by recognizing that this right demands certain duties and responsibilities, so that imposing certain restrictions becomes mandatory.³⁶

In the United States, the First Amendment protects citizens' right to free speech without government censorship.³⁷ The US Supreme Court has subsequently, through various landmark pronouncements, upheld the protection of this freedom.³⁸ In the case of *New York Times Co. v. Sullivan*,³⁹ the US Supreme Court granted unrestricted protection to freedom of expression while limiting the scope of defamation laws, especially with respect to the press. It held that the press is a pillar of democracy and must not be prevented from criticizing public policies and individuals in positions of concern to the people at large. In describing the Supreme Court ruling, one commentator said, "The latitude given to journalists by the US Supreme Court extended up to the abolition of the common law presumption that defamation speech is false in cases where a plaintiff seeks damages against a media defendant for speech of public concern."⁴⁰

41. "Freedom of Expression in the Inter American System for the Protection of Human Rights", Claudio Grossman, Vol. 7:619 2001, <https://core.ac.uk/download/pdf/51092253.pdf>

The American Convention on Human Rights, enforced by the Inter-American Court of Human Rights, restricts prohibitions instituted by either the government or the private sector on the freedom of expression. The Inter-American System is a combination of norms and institutions that apply to Western Hemisphere nations. The applicable rules consist principally of the American Convention on Human Rights ("American Convention") and the American Declaration on Rights and Duties of Man ("American Declaration").⁴¹

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

— Respect for the rights or reputations of others

or

— The protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.⁴²

42. Art. 13, American Convention on Human Rights, <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>, (accessed May 1, 2022).

Article 14 adds the following:

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

43. Art. 14, American Convention on Human Rights, <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>, (accessed May 1, 2022).

44. Article 4, American Declaration, <http://humanrightscommitments.ca/wp-content/uploads/2018/10/American-Declaration-of-the-Rights-and-Duties-of-Man.pdf>, (accessed May 1, 2022).

45. Amnesty International, "China 2021," <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/>, (accessed July 16, 2020).

46. Association of Southeast Asian Nations, "ASEAN Human Rights Declaration," (November 19, 2021), <https://asean.org/asean-human-rights-declaration/>, (accessed July 16, 2020).

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.⁴³

Finally, Article 4 of the American Declaration provides that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."⁴⁴

The African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights provide similar protections for freedom of expression. Some Asian countries have human rights documents that protect freedom of speech, but organizations such as Amnesty International often complain of heavy government involvement in the region's media, including unnecessary punishment for journalists and others who criticize those in authority, especially in China.⁴⁵ The Association of Southeast Asian Nations (ASEAN) includes Indonesia, Malaysia, Philippines, Singapore, and Thailand, and its Human Rights Declaration states the following about freedom of speech: "Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice."⁴⁶

Article 19(1) of India's constitution preserves each citizen's right to free speech, but Article 19(2) allows the government to interfere "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."⁴⁷

47. Government of India, Ministry of Law and Justice, "Constitution of India – in English," (November 26, 2021), <https://legislative.gov.in/sites/default/files/COI...pdf>, (accessed July 16, 2020).

Internet Defamation and Social Media

The internet has conferred many benefits onto society, and in general, it has advanced the right to freedom of expression. Social media has disrupted and fragmented traditional forms of communication, including print, television, and radio, and it has become an integral mode of communication in modern society.⁴⁸ It possesses qualities that make it a preferred platform for sharing one's thoughts and comments with the world. However, the following characteristics of social media also make it a hotspot for sharing and spreading defamatory content.

Affordable and accessible.

The internet is available to almost everyone at very low or even zero cost. Also, many of the devices people use to access the internet are affordable, even for individuals with a low income. Today, people don't need large, expensive machines such as desktop computers to get online; the internet can be easily accessed through smartphones and tablets.

48. Coleen Lewis, "Social Media—Cyber Trap Door to Defamation," Masaryk University Journal of Law and Technology 9, no. 1 (June 2015), <https://www.researchgate.net/publication/281231900>.

This level of accessibility results in a vast number of users who can either produce defamatory content or be an audience to libelous content.

Convenient to use.

Social media and various web applications have made sharing individual thoughts and opinions on any subject, person, or entity extremely convenient. One need not be a trained professional to enter into a discussion or to share materials and videos via a website, blog, vlog, or comment sections. Social media platforms and applications also facilitate quick and simple downloads of any material published online. This convenience creates opportunities for people to share unrestricted and non-scrutinized content, allowing anyone to view it, which can in turn threaten individuals' reputation and privacy rights.

Widespread outreach.

Anyone can use social media platforms, regardless of their geographical location or time zone, through a diverse number of devices, and posted content can be reposted multiple times in various forms and in various places. The trans-jurisdictional nature of social media platforms and the vastness of their reach adds to the difficulty in quantifying the damage that defamatory content has allegedly caused to a person or entity's reputation.

A relaxed approach.

People on social media enjoy a comfort zone of anonymity when connecting with others in cyberspace. They share their thoughts spontaneously without checks or guidance, and this free-flowing communication can result in emotional, unfiltered, and thoughtless remarks—like thinking out loud in the physical world. But the problem lies in that sharing one's thoughts orally in the physical world is very different from writing them down and publishing them on social media. The damage that ill-advised words without veracity can do when spoken in the physical world is limited, whereas on social media, words written in ignorance or in an emotional state can become permanent and continue to spread. Social media also introduces opportunities for deliberate criminal acts by people using anonymous profiles or accounts.

International laws and regulations, in addition to domestic laws in many nations restrict the use of social media for the purposes thus far mentioned. The right to free speech does have limits in this respect. A legal restriction that is imposed in almost every nation is that what a person expresses must not harm another person's reputation. Internet users' ignorance of this restriction puts them at risk of threatening someone's reputation in a legally actionable way. As Lord Atkin asserted in the case of *Sim v. Stretch*,⁴⁹ any expression by a person that might "lower someone in the estimation of right-thinking members of society generally or expose him to hatred, contempt or ridicule or to injure his reputation in his office, trade or profession or financial credit" shall be considered defamatory, and the author of such an expression, as well as anyone who assists the author in disseminating the expression, can be held responsible. In a nutshell, "social media has a cyber trap door and users who choose to dance close to this trap door, without due caution, are at an increased risk of falling through by infringing other persons' rights."⁵⁰

49. [1936] 2 All E.R. 1237, 1240.

50. Lewis

Effect on Businesses and Professionals

Building a good reputation among its existing and prospective clients is essential for businesses. Even a carefully curated reputation can come into jeopardy in cases when employees, former business partners, competitors, or even clients air their personal or professional grudges. The most important issue to be defined when speaking of defamation of businesses or professional is what is considered defamatory.

Client reviews that express dissatisfaction about a product or service are not considered defamatory. However, if someone were to post on social media accusing a company, its owners, or even the owners' family members of something that could harm their reputation or that of the business, the accusation would be considered defamatory. Statements that would be considered defamatory if untrue include accusations of involvement in criminal activity or remarks about sexuality or race. Such statements are assumed to have a negative impact on the reputation of the business or individual(s) mentioned before the world at large and can give rise to defamation lawsuits. Any subsequent legal action can involve both the person who originally published the alleged defamatory statement and anyone who assisted in publishing it.

6. Strategies for Dealing with an Internet Defamation Suit

This section will approach internet defamation cases from the perspective of both the plaintiff and the defendant. To begin, what measures can a person or entity take when an internet defamation suit has been filed against them? The first thing to do is contact an attorney to deal with the case. Internet defamation cases are sufficiently complex that they can be won only by good arguments. Before reaching out to an attorney, however, any alleged wrongdoer should carefully analyze the statement they made and consider whether it is defensible in one of the following ways.

As truth: This defense can be claimed when the defendant argues that their assertion was based on fact and that they did not go above or beyond the scope of the understanding of the truthful facts. The defendant must clearly establish that their statement was accurate in nature and in no manner materially different from the truth. The burden of proof is on the defendant to prove that the statement was true, and if the published material is deemed truthful by the court, the poster's intent does not matter.

As innocent dissemination: This defense can be substantiated by clearly establishing three elements:

- The defendant published the matter merely in the capacity, or as an employee or agent, of a subordinate distributor, and
- The defendant neither knew, nor ought reasonably to have known, that the matter was defamatory
- The defendant's lack of knowledge was not due to any negligence on the part of the defendant.⁵¹

This defense can come in handy in cases of social media, websites, booksellers, and the like.

51. Section 32(1) Defamation Act, 2005, Australia. <https://legislation.nsw.gov.au/view/html/inforce/current/act-2005-077#sec.32>

As opinion and fair comment privileges: The defendant can claim that the statement is merely opinion. Because an opinion cannot necessarily fall under the category of true or false, it would not form the basis for a defamation claim. Similarly, the defendant can claim that their statement was a fair and reasonable comment on a matter of public interest. Nevertheless, the comment must be reasonable and related to something that affects the public or society at large.⁵²

As absolute privilege: Certain absolute privileges are accorded to certain institutions in almost all jurisdictions to create an environment that is free from the fear of lawsuits. For example, the statements made by a legislator during a parliamentary proceeding cannot form the basis of a defamation claim.

As authorized content: If a defendant can establish that their statement was made with the plaintiff's consent, then the statement is not considered as defamatory. The consent can be explicit or implied and would be decided based on the facts and circumstances of the case.⁵³

Remediation Strategies for the Defamed Person or Entity

A person or entity who notices a defamatory post, statement, or other online expression against them can choose to either file a suit or attempt to resolve the situation without litigation.

⁵². DAS Law, "Defending against defamation claims," (April 27, 2018), <https://www.daslaw.co.uk/blog/defending-against-defamation-claims>, (accessed June 27, 2020).

⁵³. Saumya Saxena, "Law of Defamation in India," Pleaders (blog), (May 14, 2019), <https://blog.ipleaders.in/law-of-defamation-in-india/>, (accessed June 27, 2020).

Taking Legal Action

Before one opts to file a suit against a defamer, they should consider a few important points. Firstly, initiating a suit may or may not be a smart decision, depending on the strength of the poster's reputation in the market. The better the reputation, the more the chances that the defamatory content will receive more publicity. Shining the spotlight on defamatory statements can have an adverse result referred to as the "Streisand Effect,"⁵⁴ in which an attempt to suppress libel results in publicizing it more, garnering extra attention. The term derives from a 2005 case⁵⁵ in which American entertainer Barbra Streisand filed a lawsuit against a publication that published images of her beachfront home. Before the lawsuit was filed, the photos had been viewed only a few times, but because of the lawsuit, the images went viral, gaining millions of views and downloads. When Streisand lost the lawsuit, the effect was magnified: the photos drew even more attention. Many other real-life examples⁵⁶ demonstrate this effect. Thus, filing a lawsuit might not always be in the best interests of an individual or entity if their aim is to reduce publicity.

54. Naveed Saleh, "Understanding the Streisand Effect," Psychology Today, (December 20, 2019), <https://www.psychologytoday.com/intl/blog/the-red-light-district/201912/understanding-the-streisand-effect>

55. *Streisand v. Adelman*, et al., in California Superior Court; Case SC077257.

56. Saleh

Secondly, fighting an internet defamation lawsuit can take considerable time, money, and energy. To establish a claim, the defamed person or entity must identify the individual who posted the content and quantify the damages its publication caused. Because defamation is primarily an economic tort, a lawsuit must measure damage in monetary terms. Internet defamation suits become problematic when the defamer cannot be identified, which is highly probable, given the prevalence of anonymous social media profiles.⁵⁷ In those cases, no effective remedy is clear, even if the defamed party is willing to litigate. In the United States, the Communications Decency Act protects internet service providers (ISPs) from being sued for defamatory posts made by any of their users or from even being compelled to remove any alleged defamatory content from their servers. So before an individual or entity files a lawsuit, they must analyze all the case's strengths and weaknesses to determine the best strategy for preventing additional harm.

If the defamed party does deem litigation to be the best course of action, they should act as quickly as possible because certain laws place time limits on defamation cases. In the United States, these limits vary from state to state. For example, in Massachusetts, a defamation claim can be filed up to three years from the date when the cause of action arose, whereas in Pennsylvania, Ohio, New York, New Jersey, and some other states, this period is just one year.⁵⁸ A defamed person or entity should approach an attorney as early as possible if they wish to proceed with a defamation lawsuit.

57. *Cohen v Google, Inc.*, 2009 NY Slip Op 29369 [25 Misc 3d 945].

58. FindLaw, "Time Limits to File a Defamation Lawsuit: State Statutes of Limitation," (December 7, 2018), <https://www.findlaw.com/injury/torts-and-personal-injuries/time-limits-to-file-a-defamation-lawsuit-state-statutes-of.html>, (accessed April 1, 2022) .

Non-Legal Options

Other options are available for individuals and businesses seeking to protect their reputation from online defamation.

Ignoring the statement.

Depending on the veracity of the defamatory statement, the best strategy might be to ignore it, especially if it is just a minor infringement. Ignoring it means not responding to the statement in public or through online portals; sometimes, reacting to trivial issues gives them extra publicity they do not deserve. If, for example, an unsatisfied customer makes a defamatory remark such as “I was thrown out of the store by the staff,” it would be better to ignore it than to respond to it. If there are many positive reviews out there about your company, any reactionary statements from you or your firm could make matters worse. Such remarks are generally categorized as inauthentic and are not relied on by other readers.

Responding to the statement.

There are some allegations you cannot just ignore, but they are also not significant enough to warrant a legal proceeding. For example, if someone posts a statement alleging a company or individual’s involvement in a criminal act, ignoring it might give the impression that the accused accepts the allegation. In such cases, a good strategy might be to simply respond politely to the defamatory content on the same platform where it was published. When a response is required, respond to the post directly, denying the poster’s claim in a very polite and calm manner, no matter how rude or attacking the tone of the defamatory statement. This strategy makes readers skeptical of the truthfulness of the defamatory content.

Having the statement removed.

Having defamatory content deleted from the platform might also be possible. If the aggrieved party does not have a legal order to force the platform owner or administrator to remove the problematic content, they can begin with a request to have it taken down. Depending on the site’s use policy, the administrator or owner might be obligated to do so.

If the content does not comply with terms and conditions of the governing website mentioned then the administrator can be requested to remove defamatory content.

Many social media sites and search engines have specific clauses in their Terms of Service for such requests. For example, Youtube's misinformation policy⁵⁹ states that: "Certain types of misleading or deceptive content with serious risk of egregious harm are not allowed."

Similarly, Twitter, one of the most popular social networking sites especially for receiving and discussing news items lists that "We (Twitter) reserve the right to remove Content that violates the User Agreement, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment."⁶⁰

If a social media platform is not motivated to remove defamatory content based on its terms of use, it might care about the use of its trademark if a user includes it in or with a defamatory remark.

Another option is to report the website to Google if any of Google's search engine optimization (SEO) rules have been violated. In its policies⁶¹ on personal information Google states that, "Google may remove personal information that creates significant risks of identity theft, financial fraud, or other specific harms."

59. "Misinformation policies: YouTube", https://www.google.com/url?q=https://support.google.com/youtube/answer/10834785?hl%3Den&sa=D&source=docs&ust=1651407348065481&usg=AOvVaw1_d7LPVzqYhTx8S5AJLe4K, (accessed May 1, 2022).

60. "Twitter: Terms of Service", https://www.google.com/url?q=https://twitter.com/en/tos%23update&sa=D&source=docs&ust=1651407348065761&usg=AOvVaw3jBmR3QENHwu4o9_fsmaBI, (accessed May 1, 2022).

61. "Remove your personal information from Google", <https://support.google.com/websearch/troubleshooter/3111061?hl=en>, (accessed May 1, 2022).

62. In the United States, this falls under Section 230 of the Communications Decency Act (<https://www.eff.org/issues/cda230>).

However, if the website administrator, owner, or service provider does not voluntarily take down the content, they cannot be forced to do so.⁶²

Unfortunately, even if the content is removed, its creator might post it on a different platform, in some cases creating an endless cycle.

Suppressing the content.

This strategy is also known as reputation management, and it is discussed in detail in later sections of this paper. The affected party can undertake a variety of ways to actively suppress defamatory content, including analyzing the person or entity's current reputation and posting counteractive, positive content, if necessary; strategically publishing positive quality content; and using SEO methods to highlight existing assets. These methods are aimed at ensuring that the top results in user searches are only positive and user intensive, so that negative statements and defamatory content become outdated and therefore unreliable.

7. How Expert Witnesses Can Help in an Internet Defamation Case

In common-law countries such as the United States, the United Kingdom, and Australia, judges will take testimony from an expert witness to help qualify the damage caused to a party by an instance of online defamation and quantify that party's compensation. When the victim in an online defamation case files a civil suit against an alleged defamer, the facts of the case must be established for a jury. Two types of evidence can support a defamation claim: direct evidence, which precisely supports the veracity or existence of a fact without the need for any inferences, and indirect or circumstantial evidence, which "tends to prove a fact by proving other events or circumstances which afford a basis for a reasonable inference of the occurrence of the fact at issue."⁶³ Evidence can be presented in four ways:⁶⁴

- **Documentary evidence**, or documents submitted in court
- **Physical evidence**, or material objects presented in court
- **Demonstrative evidence**, which illustrates other evidence presented in court
- **Testimonial evidence**, or oral or written statements made under oath and presented in court

A person can testify either to state the facts of a case or to present their opinion on a related subject. A layman can become a witness to the facts of a case. If needed, an expert witness can be asked to testify on the subject matter of a case based on their qualifications, experience, and expertise.

⁶³ Merriam-Webster.com Dictionary, "circumstantial evidence," [https://www.merriam-webster.com/dictionary/circumstantial evidence](https://www.merriam-webster.com/dictionary/circumstantial%20evidence), (accessed July 5, 2020).

⁶⁴ Amir Tikriti, "Evidence You'll Need to Bring a Defamation Lawsuit," AllLaw, <https://www.alllaw.com/articles/nolo/civil-litigation/evidence-defamation-lawsuit.html>, (accessed July 1, 2020).

Defining Expert Witness

According to the Cambridge Business English Dictionary, an expert witness is “a person who is asked to give their opinion on a particular subject in a law court because of their knowledge or practical experience of that subject.”⁶⁵ An attorney will call on an expert witness to help a jury understand complicated and technical matters. Because jury members are selected from a diverse pool of citizens, they can hail from any background or profession and cannot therefore be presumed or expected to have technical knowledge of any aspect of a case. So, to help jury members form an informed opinion about the subject matter, the attorneys representing either side of a dispute might rely on an expert witness to detail the technicalities of a case.

65. Cambridge Business English Dictionary, “expert witness,” <https://dictionary.cambridge.org/us/dictionary/english/expert-witness>, (accessed July 1, 2020).

Who Can Be an Expert Witness?

66. The complete text of Rule 702 of the Federal Rules of Evidence (https://www.law.cornell.edu/rules/fre/rule_702) states the following:
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
(a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods, and
(d) the expert has reliably applied the principles and methods to the facts of the case.

67. Jenny Tsay, “Who Qualifies as an Expert Witness?” FindLaw, (February 24, 2014), <https://www.findlaw.com/legalblogs/law-and-life/who-qualifies-as-an-expert-witness/>,.

State rules relating to the testimony of an expert witness vary in the United States, and different rules also apply to cases tried in federal versus state courts. The Federal Rules of Evidence 702–706 relate to expert witness testimony. Rule 702 discusses the circumstances under which a witness can testify to their opinion in a court of law.⁶⁶ According to this rule, for someone to qualify as an expert witness, they must possess knowledge, skills, education, experience, or training in a specialized field.⁶⁷

68. Federal Rules of Civil Procedure, Title V, Rule 26, "Duty to Disclose; General Provisions Governing Discovery," https://www.law.cornell.edu/rules/frcp/rule_26.

69. In cases of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579, 113 S.Ct. 2786 (1993), and *Kumho Tire Co. v. Carmichael*, 526 US 137, 119 S.Ct. 1167, 1179 (1999).

70. *Ibid.*

71. *Ibid.*

According to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, the constituent parts of a report submitted by an expert witness must include the following:⁶⁸

A complete statement of all opinions the witness will express and the basis and reasons for them

The facts or data considered by the witness in forming them

Any exhibits that will be used to summarize or support them

The expert witness must also disclose the following details:

The witness's qualifications, including a list of all publications authored in the previous ten years

A list of all other cases in which, during the previous four years, the witness testified as an expert at trial or by deposition

A statement of the compensation to be paid for the study and testimony in the case

The US Supreme Court has set precedents for the admissibility of expert witness testimony in federal cases.⁶⁹ In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,⁷⁰ seven Supreme Court justices established a guideline for the admissibility of expert testimony that is popularly known as Daubert's Rule. The court ruled that the testimony of an expert witness must be relevant to the matter in dispute and should be built on a reliable foundation.

The ruling in this case was limited to expert testimony on scientific evidence, but in the case of *KumhoTire Co. v. Carmichael*,⁷¹ the scope was expanded to all expert witness testimony presented before a court. In another case, that of *General Electric Co. v. Joiner*,⁷² the Supreme Court further clarified the Daubert Rule, stating that an appellate court can review the trial court's judgment to either admit or exclude expert testimony.

72. 522 US 136 (1997).

What to Expect from an Expert Witness in an Internet Defamation Case

A defamation expert witness must have experience and a background in matters such as libel, slander, business defamation, professional ethics, branding, advertising, and public relations. The expert can testify to the veracity of an allegedly defamatory statement. Either the plaintiff or the defendant can call an expert witness, or both can call one jointly. As discussed earlier, if the statement in question is objectively true, the publisher of it can be absolved of liability for defamation because they are protected by their First Amendment rights. In the case of *Melaleuca Inc. v. Clarke*,⁷³ the court opined that the

73. 66 Cal. App. 4th 1344.

“defamation defendant may also find it helpful or necessary to present expert testimony as to the truth of an allegedly defamatory statement. Not only is truth a complete defense to defamation, but the broad protection the First Amendment affords defamation defendants would be turned on its head if a defendant could not also use expert testimony to establish disputed statements were in fact true.”

74. According to Rule 703 of the Federal Rules of Evidence.

as cited in the above text is referenced from *Melaleuca Inc. v. Clarke*, 66 Cal. App. 4th 1344.

In addition to assisting in substantiating the truthfulness or falsity of a statement, a defamation expert can help the court ascertain any damages caused to the plaintiff when the defendant published the content on the internet and can explain any other issue that cannot be clarified by a layman.⁷⁴ The court expects the expert to do the following:

- i. To provide an independent and impartial opinion on the matter based on the instructions provided. If the opinion is found by the court to be partial to either party, such opinion shall be discarded. Also, the instructions provided to the expert are visible in the report that is shared with the court and the other party in dispute.
- ii. To form a report based on their opinion which shall be reasoned accordingly and shall be based on facts and principles. This report is submitted to the court and shared with the other party.
- iii. The opinion of the expert shall be based on their area of expertise and experience only, and they shall not present any opinion which falls out of their domain of expertise.
- iv. The expert witness has an overriding duty to the court or tribunal, which supersedes any of their duties, even one that they might owe toward the party who has hired them.

A good strategy is to hire an expert witness in any matter relating to defamation that has escalated to the point of litigation. The expert can provide an impartial opinion to the court on a detailed, technical level about the subject matter of the case, and their testimony can assist the jury in reaching a reasoned decision based on the evidence.

8. Reputation and Its Relevance in the Internet Era

Because the internet is global, online defamation can have an international reach. The world's nations have developed their own laws and have established precedents to curb and manage defamation that originates on the internet. This section will examine key cases in various countries.

United States

Elias v. Rolling Stone LLC⁷⁵

This case addressed a dispute that arose from a 2014 Rolling Stone article entitled “A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA” and a subsequent podcast by Sabrina Rubin Erdely on the same subject. Rolling Stone alleged that a University of Virginia student had been raped by three members of the university's chapter of the Phi Kappa Psi fraternity. The fraternity members subsequently brought defamation lawsuits against the magazine. These suits were separate from cases brought by the fraternity and by an associate dean of the university.

On analyzing the case, The US District Court for the Southern District of New York came to the conclusion that enough proof was not provided by the plaintiffs to substantiate that the statements in question were “of and concerning” them. Additionally the court also held that the statements or remarks in the podcast of the defendant were too subjective and broad.

75. *Elias v. Rolling Stone LLC*, Case 16-2465 (2d Cir. 2017) (http://online.wsj.com/public/resources/documents/2017_0919_rolling_stone_2nd_circuit.pdf).

Hence, they were classified at non-actionable opinion. Based on the above two findings, the court ruled in favor of the defendant and dismissed the complaint in its entirety for failure to state a claim.

In September 2017, the US Court of Appeals reversed the district court's decision and observed that the information provided in the article was sufficient to identify the plaintiffs personally and damage their reputations.

Clifford v. Trump⁷⁶

This defamation case was filed by adult film actress Ms. Stephanie Clifford, also known as Stormy Daniels, against US President Donald Trump, alleging that he defamed her by tweeting that her claims about their purported affair included a threat by a “nonexistent man” and were a “total con job.” The ruling was significant as a case not only of defamation law but also of US constitutional law regarding presidential responsibility. President Trump filed a special motion to dismiss the case on three grounds:

- a) The tweet was a protected opinion.
- b) Ms. Clifford had not suffered any damage from the tweet.
- c) The suit was a strategic lawsuit against public participation, meaning that the president was protected because he had not acted with malice or careless disregard for the truth.

⁷⁶ **Clifford v. Trump**, 15 October 2018 US District Court, California CD (https://inform.org/wp-content/uploads/2019/01/gov.uscourts.cacd_719561.36.0_2.pdf).

Ms. Clifford's claim was rejected by the court, and the motion was considered timely. The motion was approved on the grounds that the tweet was a rhetorical comment of political opinion and qualified for protection under the First Amendment.

Gill v. Anagnost, Crews and Grenier⁷⁷

A libel action was filed by Dick Anagnost, auto dealer Andy Crews, and banker William Grenier against local business owner Michael Gill of Derry, New Hampshire, who had posted criminal allegations about the claimants, with photos and names, on billboards outside his business locations and on his website. It was filed in the New Hampshire state court.

The court decided in favor of the claimants, and the jury awarded the three businessmen a total of US\$247 million in damages. The case was noted as having the highest award of damages of any defamation case in New Hampshire. The court held that the billboards were located next to a public highway and that the nature of the allegations made against the claimants was serious. These facts were strongly taken into consideration by the jury. The defendant later challenged the court's decision in the New Hampshire Supreme Court, which upheld it.

Gibson's Bakery v. Oberlin College⁷⁸

In this case, a libel claim was filed in the Court of Common Pleas of Lorain County, Ohio, by Gibson Bros. Inc. (Gibson's Bakery) against Oberlin College.

77. No. 216-2016 CV 277.

78. 17 CV 193761.

Allegedly, Oberlin's student senate had published a resolution against the claimant, saying that Gibson Bros. had "a history of racial profiling and discriminatory treatment." It had also distributed a flyer purporting that Gibson's Bakery was a "racist establishment."

The jury found that Oberlin College had supported its students in this activity and that both the flyers and the student senate's resolution were defamatory. Considering all the facts of the case, the jury awarded general and exemplary damages of US\$44 million to Gibson Bros.

79. 2:18-CV-8048 (<https://www.documentcloud.org/documents/4895935-Vernon-Unsworth-vs-Elon-Musk-defamation-lawsuit.html>).

Musk v. Unsworth⁷⁹

In this case, Vernon Unsworth (a British cave diver) filed a suit for defamation against Tesla and SpaceX CEO Elon Musk in September 2018, after Musk called him "sus" (suspicious) and a "pedo guy" in one of his tweets. The argument on behalf of the defendant was that the comment "pedo guy" was simply heated rhetoric and not meant as a statement of fact. The jury rejected the plaintiff's claim on the basis that the tweet had not referred to the plaintiff by name. The jury also ruled that Musk's statement about Unsworth did not qualify as defamation.

Australia

80. [2017] VSC 521.

Wilson v. Bauer Media Pty Ltd⁸⁰

Australia-born actress Rebel Wilson filed a case against Bauer Media Pty Ltd. and Bauer Media Australia Pty Ltd. for defamatory articles they had published about her. She claimed the articles damaged her image by asserting that “she was a serial liar” who had “forged every aspect of her life.”

Wilson asked the Supreme Court of Victoria for general and special damages for the loss of business opportunities and reputational injury due to the defamatory statement published against her.

The court ruled in her favor, and Justice John Dixon awarded her AUD 650,000 in general damages and AUD 3,917,472 in special damages. The court stated that in awarding damages, multiple aggravating factors were taken into consideration that had caused substantial harm to her career.

81. [2018] QSC 201.

Wagner &Ors v. Harbour Radio Pty Ltd &Ors⁸¹

This case was filed by Wagner brothers - Denis, John, Neill and Joe, against Harbour Radio Pty Ltd., pertaining to controversial broadcaster Alan Jones. In 27 radio broadcasts between October 2014 and August 2015, Jones allegedly made 76 defamatory remarks about the collapse of a dam wall during floods in 2011.

82. [2019] NSWCA 172 (<https://www.caselaw.nsw.gov.au/decision/5d26da21e4b02a5a800c25b3>)

The dam wall in question was part of a quarry owned by the Wagner brothers, and Jones asserted during his broadcasts that as owners of the dam, the Wagners were responsible for the deaths of those killed when the wall collapsed.

The Supreme Court of Queensland passed orders in favor of the plaintiff by preventing Jones from repeating the defamatory allegations. Flanagan J. found that the defendants had committed the “gravest kind” of defamation by baselessly accusing the plaintiffs of “municipal murder,” corruption, and participating in a cover-up of the deaths. The Wagners were awarded AUD 3.7 million in damages in total, with each of the claimants receiving a substantial award of aggravated damages as a result of Jones’s “vicious and spiteful” conduct.

Fairfax Media Publications Pty Ltd v. Gayle ⁸²

In this case, the West Indies cricketer Chris Gayle filed a defamation lawsuit against Fairfax Media Publications for allegedly publishing a series of defamatory reports about him. These reports appeared in January of 2016 in the Sydney Morning Herald, the Age, and the Canberra Times and alleged that Gayle had exposed himself to a massage therapist in Sydney during the 2015 World Cup.

The four-person jury ultimately found that Fairfax Media Publications had completely failed to establish a defense of truth to the three allegations at the center of the case:

- Gayle had intentionally exposed his genitals.
- Gayle had indecently exposed himself.
- Gayle had indecently propositioned the massage therapist.

Accordingly, the jury decided the case in favor of Gayle and held that publishing such an article was defamatory and had not only negatively impacted Gayle's career but had also caused emotional harm. Also the court held that the article's publication was actuated by malice because the defendant had failed to prove their case, which led the jury to award compensatory damages of AUD300,000. The jury declined to award aggravated damages. The publications appealed, contending that the primary judge had erred in refusing to discharge the jury. Gayle also cross-appealed on quantum⁸³ of damages. However, the appeal and the cross-appeal were both dismissed.

Voller v. Nationwide News Pty Ltd⁸⁴

In this case, plaintiff Dylan Voller sued Nationwide News Pty Ltd. for defamatory comments made by multiple third-party internet users on their Facebook page, accusing Voller of such crimes as rape and assault. It all began in 2016, when a broadcasting corporation released reports of ill-treatment Voller experienced during his stay in Don Dale Youth Detention Center.

83. Merriam Webster Dictionary, "quantum", <https://www.merriam-webster.com/dictionary/quantum>.

84. [2019] NSWSC 766 (<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NWSC/2019/766.html>).

Because it was related to institutional irregularities and the human rights of juveniles, the broadcast corporation's reports attracted the attention of the public and government. The government began investigations and inquiries to explore the case.

Further, media houses and other publishing corporations began producing and posting other stories about Voller on their Facebook pages, where defamatory comments were made by other users. On the grounds of those defamatory statements, Voller filed the case, purporting that the media corporations and publishing companies were the posters of the offending Facebook comments.

New South Wales Supreme Court held that social media companies could be considered publishers of comments left by users on public Facebook pages. The court relied on Australian jurisprudence and the jurisprudence of other Commonwealth countries in its decision. Further the court stated that social media companies have "intermediary liability" because by maintaining Facebook pages, the media companies increase the possibility of defamatory comments becoming visible to the public at large; in this case, the comments led to reputational damage for the claimant. The court also found that the media companies failed to assess the loss Voller incurred as a result of those defamatory comments being published on a public platform. Also, no action was taken by the media companies to prevent the harm done to Voller.

85. [No9] [2017] WASC 367 (<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/wa/WASC/2017/367.html>).

Rayney v. The State of Western Australia⁸⁵

In this case, the plaintiff, Lloyd Rayney, filed a lawsuit for defamation against the State of Western Australia, alleging that a senior police officer named Detective Senior Sergeant (DSS) Jack Lee made a defamatory statement against him during a media conference held after the body of Rayney's murdered wife was discovered. The police department suspected the Rayney had murdered his wife. He was investigated for the murder and later acquitted.

The court allowed Rayney's claim and awarded him AUD 2.62 million in damages. The court that any prudent person would conclude from the statement DSS Lee made that Rayney had murdered his wife. The case also covered important legal issues pertaining to the application of the qualified privilege defense to statements made by the police in the course of an investigation. Although the matter involved public interest, the defense of qualified privilege was not applied because it cannot extend to the media or public receiving such defamatory information. The court criticized the comment DSS Lee made on the grounds that he had no valid information to suspect Rayney of having killed his wife and found that no common law privilege existed because DSS Lee's statements "went beyond anything required to discharge any duty of the police to keep the public informed."

Canada

Haaretz.com v. Goldhar⁸⁶

In this case, Mitchell Goldhar, a Canadian businessman and owner of an Israeli soccer team, initiated defamation proceedings against the Israeli news organization Haaretz. Their newspaper was published in hard copy and online. The defamation proceedings were initiated in Ontario on the grounds that the newspaper had allegedly published an article online about Goldhar's ownership and management approach toward his team and his business in Canada. The defendant claimed that the case was out of jurisdiction, having been issued in Ontario rather than Israel. It was argued that the Court of Israel would be the appropriate forum in which to file the case and that a stay should therefore be granted against the proceedings.

The motion judge rejected the defendant's motion, saying that the Ontario Court had jurisdiction to decide the case. The Ontario Court of Appeal also rejected an appeal. The appeal was referred by the defendant to the Supreme Court of Canada, which addressed significant jurisdictional issues where defamatory material was published multi-jurisdictionally, addressing concerns regarding libel tourism in the process. The court agreed with Haaretz, granting its motion to stay proceedings in Ontario.

86. 2018 SCC 28 (CanLII).

India

87. SMC Pneumatics (India) Pvt. Ltd. v. JogeshKwatra (original suit no. 1279 of 2001) (<https://indiankanoon.org/doc/31110930/>).

SMC Pneumatics (India) Pvt. Ltd. v. JogeshKwatra⁸⁷ (original suit no. 1279 of 2001)

This case was the first one in India pertaining to online defamation. It was filed by SMC Pneumatics against JogeshKwatra, one of its employees. The defendant, Kwatra, had sent emails that were insulting, defamatory, pornographic, offensive, filthy, and abusive in nature to his employers and to subsidiaries of the firm with a malicious intent to defame the company and its managing director.

SMC Pneumatics filed a lawsuit against Kwatra in the Delhi High Court, seeking that he be restrained from sending defamatory emails.

The SMC Pneumatics argued that the emails Kwatra had sent were clearly obscene, vulgar, abusive, intimidating, humiliating, and defamatory. Therefore, Kwatra should be liable to the company.

Another argument was that the defendant had malicious intent and that the sole purpose of the emails was to harm the company's reputation in India and around the world. Additionally, SMC Pneumatics claimed that Kwatra's actions in sending the emails amounted to a violation of the company's civil rights.

After hearing the plaintiff at length, the judge of the Delhi High Court passed an order granting an ex parte ad interim injunction on the grounds that the case was a prima facie case.

The Delhi High court held that Kwatra was liable for defamation under Section 499 of the Indian Penal Code. The Delhi High Court subsequently restricted the defendant from sending derogatory, defamatory, obscene, vulgar, humiliating, or abusive emails to the plaintiff or to any of its sister subsidiaries worldwide, including to their managing directors and members of their sales and marketing departments. In addition, the defendant was barred from publishing or transmitting any information that was derogatory, defamatory, or abusive to the plaintiff, as well as to others online.

KalandiCharanLenka v. State of Odisha⁸⁸

In this case, the defendant wanted to marry the plaintiff, but the marriage could not take place. The defendant started stalking the plaintiff both online and offline, sending obscene messages, letters, and pictures not only to the plaintiff but also to her friends. The purpose of the defendant's actions was to intimidate and sexually exploit the plaintiff. To do so, the defendant created a fake Facebook account in the plaintiff's name and used the account to defame the plaintiff by publishing obscene and vulgar pictures and texts. The Cyber Cell of the Crime Branch investigated the case. Further, the High Court of Orissa held that the defendant was liable for offenses under Sections 354A for sexual harassment; 354D for stalking; Section 66-C for identity theft; Section 66-D for impersonation; and Section 67 for transmitting obscene and sexually explicit material online under the Indian Penal Code, 1860.

88. BLAPL No. 7596 of 2016.

M/S Spentex Industries Ltd. &Anr. v. Pulak Chowdhary⁸⁹

In this case, the plaintiff initiated court proceedings against the defendant, seeking a mandatory and prohibitory injunction against the defendant. The defendant had entered into a service agreement with the plaintiff to provide consultancy services in Uzbekistan. Because the plaintiff was a globally reputable company with vast business holdings, it wanted to extend its business into Uzbekistan. Eventually, because the defendant failed to provide services, the plaintiff terminated the contract.

The defendant, upset at the cancellation of the contract, began defaming the plaintiff company by sending defamatory texts, emails, letters, and other communications to the International Finance Corporation, the World Bank, the president of the Republic of Uzbekistan, and UzReport, a news website.

The plaintiff filed suit against the defendant, requesting an injunction order and seeking recovery of Rs. 50,00,000 in damages for loss of reputation and business as a result of the defamatory emails. The district court ruled in favor of the plaintiff and awarded Rs.5,00,000 in damages for the loss of reputation.

Radheshyam Tiwari v. Eknath⁹⁰

In this case, the defendant, who was the editor of a local Marathi weekly, published a series of articles about the plaintiff in which defamatory remarks were allegedly made against the plaintiff, including that he was a block development officer who issued false certificates and accepted bribes. The articles also accused the plaintiff of using corrupt and illegitimate methods of extorting money from people and was a “misleader.”

89. *M/S Spentex Industries Ltd. &Anr. v. Pulak Chowdhary* (original suit no. 219/18) (<https://indiankanoon.org/doc/80844707/>).

90. (AIR 1985 Bom 285).

On filing the lawsuit, the defendant pleaded all three defenses that are available in a defamation case. The defense of justice was rejected because the defendant failed to prove the truth of the claims published about the plaintiff. The defense of fair comment was not accessible because the concerned content had no expression of opinion about the defendant; it was a statement of fact. Because the publications were untruthful, the defendant could not take the defense of qualified privilege before the Bombay High Court.

91

Radheshyam Tiwari v. Eknath

This case pertains to a bail application before the High Court of Kerala. A reputable woman who was an author, a social activist, and the wife of a member of the Parliament of India filed a complaint against the bail applicant. The argument was that the applicant/defendant was running a Facebook campaign against the plaintiff to malign her public image using photographs, obscene texts, and vulgar discussions about her.

Allegedly, the plaintiff was being sexually harassed and defamed online. The bail applicant/defendant claimed in his Facebook posts that the plaintiff had raped him in college. Obscene photos and other posts were shared with a large audience as well. The defendant's goal was to cause reputational harm to the plaintiff.

The Court of Kerala considered all the facts and held that the defendant's acts amounted to defamation and sexual harassment. The court rejected the bail application.

91. (3) ILR(Ker) 583.

Ireland

Independent Newspapers v. Ireland⁹² (European Court of Human Rights)

This defamation case was filed by Ms. L. against the Herald newspaper, alleging that the Herald had published a series of articles in late 2004 that claimed that Mr. C., a government minister, and Ms. L., a public relations consultant, were having an extramarital affair. The Herald also published photographs that allegedly showed Mr. C. and Ms. L. in intimate positions. The case was decided by a jury in favor of Ms. L., who was granted compensation of EUR1,872,000. The defendant apologized to the plaintiff for the defamation. However, the jury's decision about the amount of compensation was challenged before the Supreme Court. The counsel, on behalf of the defendant, argued that the damages awarded by the jury were unreasonable and disproportionate to the damage caused to the plaintiff.

The Supreme Court accepted the defendant's arguments and reduced the award to EUR1.25 million. However, the Irish Supreme Court did not find any error on the part of the jury other than the excessive award and therefore did not intervene with the judgment.

The defendant preferred an appeal against the decision of the Supreme Court to the European Court of Human Rights on the grounds that the award was excessive and that it signified the absence of adequate and effective safeguards in Ireland's law on defamation. Therefore, the defendant claimed a violation of the right to freedom of expression under Article 10.

The European Court of Human Rights found disproportionate interference with the Herald's right to freedom of expression and a violation of this right under Article 10. As far as the roles of supreme courts and subordinate courts were concerned, the European Court of Human Rights observed that the law had changed with the adoption of the 2009 Defamation Act, which enables a trial judge to give a jury more detailed directions on how to assess damages in such defamation cases, and that a chilling effect on the freedom of the press should not take place. In view of these circumstances, the Herald was awarded EUR20,000 to cover costs. The remaining claims were dismissed by the court.

92. 28199/15.

New Zealand

Durie v. Gardiner⁹³

In this case, the New Zealand Court of Appeal recognized a new defense to the tort of defamation for the very first time: “qualified privilege or public interest defense.” The case emerged from an appeal in a defamation case by a retired high court judge, Sir Edward Durie, and his lawyer wife, Ms. Hall, against the Māori Television Service and its senior news reporter, Heta Gardiner.

The dispute arose from two broadcasts on Māori Television Service and related website stories the company published in August 2015. The broadcasts criticized the claimants’ actions in the course of their involvement with the Māori Council. The defendant argued that the words that were alleged to be defamatory did not bear the meanings pleaded before the court but that if they did, they would nonetheless be protected under a qualified privilege or public interest defense. The defendant pleaded the defenses of honest opinion, qualified privilege, and public interest. The claimant filed an application to strike out these defenses, which were rejected by the court.

The claimants challenged the court’s decision before the Court of Appeal. Significantly, the court considered that this case promoted a change in the rules around this issue. The United Kingdom and Canada have recognized these defenses and have passed landmark judgments on defamation. Therefore, the court concluded that this judgment was the “time to strike a new balance by recognizing the existence of a new defense of public interest communication that is not confined to parliamentarians or political issues, but extends to all matters of significant public concern and which is subject to a responsibility requirement.”⁹⁴

93. [2018] NZCA 278 (<http://www.nzlii.org/nz/cases/NZCA/2018/278.html>).

94. *Ibid.*

The court held that the qualified privilege recognized earlier in *Lange v. Atkinson* was no longer available. The new defense of qualified privilege would be applied to cases of defamation according to two criteria:⁹⁵

- The subject matter of the publication was of public interest.
- The communication was responsible.

This defense is now available to all members of the public in New Zealand who claim to publish any material in the public interest, with a particular subtype applicable to journalistic reporting. Because Māori Television Service's communications did not refer to an independent, third-party source to support its allegations, the court determined that the defense was to be applied generally.

95. [1997] 2 NZLR 22 (HC), [1998] 3 NZLR 424 (CA), [2000] 1 NZLR 257 (PC), [2000] 3 NZLR 385.

