

What is defamation?

This lesson looks at the law of defamation in the United Kingdom - libel and slander - and focuses on the outcome of a recent case, often called the 'McLibel' case. As well as being the longest trial in English civil case history it was also remarkable as the defendants represented themselves in person.

Aim: To practise the skills of

- reading and understanding information in a text about UK defamation law
- using the information to discuss and give legal advice about examples
- reading an authentic newspaper article to understand the construction of a text by replacing missing paragraphs
- guessing meaning of vocabulary and phrases related to text
- answering questions about the text

Level: At least Upper Intermediate and above

Student profile: It is envisaged that students will be studying law, or will be trainees or qualified lawyers.

This lesson could be divided into two parts. The first part covers the background to defamation with students working through the examples and giving feedback. The second part deals with the McLibel text and exercises.

The lesson is in 5 parts and if divided into 2 sessions - parts 1 and 2, then 3 to 5 - could easily take in excess of 120 mins *in total*.

Stage 1

This is a brief description of a complex area of law, but it gives enough of the bare bones for students to deal with the examples.

Procedure: It is probably best to give each student a copy of the outline of the law and deal with any questions that they raise immediately.

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

Procedure: The students could either deal with all the examples or they could be cut up and distributed to individual groups. Students could also write a letter of advice as an alternative task in class or for homework.

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?

Answer:

This is libel, as it was printed. Your advice would probably be not to take any action unless he could prove in a court of law that the evidence was false or incorrect. Your client might also need to produce further evidence to prove that he is not a criminal and is successful through legitimate means.

The journalist could use the defence of fair and bona fide comment as well as justification by truth to defend any action.

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?

Answer:

This is slander, as it was spoken; however, as it was said in Parliament the MP could claim privilege and the Minister can do nothing.

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?

Answer:

This is libel, as it was written.

Clearly your client has a case if the contents of the e-mail were incorrect, but the employee might have a defence of fair and bona fide comment if it was nothing more than criticism and opinion.

There is also the issue of 'publication' - was it intended to be published to so many people?

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?

Answer:

This is slander, as it was spoken.

Your client would have no defence in this action, he has clearly defamed the actress and in view of the result of his words it could cost him a lot more in damages.

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?

Answer:

As this is basis of the McLibel case perhaps it would be best to listen to students' opinion before moving on to the reading text – but make sure that students do not see the article until they have finished giving their advice!

Stage 3

Procedure: This is a challenging task and will require sometime for students to complete.
If extra support is needed, the Vocabulary exercise could be used before the reading task and/or some reading for gist questions, such as:

- How long was the trial?
- What were the names of the two defendants?
- Why were they appalled?
- What is the turnover of McDonalds?

The original text in its entirety is at the end of these notes.

Answers:

| Space | Paragraph |
|-------|------------|
| A | Example: 3 |
| B | 7 |
| C | 6 |
| D | 1 |
| E | 8 |
| F | 2 |
| G | 4 |
| H | 5 |

Stage 4

Procedure: Students work out meaning of definitions of words used in the texts.
If necessary, encourage students to use dictionaries.

Vocabulary

Answers:

| | | | | | | | | |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| 1. p | 2. o | 3. k | 4. n | 5. d | 6. m | 7. q | 8. i | 9. a |
| 10. e | 11. r | 12. j | 13. h | 14. l | 15. b | 16. c | 17. g | 18. f |

Stage 5

Procedure: an additional activity to provoke discussion about the case, the system of law, the attitude of the courts and the legal profession to individuals defending themselves and the law of defamation.

Comprehension questions

1. What was the style of the defendants during the trial?

Sometimes they were cutting, but not surprisingly they hesitated, paused, and conferred at every point.

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

2. What problems did they face during the trial?

When they took the British government to the European court of human rights in 1991 to try to get legal aid they were refused.

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.

They frequently felt cruelly punished for their original ignorance of the law.

They believed the court treated them shabbily at times.

When Ms Steel was suffering badly from stress, she was denied the shortest adjournment.

They had no legal training and were trying to defend themselves in one of the most complex branches of the English law.

3. What was their view of British libel laws?

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.

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.

4. Once the case had finished, what was important about the outcome?

"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."

"It was a nightmare fighting that case, but it was a unique chance to expose the reality of McDonald's," Mr Morris said. This should encourage people to better defend themselves."

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

Original copy:

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.

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.

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

"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."

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.

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.

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.

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.

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.

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.

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."

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.

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.

"It was a nightmare fighting that case, but it was a unique chance to expose the reality of McDonald's," Mr Morris said.

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."

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.

