



MARTIN GEORGE & CO.

(M.A.G.C.O)

Attorneys-at-Law

LEGAL TOPIC: DEFAMATION & SOCIAL MEDIA

By: Sherisse Walker
Attorney-at-Law
Martin George and Co.
Attorneys-at-Law

A) INTRODUCTION

The tort of Defamation continues to be an evolving one not only within the jurisdiction of Trinidad and Tobago but also throughout the world; owing to the explosion of the use of social media, which, has now become the breeding ground for the publication of disparaging and defamatory content.

However, notwithstanding the above, it appears as though our legislation continues to be ill-equipped to deal with such issues which arise for determination; and so, in the absence of such legislation, heavy reliance has been placed on our Court system to specifically address the use of social media and its real-world implications in an effort to curtail the risk of harm that the publication on such platforms may cause.

The Honourable Mr. Justice Frank Seepersad said it best in the local case of CV2016-02974 DRA and Others v Janelle Burke wherein he expressed inter alia that while these platforms offer persons the ability to freely express their own statements, beliefs and opinions, it must be emphasized that the right to freedom of expression is *not absolute* and must be exercised responsibly and in a manner which does not eviscerate the rights and freedoms of others. The Honourable Judge added that anonymity *cannot* obviate the need to be respectful of people's rights and users cannot therefore be recklessly allowed to impugn a person's character or reputation.

E Mail: mag4law@hotmail.com
Website:
<http://martingeorge.net/>

PORT -OF SPAIN OFFICE:
#43 Dundonald Street,
Cor. Gordon & Dundonald
Streets Port of Spain,
Trinidad, West Indies.
Tel: (868) 624-7257
Tel / Fax: (868) 623-5187

TOBAGO OFFICE:
33 Bacolet Park
Scarborough,
Tobago, West Indies.
Tel: (868) 639-1809
Tel/Fax: (868) 639-1579

US MAILING ADDRESS:
11158 Highland Circle,
Boca Raton
Boca Woods
Florida,
33428 USA



Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC
anelle Ramsaroop LL.B (Hons) LEC, Sarah Lawrence LL.B (Hons) LEC and Sara Martinez
LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

B) DEFINITION

Gatley on Libel and Slander 12th edition defines the term “Defamation” as;

“...a collective term for the torts of libel and slander. It is committed when a person publishes words or matter to a third party that contain an untrue imputation that harms the reputation of the Claimant...”

As it relates to the use of social media platforms, Halsbury’s Laws of England Volume 32 (2012) at paragraph 566 explains;

“An individual who posts defamatory material on the internet is a publisher of that material if it is subsequently accessed and read by a third party.”

Generally, a statement will be considered to be defamatory, if it:

1. Tends to lower a person in the estimation of right-thinking members of the society generally;
2. Exposes a person to hatred, contempt or ridicule;
3. Causes other persons to shun or avoid him;
4. Discredits a person in his trade, profession or calling; or
5. Damages a person’s financial credit.

In this jurisdiction, the Court of Appeal case of **Kayam Mohammed and Others v Trinidad Publishing Company Limited and Others Civ Appeal No. 118 of 2008** emphasized that in determining whether statements made are considered defamatory;

“The Court should ... give the article the natural and ordinary meaning the words complained of would have conveyed to the ... ordinary reasonable reader ... The natural and ordinary meaning refers not only to the literal meaning of the words but also to any implication or inference that the ordinary reasonable reader would draw from the words.”

C) FORMS OF DEFAMATION

i) Libel

Atkin’s Court Forms (2nd Edition), Volume 15 paragraph 2, p.7 provides that;

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

“... any publication published in a form which can be described as permanent will constitute libel. Publications on the internet also give rise to actions in libel.”

Libel is “*actionable per se*,” meaning that the law presumes that damage has been caused to the Claimant’s reputation; and so he will generally be awarded General Damages by way of compensation for same.

In the local case of **CV2016-02974 DRA and Others v Janelle Burke**; the Honourable Mr. Justice Seepersad found that disparaging statements made by a Defendant about the Claimants through a Facebook profile, constituted libel. In the instant case, the Court held that the Claimants were not only successful in establishing that the Defendant’s published words were defamatory; but the Learned Judge was also satisfied that the Claimants successfully proved that the said words made through social media, sullied their reputation, thereby causing them emotional pain and anguish, which entitled them to General Damages for same.

