

THE DEFENCE OF QUALIFIED PRIVILEGE IN DEFAMATION

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CHAPTER 1

a) Brief Discussion on the Law of Defamation in General

In Malaysia, the Law of Defamation is codified in Defamation Ordinance 1907. The English Common Law is part of our sources of Law by virtue Section 3 and Section 5 of the Civil Law Act 1956.²

However, the application of the Law of England throughout Malaysia is subject to two limitations. Firstly, it is applied only in the absence of local statutes on the particular subjects. Local law takes precedence over English law as the latter is meant only to fill the gaps in the local system. Secondly, only that part of the English Law that is suited to local circumstances will be* applied.

A statement which disparages a man in his reputation in relation to his office, profession, calling, trade or business may be defamatory. Injurious statements which do not reflect on a person's reputation are not defamatory but may be actionable if made maliciously.

Revised - 1984

Revised - 1972

Wu Min Aun - 'An Introduction to the Malaysian Legal System' (Revised Third Edition) Heinemann Asia Publication; see proviso to Section 3(1) Civil Law Act 1956 (revised 1972) .

The English Law provides two separate civil actions in respect of a defamatory matter: the action for libel and the action for slander. In general terms, the action for libel is concerned with the publication of defamatory matter which is in writing or some other persuevant form whereas the action for slander is covered with the publication of defamatory matter by word of month or in some other transient form. However it must be borne in mind that the precise dividing line between the two types of action is not finally settled.

To succeed in an action for defamation, a plaintiff must establish three important elements:

1. The words must be defamatory
2. They must refer to the plaintiff
3. They must be "maliciously" published

In one particular case, it has been established that, "Words are not defamatory however much they may damage a man in the eyes of a section of the community unless they also amount to disparagement of his reputation in the eyes of right-thinking men generally. To write or to say of a man something that will disparage him in the eyes of a particular section of the community but will not affect his reputation in the eyes of the average right-thinking man is not actionable within the law of defamation." The question that was suggested is, "would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?"⁵

⁴ Tolley v. Fry [1930] 1 KB
• > per Greer L.J. at page 479

⁵ Per Lord Atkin in Sim v. Stretch [1936] 2 All ER 1237, 1240.