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2016

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30 November 2016 | Rabu
UiTM Cawangan Pahang
Kampus Jengka



Defamation Law: Are They Aware? Do They Know?

Hazlin Hasan^{1*}, Suria Fadhillah Md Pauzi², Musramaini Mustapha³,
Mohd Samsuri Ghazali⁴

^{1,3,4} Faculty of Business and Management, Universiti Teknologi MARA Cawangan Pahang,
Kampus Raub, 27600 Raub, Pahang, Malaysia,
hazlin665@pahang.uitm.edu.my, musra_08@pahang.uitm.edu.my,
mohdsamsuri@pahang.uitm.edu.my

² Faculty of Law, Universiti Teknologi MARA Cawangan Pahang,
Kampus Raub, 27600 Raub, Pahang, Malaysia,
suriapauzi@pahang.uitm.edu.my

*Corresponding Author

Abstract: By definition defamation is the act of injuring someone's character or reputation by expressing false statements that may lower that person's reputation in the eyes of the public. Regardless of race or religion, slander and gossips have been noted to cause destruction to the community and they are totally unacceptable to Islam and considered amongst the most destructive of major sins. With the extensive usage of social media among the youth and the many controversial issues debated in it, it is pertinent for the youths to be able to distinguish whether the statements they made are maliciously published. The researchers found it important to analyse the level of awareness and knowledge of these youth on defamation as these findings could be used to suggest programs that could equip them with necessary knowledge and assist them from unintentionally harming themselves out of ignorance. A total of 53 student leaders who attended a seminar on the awareness of defamation law were selected for this study. SPSS Version 23.0 software programme was used to analyse the frequencies, mean and standard deviation, maximum and minimum values. The study concluded that a majority of the student leaders was highly aware of the existence of defamation law but their level of knowledge on the law was found to be at an average level. The findings suggest that these young leaders still need to be educated further on the elements of the law in order to fill the gap of concerns on defamation, socially or religiously.

Keywords: Awareness, Defamation, Knowledge, Student Leaders

1. Introduction

According to Robert (1986), defamation refers to the act of injuring someone's character or reputation by expressing false statements that may lower that person's reputation in the eyes of the public. Defamation happens if they are proven to be made in a vindictive or malicious manner. Regardless of race or religion, suspicion, backbiting, slander and gossips have been noted to cause destruction to the community. These acts are totally unacceptable to Islam and are considered amongst the most destructive of major sins. However, off late, there have been many civil cases of defamation involving celebrities and political figures being brought to the court under the Defamation Act 1957. In Malaysia, defamation can be both a civil and criminal offence. For civil cases, the relevant legislation is the Defamation Act 1957 whereas criminal defamation is covered by Chapter XXI (Sections 499 to 502) of the Penal Code (Talib, 2010). These are the people who are most affected as they live by their reputations. As defamation focuses on the effect of damaged reputations of a person in the eyes of the society, high profile people tend to be more wary when their private lives are being invaded by unknown people.

With the highly extensive usage of social media among the youth and the many controversial issues being debated today in the social media, it is very pertinent for everyone, especially the youths to be able to distinguish whether the statements they shared in the media are defamatory or maliciously published. Since the Gen Y are known to be impulsive and forward, as a first step, it is imperative for the researchers to determine the level of awareness and knowledge of these youth on defamation law as these findings could be used to suggest

programs that could assist these young leaders from unintentionally harming themselves thus becoming more responsible and be alert with the ever challenging world they are facing now.

2. Literature Review

Defamatory statement is said to be made if its effect expose the plaintiff, in the eyes of community, to hatred, ridicule or contempt or to lower him or her in their estimation or to cause him or her to be shunned and avoided by them (*Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Anor* ([2010] 2 MLJ 492). The right to protect one's name, dignity and reputation is established in the common law of defamation during middle age with the combination of secular legal principles and spiritual authorities (Veeder, 1903). The principle is further developed in England which eventually creates the English Defamation Act 1952. This Act is in *pari materia* with Malaysian defamation law namely Defamation Act 1957. Defamation Act 1957 governs civil defamation whereas Sections 499 and 500 of the Malaysian Penal Code deal with criminal libel. A defamatory statement may either be a libel or slander. Libel is defamation in a permanent form such as articles published in a newspaper (Talib, 2010). As it is actionable per se, there is no need for the plaintiff to prove that he has suffered any loss or injury because of the published statement. On the other hand, slander is defamation in a temporary form such as words spoken (Carey, 1996). It is not actionable per se thus the proof of actual damage is required.

Under Malaysian law, a defamatory statement can be proven if (i) the words are defamatory, and (ii) the words refer to the plaintiff, and (iii) the words have been published (*Kian Lup Construction v Hong Kong Malaysia Bhd* [2002] 7 CLJ 32). In the case of *J.B. Jeyaratnam v. Goh Chok Tong* [1985] 3 MLJ 334 the court upheld if the published words impute to the plaintiff any dishonourable or discreditable conduct, the words are said to be defamatory. Besides that, the plaintiff must show that the statements must refer to him. Interestingly, even if such defamatory statement does not mention the name of the plaintiff specifically but if he would be capable of being identified by the reasonable person, defamation action may be brought against the defendant (*Sandison v Malayan Times Ltd & Ors* [1964] MLJ 332). The final element that needs to be proven by the plaintiff is the defamatory statement must be published. A statement is considered to have been published when the defendant communicates it to anyone other than the claimant, or the defendant's spouse (*Theaker v. Richardson* (1962) 1 All ER 229).

Among the famous defamation case in Malaysia involved plaintiffs who played a key role as witnesses in the corruption trial against the former Deputy Prime Minister of Malaysia (Umami Hafilda Bte Ali & Anor v. Karangkrak Sdn Bhd & Ors (No 2) [2000] 6 MLJ 532). The plaintiffs sued the defendants for publishing an article about them in *Bacaria*. The headline on the front page of *Bacaria* stated: 'Umami Hafilda NIKAH'. The article alleged that the first plaintiff had married one Khairuddin, which the second plaintiff maintained that the name referred to him. The article further alleged that the wedding reception had to be on a modest scale because it was not well received by the local folk because of the plaintiffs' involvement in defaming the Deputy Prime Minister. The plaintiffs claimed that the article was untrue and false and thus had defamed them. The court held that the passages in the article suggested that both the plaintiffs were married. This is an unfair statement to make, knowing full well that they were indeed not married. Such a statement had clearly deprived the chance of each of them being free to meet someone else. The publication when read by a fair minded and ordinary member of the public would hold the plaintiffs in odium and contempt. Therefore, defendants were liable for damages in publishing such defamatory statement.

From the above discussion, it can be safely adduced that Malaysian laws do preserve and uphold one's reputation and dignity from being tarnished by irresponsible person, thus confers rights upon the aggrieved party to take action if his reputation is being derogated by others. Likewise, Islam is religion of peace. Therefore, as noted, Islamic teaching also protects the dignity and reputation of member of society. Defamatory action either in the form of *Ghibah*

(gossip) and Namimah (tale-bearing) are totally prohibited. There are lots of verses from the Holy Quran which forbids the Muslims from the act of backbiting. Amongst them are, "O you who believe! Avoid much suspicion, in deeds some suspicions are sins. And spy not neither backbite one another. Would one of you like to eat the flesh of his dead brother? You would hate it (so hate backbiting). And fear God, verily, God is the one who accepts repentance, Most Merciful. (49: 12). From the verse, we can see that Allah has reminded us to be very careful in what we wish to utter as the consequences of it is very grave especially if it caused enmity, hostility and dishonor to others. Prophet Muhammad ﷺ also said:

"Do you know what backbiting is?" They said, "God and His Messenger know best." He then said, "It is to say something about your brother that he would dislike." Someone asked him, "But what if what I say is true?" The Messenger of God ﷺ said, "If what you say about him is true, you are backbiting him, but if it is not true then you have slandered him".

(Muslim)

In addition the Messenger has clearly stated that:

"The gossip-monger will not enter paradise".

(Bukhari & Muslim)

Therefore, from these hadiths, we can conclude that the act of defamation not only violates the right of that person but also deprive ourselves from the mercy of Allah.

3. Methodology

A total of 53 student leaders of UiTM Cawangan Pahang who attended a seminar on the awareness of defamation law were selected as respondents for this study. No sampling technique was used as all the participants of the seminar were involved in the study. A set of questionnaire developed by a content expert was used and distributed personally to all respondents. A pilot test was conducted to test the reliability of the questionnaire and scored a high Cronbach Alpha reading of 0.84 which indicated that the instrument is reliable as it is above 0.60 (Nunally in Sekaran, 2007).

The questionnaire was distributed to the respondents before the seminar started. They were guided on any legal terms which they were not familiar with while answering the questionnaire. The questionnaire contained three sections namely; Section A for Respondent Demographic, Section B for Awareness on Defamation Law and Section C for Knowledge on Defamation Law. The researchers used a 5-point Likert scale that ranges from 1 = Strongly Disagree to 5 = Strongly Agree for both questions on Section B and C. The data were analysed using the SPSS Version 23.0 software programme. Descriptive statistics was used to analyse the data which included the frequencies, mean and standard deviation as well as to scan the minimum and maximum values.

4. Result and Analysis

Table 1. Respondents Demographic Profile

	Profile	Frequency	Percentage
Sex	Male	23	43.4
	Female	30	56.6

Age	18-19	39	73.6
	20-22	14	26.4
Qualification	Diploma	53	100
Faculty	Applied science	19	35.8
	Accounting	4	7.5
	Engineering	16	30.2
	Business management	14	26.4

Table 1 shows the findings of the respondent's demographic profile. Based from the table, a majority of 56.6% of the respondents were females and mostly aged between eighteen to nineteen years old (73.6%). All of the respondents were diploma students from different faculties with the majority of 35.8% were students from the Faculty of Applied Sciences. 30.2% were students from the Faculty of Engineering, 26.4% were from the Faculty of Business and Management while the remaining 7.5% were from the Faculty of Accountancy.