United Kingdom

96. [2018] EWCA Civ 2591.

Economou v. De Freitas⁹⁶

The facts of this case, in brief, are that the claimant, Alexander Economou, had been in a romantic relationship with the daughter of the defendant, David de Freitas. The claimant later ended the relationship with the daughter, who had bipolar disorder. The girl, upset at the abrupt ending of the relationship, told her friends and relatives that Economou had raped her, and she filed a false complaint against him. Economou was charged with rape and arrested by the police. No charges were made against him after the police investigation. The daughter was put on trial for allegedly fabricating a rape allegation and later committed suicide.

Subsequently, Economou initiated defamation proceedings against the defendant, who had made statements in interviews about his daughter's suicide. These interviews were later published.

The UK High Court decided in favor of the defendant and held that the defense of public interest, provided under Section 4 of the Defamation Act 2013, was applicable in the case with respect to the publication of defamatory statements about the claimant. The high court's decision was challenged by Economou on appeal but was dismissed by the Court of Appeal.

97. [2017] EWHC 433 (QB) (<http://www.bailii.org/ew/cases/EWHC/QB/2017/433.html>).

Monroe v. Hopkins ⁹⁷

This defamation case was filed in 2017 by claimant Jack Monroe, a food blogger and writer, against defendant Katie Hopkins, a journalist for the Daily Mail. The alleged defamatory statements were tweets by the defendant that read, “Scrawled on any memorials recently? Vandalized the memory of those who fought for your freedom. Grandma got any more medals?” Monroe alleged (a nonbinary, transgendered individual who uses the pronouns she/her) that the tweets implied that she had either vandalized a war memorial during an anti-government protest or condoned such behavior. She also alleged that the tweets had harmed her reputation, causing her to suffer loss.

The judge found Hopkins liable and awarded Monroe £24,000 in damages. The judge opined that the defendant’s reprehensible behavior throughout the matter caused not only harm to the claimant’s reputation but also emotional injury.

In this case, the court recognized the impact of innuendo in a tweet. It recognized how a reasonable reader could derive secondary meaning from a post on a social media platform and accepted an appendix agreed on by the parties on “How Twitter Works.” The principles related to the determination of meaning in defamation cases were also reiterated by the court.

98. Michael DiBenedetto, "Trump Suits: Melania Sues the Internet," Law School Student Scholarship 924, 2017, https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1930&context=student_scholarship.

99. [2019] UKSC 27 (<https://www.supremecourt.uk/cases/docs/uksc-2017-0175-judgment.pdf>).

Melania Trump v. Daily Mail ⁹⁸

Melania Trump, the wife of US President Donald Trump, filed a defamation action in the New York State Commercial Court and in the UK High Court against the Daily Mail, a British newspaper that also maintains a website for US news, and against Webster Tarpley. Tarpley published a blog post entitled "Where Is Melania Trump?" in which he stated that she had been an escort prior to moving to New York in the 1990s. The Daily Mail published an article on August 20, 2016, making the same claim. Subsequently, Tarpley had to retract the post, and he apologized. Melania Trump continued the defamation suits against both defendants.

The Daily Mail ultimately apologized to Melania Trump for publishing the article and causing serious harm to her reputation. The matter was settled between the parties, and the Daily Mail paid \$3 million to Melania Trump.

Lachaux v. Independent Print ⁹⁹

In this instance, the plaintiff, Bruno Lachaux, was a French aerospace engineer married to Afsana, a British woman, with whom he had a son named Louis. Lachaux initiated court proceedings in the United Arab Emirates for divorce and custody of the child. Meanwhile, Afsana, anticipating the lack of opportunity for a fair trial in the United Arab Emirates, hid herself and her son. Eventually, the UAE Court awarded Lachaux custody, and he filed a criminal case against Afsana for abducting their son.

A few years later, British publications began releasing news articles in the Independent and the Evening Standard that purported that Lachaux had been violent and criminally abusive to his wife during the marriage, as well as during the divorce and custody proceedings. The plaintiff filed a defamation lawsuit against the defendant in the UK High Court. The articles stated that the plaintiff's behavior toward his wife had been cruel, that he had tried to use UAE laws against her, and that he had attempted to hide his son's passport so that Afsana could not take the child out of the United Arab Emirates. The article also said that Lachaux had wrongly and maliciously filed abduction proceedings against his wife so that he could take custody of the child forcefully. The argument the defendant made before the court was that no serious harm was caused by the articles. However, the court held that the articles consisted of defamatory statements that could cause or were likely to cause serious harm to the plaintiff.

The newspaper, aggrieved by the high court's decision, appealed, but the Court of Appeal upheld the decision. At this stage, the defendant filed an appeal to the UK Supreme Court, which upheld the decision of the lower courts and held that a plaintiff is required to prove, using facts, that "serious harm" or injury to their reputation has been incurred. The defendant's appeal was dismissed.

Stocker v. Stocker¹⁰⁰

In this case, a defamation proceeding was initiated by Ronald Stocker against his ex-wife, Nicola Stocker. The issue began when Ms. Stocker posted about the plaintiff on Facebook during a conversation with Mr. Stocker's ex-girlfriend. The allegation was that the ex-girlfriend claimed that Mr. Stocker had attempted to strangle her. The defendant/ex-wife also stated that she had been told that Mr. Stocker used to molest the ex-girlfriend, had violated a non-molestation order, and had been arrested. Mr. Stocker claimed that his ex-wife's statement was defamatory and that she had portrayed him as an offender and a dangerous man.

100. [2019] UKSC 17 (https://www.supremecourt.uk/cases/docs/uk_sc-2018-0045-judgment.pdf).

The High Court and Court of Appeal decided in favor of Mr. Stocker. The courts relied on the Oxford English Dictionary's definition of the verb "strangle" and were of the opinion that the ex-wife's reference to the plaintiff's arrest and threats was defamatory. However, past references from other known contacts did not prove that Mr. Stocker was a dangerous person.

The Supreme Court allowed the ex-wife to appeal on the grounds that the lower courts had erred in deciding the case. The court overruled the decisions of the High Court and the Court of Appeal by criticizing the High Court's and the Court of Appeal's reliance on a dictionary definition of "strangle." As far as the facts of the case were concerned, the ex-wife's statements were factual. The plaintiff had strangled his ex-girlfriend to the extent that she had red marks on her neck, he was arrested, he violated a non-molestation order, and he threatened her. In this case, the ex-wife's statements could not be considered defamatory because Mr. Stocker/the plaintiff actually was a dangerous and disreputable person.

9. Conclusion

The concepts, parameters, and case laws discussed in this paper, clearly illustrate how defamation is a civil wrong that affects one's right to reputation. When a person's rights to freedom of speech and expression guaranteed to them by the principles of human rights are transgressed, defamation is present. In each case involving defamation, the court analyses the claims made by the plaintiff in light of the facts and evidence presented before them to reach a reasoned decision, and this process might provide an adequate remedy to the party whose right to reputation has been infringed.

An expert witness can help a court and any jury members navigate the technicalities involved in each case by providing an opinion based on deep subject matter knowledge. The person whose rights have been infringed should analyze the case at hand and decide what strategy would best suit their situation, and that strategy might include enlisting the help of an expert witness. The modern concept of reputation management, however, provides a mechanism to help people resolve defamation matters outside of court - a highly desirable option, given that escalating matters can garner unwanted publicity.

Our reputation is foundational to our social lives, and knowing it can be protected from unwarranted attacks is reassuring. The internet age creates numerous opportunities for people to express their thoughts and opinions. With this privilege, citizens should make conscious choices about what they post online and consider what repercussions their choices may lead to. Although the internet age offers countless benefits;, it can lure someone into acting carelessly, laying a defamation trap unseen by previous generations.

10. Works Cited

1. [Immanuel Kant, *The Metaphysics of Morals*](#) (Cambridge: Cambridge University Press, 2017), 237.
2. Kant, 237.
3. Michelle Seidel, <https://legalbeagle.com/8325716-win-defamation-lawsuit.html>
4. Coulter Boesch, "Defamation Law: Legal Elements of Libel and Slander", AllLaw, <https://www.alllaw.com/articles/nolo/civil-litigation/defamation-libel-slander.html>, (accessed May 15, 2020).
5. Boesch.
6. Aaron Larson, "Defamation: Libel and Slander," ExpertLaw,(May 8, 2018) https://www.expertlaw.com/library/personal_injury/defamation.html
7. [SLR 39_432](#), [1902].
8. Law Commission of Ontario, "Defamation Law in the Internet Age," (March 2020), <https://www.lcocdo.org/wp-content/uploads/2020/03/Defamation-Final-Report-Eng-FINAL-1.pdf>
9. Merriam Webster Dictionary, "reputation,"
10. Jane Bailey and Valerie Steeves, "Defamation Law in the Age of the Internet: Young People's Perspectives," Law Commission of Ontario, (June 2017), <http://www.lco-cdo.org/wp-content/uploads/2017/07/DIA-Commissioned-Paper-eQuality.pdf>
11. Ibid.
12. Ibid.
13. [Lori Randall Stradtman](#), *Online Reputation Management for Dummies* (Hoboken, NJ: John Wiley & Sons), 2012.
14. Reputation X, *The 2018 Online Reputation Management Guide for Business*, <https://www.reputationx.com/hubfs/orm-guide-for-business.pdf>
15. Steven W. Giovinco, "Online Reputation Management Strategy," Recover Reputation, https://www.academia.edu/37789871/Online_Reputation_Management_Strategy
16. Reputation X.
17. Ibid.
18. Ibid.
19. Reputation X, "The Online Reputation Process," <https://www.reputationx.com/orm/techniques/process>, accessed May 29, 2020.
20. [Reputation X, "Protect Online Reputation,"](#) accessed May 29, 2020. Traverse Legal, "What Is
21. Defamation, Libel, and Slander?," <https://www.traverselegal.com/defamation-libel-slander/#clip=2e7f1ot0gvdw> (accessed May 21, 2020).
22. Electronic Frontier Foundation, "Online Defamation Law," <https://www.eff.org/issues/bloggers/legal/liability/defamation>, (accessed June 5, 2020).
23. [Vogel v. Felice](#), 26 Cal. Rptr. 3d 350 (California Court of Appeals, 6th District, March 24, 2005).
24. [Harsh Mendiratta v. Maharaj Singh](#) 95 (2002) DLT 78.
25. *Newstead v. London Express Newspapers Ltd.*, (1940) [1 KB 377](#).
26. Electronic Frontier Foundation, <https://www.eff.org/issues/bloggers/legal/liability/defamation>, (accessed June 5, 2020).
27. David Goguen, "Online Defamation & Libel: Legal Issues," AllLaw, <https://www.alllaw.com/articles/nolo/civil-litigation/defamation-slander-internet.html>, (accessed June 21, 2020).
28. Center for Democracy and Technology, "Defamation in the Internet Age: Protecting Reputation without Infringing Free Expression," (September 11, 2012), <https://cdt.org/wp-content/uploads/pdfs/Defamation-Internet-Age.pdf>, (accessed January 14, 2020).

29. United Nations Human Rights Committee, "General Comment No. 34 - Article 19: Freedoms of opinion and expression," para. 2, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed January 14, 2020).
30. Hill v. Church of Scientology of Toronto 126 DLR (4d) 129, para 120 and 121. As cited in the above text is referenced from Hill v. Church of Scientology of Toronto, 126 DLR (4d) 129, para 120 and 121.
31. Notably, this was the decision in the case of [Snyder v. Phelps](#), wherein the question was whether a protest involving hate speech near the funeral of a gay soldier had invaded the privacy of a gay soldier.
32. [Center for Democracy and Technology](#), accessed January 14, 2020.
33. United Nations, "Universal Declaration of Human Rights," <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed May 15, 2020.
34. Article 19 of the International Covenant on Civil and Political Rights (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) reads as follows:
 1. Everyone shall have the right to hold opinions without interference.
 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.
35. Equality and Human Rights Commission, "What is the European Convention on Human Rights?," <https://www.equalityhumanrights.com/en/what-european-convention-human-rights>, accessed June 15, 2020.
36. Article 10 of the European Convention on Human Rights (https://www.echr.coe.int/documents/convention_eng.pdf) reads as follows:

Freedom of expression

 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (cont.)
37. The First Amendment to the Constitution of the United States (<https://www.google.com/url?q=https://www.ala.org/advocacy/intfreedom/censorship%23%3A~:text=%3D%25E2%2580%259CCongress%2520shall%2520make%2520no%2520law,Amendment%2520of%2520the%2520U.S.%2520Constitution&sa=D&source=docs&ust=1651089194871138&usg=AOvVaw0AodrZnyqGEXmMliB3P05>) asserts:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
38. Media Division, Directorate General of Human Rights, "Defamation and Freedom of Expression: Selected Documents," Council of Europe, (March 2003), <https://rm.coe.int/1680483b2d>, (accessed June 17, 2020).
39. New York Times Co. v. Sullivan U.S. 254 (1964).
40. Media Division, Directorate General of Human Rights, <https://rm.coe.int/1680483b2d>, (accessed June 17, 2020).
41. "Freedom of Expression in the Inter American System for the Protection of Human Rights", Claudio Grossman, Vol. 7:619 2001, <https://core.ac.uk/download/pdf/51092253.pdf>.
42. Art. 13, American Convention on Human Rights, <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>, (accessed May 1, 2022).

43. Art. 14, American Convention on Human Rights, <https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>, (accessed May 1, 2022).
44. Article 4, American Declaration, <http://humanrightscommitments.ca/wp-content/uploads/2018/10/American-Declaration-of-the-Rights-and-Duties-of-Man.pdf>, (accessed May 1, 2022).
45. Amnesty International, China 2021, <https://www.amnesty.org/en/countries/asia-and-the-pacific/china/report-china/>, (accessed July 16, 2020).
46. Association of Southeast Asian Nations, "ASEAN Human Rights Declaration," (November 19, 2021), <https://asean.org/asean-human-rights-declaration/>, (accessed July 16, 2020).
47. Government of India, Ministry of Law and Justice, "Constitution of India – in English," (November 26, 2021), <https://legislative.gov.in/sites/default/files/COI...pdf>, (accessed July 16, 2020).
48. Coleen Lewis, "Social Media—Cyber Trap Door to Defamation," Masaryk University Journal of Law and Technology 9, no. 1 (June 2015), <https://www.researchgate.net/publication/281231900>.
49. Sim v. Stretch
[\[1936\] 2 All E.R. 1237, 1240.](#)
50. Lewis
51. Defamation Act 2005 No 77 Section 32(1) Defamation Act, Retrieved from Home - NSW legislation :- <https://legislation.nsw.gov.au/view/html/inforce/current/act-2005-077#sec.32>
52. (April 27, 2018) Retrieved from [Personal & Business Legal Services Solicitors - DAS Law:- Defending against defamation claims - DAS Law](#) (accessed June 27, 2020)
53. Saumya Saxena (May 14, 2019), "Law of Defamation in India" Retrieved from [iPleaders Blog | India's Biggest Legal Blog :- Elements of Defamation - Libel and Slander - Defences available in India \(iplayers.in\)](#) (accessed June 27, 2020).
54. Naveed Saleh (December 20, 2019), "Understanding the Streisand Effect," Retrieved from [Psychology Today: Health, Help, Happiness + Find a Therapist :- Understanding the Streisand Effect | Psychology Today](#)
55. Streisand v. Adelman, et al., in California Superior Court; Case SC077257
56. Saleh
57. Cohen v Google, Inc., in New York County Supreme Court; 25 Misc. 3d 945, 887 N.Y.S.2d 424 (2009)
58. (December 7, 2018) "Time Limits to File a Defamation Lawsuit: State Statutes of Limitation," Retrieved from:- [Find Laws, Legal Help, and Attorneys - FindLaw - Time Limits to File a Defamation Lawsuit: State Statutes of Limitation - FindLaw](#) (accessed April 1, 2022)
59. Misinformation policies, Retrieved from:- [YouTube Help \(google.com\) - Misinformation policies - YouTube Help \(google.com\)](#), (accessed May 1, 2022).
60. "Twitter: Terms of Service" Retrieved from <https://twitter.com/en/tos#update> (accessed May 1, 2022).
61. "Remove your personal information from Google", Retrieved from:- [Google Search Help - Remove your personal information from Google - Google Search Help](#), (accessed May 1, 2022).
62. Section 230 of the Communications Decency Act (United States) , Retrieved from:- [Electronic Frontier Foundation | Defending your rights in the digital world \(eff.org\) - Section 230 of the Communications Decency Act | Electronic Frontier Foundation \(eff.org\)](#)
63. "Circumstantial Evidence" Retrieved from:- [Dictionary by Merriam-Webster: America's most-trusted online dictionary - Circumstantial Definition & Meaning - Merriam-Webster , Circumstantial evidence Definition & Meaning - Merriam-Webster](#), (accessed July 5, 2020).
64. Amir Tikriti, "Evidence You'll Need to Bring a Defamation Lawsuit, Retrieved from:- [AllLaw.com. Laws & Legal Information. Legal Forms. Lawyers. | AllLaw - Evidence to Prove Defamation | AllLaw](#), (accessed July 1, 2020).
65. "Expert Witness," Retrieved from:- [Cambridge Dictionary: Find Definitions, Meanings & Translations - EXPERT WITNESS definition | Cambridge English Dictionary](#), (accessed July 1, 2020).