Additionally, in the case of **CV2016-02996 Heidi Joseph v Ama Charles** the Claimant initiated legal action against the Defendant seeking compensation for damage to her reputation caused by the publication of certain words on the Trinidad and Tobago Prison Service (“TTPS”) Facebook page by the Defendant, which imputed that the Claimant committed a criminal act as it related to the treatment of her children. In the instant case, the Court held that although the Defendant never personally posted her disparaging statements to the TTPS’ Facebook page; in light of the fact that the Defendant deliberately “tagged” the administrators of the pages “*Beyond the Tape*,” “*Ian Alleyne*,” and “*The TV6 News*” over whom she knew she had no control, she implicitly gave those administrators permission to forward her publication to third parties which included the TTPS’ Facebook page. The Defendant was therefore found to be ultimately responsible for the words which she initially published once they remained in the form she originally published.

ii) Slander

Halsbury’s Laws of England 2nd Edition Volume 20 defines slander as;

“a false defamatory statement, expressed or conveyed by spoken words, sounds, signs, gestures, actions or in some form which is not permanent published of and concerning the plaintiff, without lawful justification or excuses.”

Generally, where a party initiates legal action against another for slander, the Claimant must prove that he/she has suffered actual loss as a result of the slanderous statements.

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

There are instances however whereby slander will be treated as being “actionable per se,” meaning that the law will presume that damage has been caused to the Claimant’s reputation and he/she can be awarded compensation for same:

These instances are as follows:

1. Imputation of a Crime

- Where a Defendant alleges that a Claimant has committed a crime which is punishable by *imprisonment* or *corporal punishment*, such slander will be classified as being “actionable per se”. However, it should be noted that the imputation of a crime punishable by a fine only does not fall within this exception, notwithstanding the fact that the failure to pay the said fine may be punishable by imprisonment. Additionally, there must be a direct assertion of guilt. Therefore, a mere allegation of suspicion will not be sufficient.
 - o In the case of **Cupid v Gould (1971) 2 OECSLR 162**, the Defendant imputed that the Claimant was guilty of making use of threatening language which was punishable by a fine of twenty-four dollars (\$24.00) or by imprisonment for one month. In the instant case, the Magistrate interpreted this to mean that the offence was punishable by a fine and that one month’s imprisonment would only take effect in default of payment of the said fine. However, the court of Appeal held that the fine and imprisonment were alternative punishments, either of which might be imposed in the first instance and so the offence imputed had to be taken as being punishable by imprisonment in the first instance. The slander was therefore considered to be actionable per se.

2. Imputation of certain diseases

- It is actionable per se to allege that a Claimant is infected with certain contagious or repulsive diseases given that this would tend to cause other persons to shun or avoid him. While there has been some uncertainty throughout the years as to what diseases are to be included within this exception, the Trinidadian case of **Forde v Shah (1990) 1TTLR 73** has established that contagious venereal diseases, which includes AIDS, will fall within this category.

-

3. Imputation of unchastity or adultery

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

- An imputation of unchastity or adultery concerning any woman is actionable per se and such a provision can be found under **section 6 of the Libel and Defamation Act of Trinidad and Tobago Chapter 11:16.**

4. Imputation affecting professional or business reputation

- In order to succeed in any action under this heading, the slander will only be actionable per se if it amounts to a disparagement in the way of the Claimant's profession or business.

D) WHAT THE CLAIMANT MUST PROVE

Regardless of whether the action is for libel or slander, the Claimant must establish the following:

1. That the words were defamatory;
2. That they referred to the Claimant; and
3. That they were published to at least one person other than the Claimant himself.

E) DEFENCES

There are four major defences which may be relied upon when an action has been brought against a Defendant for defamation. These Defences are as follows:

1. **Justification (Truth)** –If a Defendant can prove that the words complained of were true in substance, this can be used as a complete defence to an action for libel or slander and he will therefore defeat any claim brought by the Claimant in defamation. (**section 3 of the Libel and Defamation Act of Trinidad and Tobago Chapter 11:16**)
2. **Fair Comment**- It is a defence to an action for libel or slander where the statement complained of was fair comment on a matter of public interest; for example affairs of the Government or the administration of Justice. The statement made must however be based upon true facts, it must not be motivated by malice, it must be honestly made; and it must only be made as a comment or opinion and not as an assertion of fact.

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons)
LEC**

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

3. **Absolute Privilege**- This is a complete defence to an action for libel or slander and it arises in those circumstances such as proceedings in the legislature or in a Court of Law where public policy demands that persons should be able to speak or write with absolute freedom and/or without fear of liability for defamation.

4. **Qualified Privilege**- Qualified privilege, like Absolute privilege seeks to protect persons who make defamatory statements in circumstances where the welfare of society demands such protection. However, qualified privilege applies to a much wider variety of situations in which it is in the public interest that persons should be able to state what they honestly believe to be true without fear and legal liability.

Prepared and presented by Sherisse Walker, Attorney at Law. MARTIN GEORGE & CO (MAGCO)

© 2020 MARTIN ANTHONY GEORGE & CO

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant