

## What is defamation?

### Stage 1

*Both libel and slander are forms of defamation, which is the communication to third parties of false statements about a person that injures or damages their reputation or character or good name.*

**Libel** is the publication in a permanent form (for example, written, printed, pictures, caricature etc.) of a false statement which permanently damages someone's character or reputation.

**Slander** is the spoken communication of statement which is untrue and damages someone's character or reputation.

As well as an individual, a legal entity (for example, a Company) can also sue for defamation.

Defences are:

- *Justification by truth* – the truth of defamatory words is a complete defence to an action for libel or slander.
- *Fair and bona fide (or in good faith) comment* - must be based on true facts or a fair and bona fide statement in matters of public interest.
- *Privilege* – includes statements made during Parliamentary proceedings, Judicial proceedings etc.

Defamation is the one civil action for which a jury is nearly always granted, and the jury not only reaches a verdict but also sets the level of damages, including recent awards of over one million pounds.

In view of the considerable costs involved, suing for libel in England has often been called 'a rich man's game'.

### Stage 2

Now, study these examples and decide if they are libel, slander or neither:

1. You act for a client who is believed to be a successful criminal. Although the police have never caught him, he is well known by the public and his wealth and lifestyle are often reported in the newspapers. A newspaper decides to publish an in-depth feature about your client producing evidence about how he has become so rich. It links him to criminal activities including Internet fraud. Your client wants to sue for defamation. What is your advice?

2. You act for a Member of Parliament.  
In Parliament one day the MP accuses a Government Minister of receiving a large sum of money for agreeing to give a construction company an important contract.  
This accusation is widely reported in the newspapers and on TV.  
The Minister threatens to sue for defamation.  
What is your advice to your client?
  
3. You act for the Managing Director of a small but expanding company.  
In an internal e-mail that was sent from one colleague to another in the company the MD was blamed for the loss of an important contract that was very important to the expansion of the company.  
Unfortunately, the e-mail was later forwarded to everybody in the company.  
Your client is very unhappy with this public criticism and wants to sue the member of staff who originally sent the e-mail for defamation.  
What is your advice to your client?
  
4. You act for a famous actor.  
At a party attended by many other famous celebrities, your client tells a group of people that he has heard that his leading actress in the film he is making is having a baby and the father is not her husband.  
The news reaches the producers of the film and they decide to cancel the film completely.  
The actress is not pregnant and decides to sue your client for defamation.  
What is your advice to your client?
  
5. You act for a high-profile multinational fast food company.  
One day a group of environmental activists hand out leaflets outside one of the branches of your restaurant criticising your employment policies.  
Your clients consider that they are fair employers and want to sue some of the activists personally.  
What is your advice to your clients?

Discuss the examples with the members of your group.

What is your advice about each of them, and what are your reasons for giving it? Is there any defence available, and what would be the likelihood of winning or successfully defending an action in each of these cases?

**Stage 3**

The following is the report of what really happened in the trial of the last example above, including the decision that was reached.

The final conclusion of the trial was a judgement in the European Court about legal aid in this case. Legal aid is financial assistance given by the government in certain types of cases to those who cannot afford the cost of legal advice.

Read this article from which paragraphs have been removed and choose the correct place in the text for the paragraphs below - do not worry if you do not understand all of the words.

## 20-year fight ends with libel law in the dock

Human rights court rules that McLibel anarchists were denied fair trial by the limitations of the legal aid system

**John Vidal**  
**Wednesday February 16, 2005**  
[The Guardian](#)

Twenty years ago last month a small anarchist group called London Greenpeace - nothing to do with the environmentalists - began a campaign to "expose the reality" behind what they called the advertising "mask" of McDonald's.

**A**

The McLibel two, beaming below a DIY banner reading "20 years of Global Resistance to McWorld", said they were "elated".

**B**

But it barely needed the European court to decide that the trial was "unfair". Anyone who visited the austere Court 11 of the Royal Courts of Justice between June 28 1994 and December 16 1996 when the epic 313-day libel case was in progress could tell at a glance that the two defendants were at a horrendous disadvantage.

Mr Morris and Ms Steel, who earned about £3,500 a year, had no legal training and were trying to defend themselves in one of the most complex branches of the English law.

**C**

McDonald's, on the other hand, had the smoothest of luxury legal machines. The company not only employed Richard Rampton QC, a formidable £2,000-a-day libel specialist, a £1,000-a-day solicitor, and the services of a full legal chambers, but also had access to anything it wanted, and thought nothing of flying in witnesses and experts from all over the world.

**D**

They were appalled that when they took the British government to the European court of human rights in 1991 to try to get legal aid they were refused, bizarrely because it was considered that they were defending themselves rather well on their own. They were infuriated, too, that they were denied a jury on the basis that ordinary people would not understand complex scientific arguments, even though they - as ordinary as they come - could clearly understand the issues well enough to defend themselves. And they found it hard to believe that the burden was always on them to prove with primary evidence what almost every other country would consider legitimate comment.

**E**

Mr Morris, who shot from the hip during the trial, in contrast to Ms Steel's more incisive questioning, recalled yesterday how they got through the legal nightmare. "We basically rolled up our sleeves and got on with it."

**F**

Yesterday the book was closed on a trial that would not be allowed to last so long today - and would probably never happen, if only because no big corporation would ever seek to pursue two such determined critics.

**G**

As ever, he took the bigger political picture. "Our overall object has always been to encourage people to stand up for themselves and to take control of their resources, not multinational companies or governments. This should encourage people to better defend themselves."

**H**

Choose the correct place in the text for the paragraphs below:

1. Halfway through the longest trial in English civil case history the McLibel two's joint assessment of English libel law was that it was an arcane relic, a legal lottery that favoured only the very rich.
2. What he did not say was that they frequently felt cruelly punished for their original ignorance of the law. The case may have gone on so long in part because of their lack of legal aid, but it was also because they believed the court treated them shabbily at times. When Ms Steel was suffering badly from stress, she was denied the shortest adjournment.
3. As they handed defamatory leaflets to McDonald's customers in the Strand, London, no one could have foreseen the chain of events which led directly to yesterday's ruling in the European court of human rights, and to Dave Morris and Helen Steel handing out more offending leaflets yesterday outside the same restaurant.
4. "It was a nightmare fighting that case, but it was a unique chance to expose the reality of McDonald's," Mr Morris said.

5. The final proof that times have changed since 1985 was to be found in the restaurant outside which the McLibel two gave their press conference yesterday. Of five customers chosen at random, two had not only heard of the McLibel trial but agreed that what Ms Steel and Mr Morris had achieved was both important and significant for society and had moved on the debate about food and corporate behaviour. The conundrum, perhaps, was that they had still chosen to eat there.
6. Sometimes they were cutting, but not surprisingly they hesitated, paused, and conferred at every point. What was expected to be a six- and then a 12-week trial became a painfully slow slog stretching into legal infinity. It was a triumph for Ms Steel and Mr Morris just to have got through the legal thickets of the 28 pre-trial hearings and into the case proper, but they needed the help of the judge as well as the pro bono advice of Keir Starmer QC and others who shared their civil liberties concern about the case.
7. "It's a great victory," Ms Steel said. "[This judgment] shows that the British libel laws are oppressive and unfair. I hope that the government will have to change them, and there will be greater freedom of speech for the public."
8. But the heart of their case was that McDonald's, a company with a turnover of \$40bn (£21bn) a year, was unfairly using the British libel laws to sue two penniless people for libel over public interest issues which affect people's every day lives. It was a clear case, they said, of the corporate censorship of opposition and debate backed by the British establishment.

Write your answers here:

Space	Paragraph
<b>A</b>	<i>Example: 3</i>
<b>B</b>	
<b>C</b>	
<b>D</b>	
<b>E</b>	
<b>F</b>	
<b>G</b>	
<b>H</b>	

**Stage 4**

**Vocabulary**

Match the word or phrases taken from the article with the correct meaning.

Word or phrase	Meaning
1. to be cutting	a. something that is dense and difficult to get through
2. to shoot from the hip	b. a puzzling problem
3. austere	c. working without payment
4. to treat someone shabbily	d. someone who believes in disorder
5. an anarchist	e. something that has survived history and is only understood by a few
6. an adjournment	f. the amount of money a company receives in given time
7. horrendous	g. to smile very happily
8. a chain of events	h. banning or deleting any information of value
9. a thicket	i. a series of linked or connected things
10. an arcane relic	j. something that is very difficult or which seems to take a long time
11. foreseen	k. bare and without any decoration
12. a slog	l. penetrating, clear, and sharp
13. censorship	m. suspension until a another time
14. incisive	n. to behave unfairly towards someone
15. a conundrum	o. to speak about something without thinking about it first
16. pro bono	p. to be very clever and penetrating
17. beaming	q. really bad
18. turnover	r. predicted

Write your answers here:

1.	2. o	3.	4.	5.	6.	7.	8.	9.
10.	11.	12.	13.	14.	15.	16.	17.	18.

**Stage 5**

**Comprehension questions**

1. What was the style of the defendants during the trial?
2. What problems did they face during the trial?
3. What was their view of British libel laws?
4. Once the case had finished, what was important about the outcome?

**5. Could this case ever happen in your country? If not, what legal steps are available to either party in situations like these?**