Table 2. Awareness on Defamation Law

	<i>m</i>	<i>SD</i>
I am aware of the existence of law which protects the dignity and reputation of a person.	4.15	0.361
I am aware of the existence of the act that protects me if I am defamed by others.	4.15	0.361
I am aware that it is an offence for me to express an opinion or give a statement which might lower another person's reputation in the eyes of the public.	4.15	0.361
I am aware that mere feelings of hurt are insufficient for the award of damages under the tort of defamation.	3.81	0.483
I am aware that my right to express a statement or opinion as a citizen is limited by law.	3.49	0.800

m mean, *SD* standard deviation

Section B of the questionnaire analysed the student leaders' awareness on the existence of the laws under the Defamation Act. Based on Table 2, level of awareness of the respondents toward defamation law prior to the program was found to be satisfactorily high. As stated, the highest mean was at 4.15 for three items with standard deviation of 0.361. The findings concluded that majority of the student leaders were highly aware on the existence of the law which protect the dignity and reputation of a person and the existence of an act that protects them as citizens if they were defamed by others. The respondents were also highly aware that it is an offence for them to express an opinion which might lower another person's reputation in the eyes of the public.

Meanwhile, the mean reading of 3.49 with standard deviation of 0.800 obtained shows that the majority of the student leaders were slightly unaware that their rights as citizens to express a statement or opinion is limited by law.

Table 3. Knowledge on Defamation Law

	<i>m</i>	<i>SD</i>
I know it is an offence to give statement whether oral or in written form which may lower another person's reputation in the eyes of the public.	4.42	0.497
I know that slander to a person's professional or business reputation is an offence in the eyes of law.	4.17	0.580
I know that slander to women's reputation and dignity is an offence in the eyes of law.	3.79	0.567
I know if I were to impute of a contagious disease upon somebody, I can be held liable for defamation.	3.42	0.497
I know if I were to impute of a crime upon somebody, I can be held liable for defamation.	3.51	0.576
I know to sue under defamation law, the stamen published and disseminated must be defamatory statement and it must refer to the defamed person.	3.83	0.470
I know that publishing and disseminating any defamatory statement either in the face book or in any social media is an offence which can open to litigation.	3.40	0.862
I realize defamatory words can be found in many forms.	3.70	0.540
I realize defamatory statement can be made in the form of image, picture or effigy.	3.77	0.640
I realize a defamatory action can be taken if the defamatory statement is communicated even to one person.	3.58	0.795
I know the communication of defamatory statement between spouses is not regarded as having disseminating or publishing a defamatory statement and thus does not constitutes an offence.	3.57	0.797
I know if a person consents to the publication of the words such as during the television interview, then she or he cannot complain about damages to his or her reputation.	3.74	0.662
I know should the publication complain about is true, then the law will not protect the complainant.	3.28	0.711
I know statements made during parliamentary debates and proceedings, even though defamatory are not questionable in any court of law.	3.40	0.840
I know anyone can make a statement in a courtroom and received immunity from being prosecuted under defamation law.	3.47	0.639
I know repetition of the same remarks of defamatory statement outside Parliament is an offence under defamatory law.	3.34	0.678

m mean, *SD* standard deviation

Section C of the questionnaire analysed the student leaders' knowledge on the elements that make up the defamation law. Based on Table 3, the knowledge toward defamation law was found to be at an average level with most mean readings obtained were below 4.00. The highest mean prior to the program was at 4.42 and standard deviation was at 0.497 which stated that they know it is an offence to give statement whether oral or in written form which may lower another person's reputation in the eyes of the public. The lowest mean obtained was at 3.17 and standard deviation at 0.727 for item which stated that they shall be privileged unless the publication is proved to be made with malice.

From the findings, it can be concluded that a majority of the student leaders has very basic knowledge on what they should and should not say or do towards someone as their

statements or actions could be defined as defamatory. However, the thin line that separates them from generally knowing and fully understanding the elements of defamation might still lead them to troubles if they do not equip themselves with proper knowledge on the subject matter.

5. Conclusion

Although the results of the study shows satisfactorily high awareness on the defamation law among the student leaders of UiTM Cawangan Pahang, however, the result on their level of knowledge on the elements of defamation shows that these young leaders still need to be guided in their words and actions. Since the Gen Y is known to be impulsive and outspoken, efforts must be made to ensure that they will always be prudent in their actions to avoid them from being stuck in defamatory situations. It is impossible to provide an exhaustive list of what statements would be considered defamatory to the public as certain statements may be clearly defamatory in their natural and ordinary meaning while in some cases the statements made may not be so straight forward especially when there are innuendos involved. Therefore, it is of utmost importance for respective parties, not just in UiTM Cawangan Pahang, but also other related government agencies, to improve the public understanding in this matter. Public awareness campaign or public forum on what deemed to be defamatory could be conducted to target audience, either directly to the youth or to the general public. The public, in general, must be educated in distinguishing whether the statements they shared in the media or in the public are defamatory.

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