66. The complete text of Rule 702 of the Federal Rules of Evidence, states the following:-
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
(b) the testimony is based on sufficient facts or data;
(c) the testimony is the product of reliable principles and methods, and
(d) the expert has reliably applied the principles and methods to the facts of the case.
Retrieved from:-[LII / Legal Information Institute \(cornell.edu\) - Rule 702. Testimony by Expert Witnesses | Federal Rules of Evidence | US Law | LII / Legal Information Institute \(cornell.edu\)](#).
67. JennyTsay, (February 24, 2014) "Who Qualifies as an Expert Witness?" Retrieved from:- [Find Laws, Legal Help, and Attorneys - FindLaw - Who Qualifies as an Expert Witness? - FindLaw](#)
68. Federal Rules of Civil Procedure, Title V, Rule 26, "Duty to Disclose; General Provisions Governing Discovery" Retrieved from:- [LII / Legal Information Institute \(cornell.edu\) - Rule 26. Duty to Disclose; General Provisions Governing Discovery | Federal Rules of Civil Procedure | US Law | LII / Legal Information Institute \(cornell.edu\)](#).
69. In cases of Daubert v. Merrell Dow Pharmaceuticals, Inc., in the US Supreme Court, 509 US 579, 113 S.Ct. 2786 (1993) and Kumho Tire Co. v. Carmichael, in the United States Supreme Court 526 US 137, 119 S.Ct. 1167, 1179 (1999).
70. Ibid.
71. Ibid.
72. General Electric Co. v. Joiner, in the United States Court of Appeals for the Eleventh Circuit, 522 U.S. 136 (1997).
73. Melaleuca, Inc. v. Clark, in the Court of Appeal of California, Fourth District, Division One, 66 Cal.App.4th 1344, 78 Cal. Rptr. 2d 627 (Cal. Ct. App. 1998).
74. According to Rule 703 of the Federal Rules of Evidence.
75. Elias v. Rolling Stone LLC, in the United States Court of Appeals for the Second Circuit, Case 16-2465 (2d Cir. 2017) Retrieved from:- http://online.wsj.com/public/resources/documents/2017_0919_rolling_stone_2nd_circuit.pdf.
76. Clifford v. Trump, 15 October 2018, in the US District Court, California CD, 339 F. Supp. 3d 915 (C.D. Cal. 2018), Retrieved from:- (https://inforrm.org/wpcontent/uploads/2019/01/gov.uscourts.cacd_.719561.36.0_2.pdf).
77. Gill v. Anagnost, Crews and Grenier, in the New Hampshire Supreme Court, No. 216-2016 CV 277.
78. Gibson's Bakery v. Oberlin College, in the [Ohio Courts of Common Pleas](#), 17 CV 193761.
79. Vernon Unsworth v. Elon Musk, in the United States District Court, Central District of California, 2:18-CV-8048, Retrieved from:- [Vernon Unsworth vs. Elon Musk defamation lawsuit - DocumentCloud](#).
80. Wilson v Bauer Media Pty Ltd, in the Supreme Court of Victoria, [2017] VSC 521, (13 September 2017).
81. Wagner & Ors v. Harbour Radio Pty Ltd & Ors, in the SUPREME COURT OF QUEENSLAND, [2018] QSC 201.
82. Fairfax Media Publications Pty Ltd v. Gayle, in the Court of Appeal Supreme Court New South Wales, [2019] NSWCA 172, Retrieved from:- [Fairfax Media Publications Pty Ltd v Gayle; The Age Company Pty Ltd v Gayle; The Federal Capital Press of Australia Pty Ltd v Gayle - NSW Caselaw](#).
83. "Quantum", Retrieved from:- [Dictionary by Merriam-Webster: America's most-trusted online dictionary - Quantum Definition & Meaning - Merriam-Webster](#).
84. Voller v. Nationwide News Pty Ltd, in the Supreme Court New South Wales, [2019] NSWSC 766, Retrieved from:- [Voller v Nationwide News Pty Ltd; Voller v Fairfax Media Publications Pty Ltd; Voller v Australian News Channel Pty Ltd \[2019\] NSWSC 766 \(24 June 2019\) \(austlii.edu.au\)](#).
85. Rayney v. The State of Western Australia, in the Supreme Court of Western Australia, [No9] [2017] WASC 367, Retrieved from:- [RAYNEY -v- THE STATE OF WESTERN AUSTRALIA \[No 9\] \[2017\] WASC 367 \(15 December 2017\) \(austlii.edu.au\)](#).
86. 2018 SCC 28 (CanLII)

87. SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra, in the Delhi District Court, (original suit no. 1279 of 2001 Retrieved from:- [Smc Pneumatics \(India\) Pvt. Ltd vs Shri Jogesh Kwatra on 12 February, 2014 \(indiankanoon.org\)](#)).
88. Kalandi Charan Lenka v. State of Odisha, in the Orissa High Court, BLAPL No.7596 of 2016.
89. M/S Spentex Industries Ltd. & Anr. v. Pulak Chowdhary, in the Delhi District Court, CS No. 219/18, Retrieved from:- [M/S Spentex Industries Ltd. & Anr. vs . Pulak Chowdhary on 1 May, 2019 \(indiankanoon.org\)](#)
90. Radheshyam Tiwari v. Eknath ([AIR 1985 Bom 285](#)).
91. (3) ILR (Ker) 583.
92. Independent Newspapers v. Ireland, in the European Court of Human Rights (ECtHR), 28199/15.
93. Durie v. Gardiner, in the Court of Appeal of New Zealand, [2018] NZCA 278, Retrieved from:- [Durie v Gardiner \[2018\] NZCA 278; \[2018\] 3 NZLR 131 \(31 July 2018\) \(nzlii.org\)](#).
94. Ibid.
95. Lange v. Atkinson [1997] 2 NZLR 22 (HC), [1998] 3 NZLR 424 (CA), [2000] 1 NZLR 257 (PC), [2000] 3 NZLR 385.
96. Independent Newspapers v. Ireland, in the European Court of Human Rights (ECtHR), 28199/15.
97. Monroe v. Hopkins, in the England and Wales High Court (Queen's Bench Division), [2017] EWHC 433 (QB), Retrieved from:- [Monroe v Hopkins \[2017\] EWHC 433 \(QB\) \(10 March 2017\) \(bailii.org\)](#).
98. Michael DiBenedetto, "Trump Suits: Melania Sues the Internet," Retrieved from:- Law School Student Scholarship 924, 2017 - https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1930&context=student_scholarship.
99. Lachaux v. Independent Print, in the United Kingdom Supreme Court, [2019] UKSC 27.
100. Stocker v. Stocker, in the United Kingdom Supreme Court, [2019] UKSC 17, Retrieved from:- <https://www.supremecourt.uk/cases/docs/uk-sc-2018-0045-judgment.pdf>

11. Additional References Content for Sameer Somal

- [Online Reputation Management, and Why It Is Important](#) (Business.com)
- [Protecting your reputation in a post fact-check world](#) (Reputation Today)
- [The Power of Fewer Words: Do Introverts Make Better Business Leaders?](#) (All Business)
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Christopher Brown v. Damon Dash; Poppington LLC d/b/a Dame Dash Studios; The Dash Group LLC; and Raquel Horn
Court: United States District Court, Central District of California

Iryna Boyko v. Benny The Bum's Restaurant and Vladimir A. Mosendz, **Court of Common Pleas for Philadelphia, PA.**

K.G.S., individually, and as Guardian and Next Friend of Baby Doe v. Thehuffingtonpost.com, Inc., d/b/a The Huffington Post; Mirah Riben; David G. Kennedy; The Kennedy Law Firm; Amber Geislinger; WALA-TV; Meredith Corp.; WBRC, LLC; Raycom Media, Inc.; and Fictitious Parties "A-Z," **in the Circuit Court of Jefferson County, Colorado.**

Monique Bunn v. Damon Anthony Dash, Dame Dash Studios d/b/a Poppington LLC, Raquel Horn and The Dash Group LLC, **in the United States District Court, Southern District of New York.**

Nokaj v. NEDM, et al **in the United States District Court, Southern District of New York.**

Susan Edwards v. Aegis Wealth Group LLC d/b/a Everspire, and Gerilyn Merrill, **in the Third Judicial District Court for Salt Lake County, Utah.**

Adam M Ludwin, Esq.; Ludwin Law Group, P.A.; and Joanna Zeitlin v. Matthew Proman, a/k/a Matt Proman, **in the United States District Court, Southern District of Florida.**

Lawrence A. Dordea v. Maggie Freleng, Obsessed Network, LLC, Sue L. Gless Thorne, John W. Hardin and Jason C. Baldwin, **in the Court of Common Pleas Civil Division, Stark County, Ohio.**

Aris Hines & Brandi Thomason v. Terry S. Johnson, individually and in his Official capacity as Sheriff of Alamance County, Randy Jones, in his official capacity as Deputy Sheriff of Alamance County, John Doe Corporation, in its capacity as Surety on the Official Bond of the Sheriff of Alamance County, NGM Insurance Company, and Doe Deputies 1-10, **in the United States District Court for the Middle District of North Carolina, Greensboro Division.**

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