

---

**THE LAW OF DEFAMATION IN MALAYSIA:  
ESSENTIAL ELEMENTS, DEFENCES, AND REMEDIES\***

*by*

**Steven Perian KC, FCI Arb\*\***

## **INTRODUCTION**

The two quotations below underscore how quickly misinformation can spread, damaging reputations long before the truth is known.

Jonathan Swift, in *The Examiner* (1710), insightfully wrote:

*“Few lies carry the inventor’s mark, and the most prostitute enemy to truth, may spread a thousand without being known for the author: besides, as the vilest writer has his readers, so the greatest liar has his believers: and it often happens, that if a lie be believed only for an hour, it has done its work, and there is no farther occasion for it. Falsehood flies, and truth comes limping after it; so that when men come to be undeceived, it is too late; the jest is over, and the tale has had its effect: like a man, who has thought of a good repartee, when the discourse is changed, or the company parted; or like a physician, who has found out an infallible medicine, after the patient is dead.”*

This sentiment is echoed in the paraphrased saying often attributed to Mark Twain:

*“A lie can travel halfway around the world while the truth is putting on its shoes.”*

Both quotations illustrate the impact of falsehoods in public perception and the difficulty of reversing reputational harm once misinformation takes hold.

## **THE AIM OF THIS ARTICLE**

This article aims to provide legal practitioners with a user-friendly and comprehensive overview of defamation law in Malaysia. In Malaysia’s

multicultural and multiracial context, it is crucial to evaluate statements within this broader societal framework.

Under **Article 10(1)(a)** of the Federal Constitution, every citizen is guaranteed the fundamental right to freedom of speech and expression. However, this right is not absolute. **Article 10(2)(a)** empowers Parliament to impose restrictions deemed necessary and expedient to prevent abuses, including those relating to contempt of court, defamation, and the incitement of offences.

This framework underscores the dual nature of constitutional rights: they are foundational yet subject to reasonable limitations. In defamation law, balancing the protection of individual reputation with the broader public interest in preserving freedom of expression is of paramount importance. Achieving this balance requires careful consideration of the potential consequences of irresponsible publication or sensationalised commentary, particularly in Malaysia's diverse society, where sensitive issues often require a delicate approach.

Defamation law in Malaysia seeks to harmonise two critical interests: safeguarding an individual's reputation and upholding the right to freedom of speech. Defamation arises when a false statement causes harm to another's reputation. Rooted in common law and influenced by English legal principles, Malaysian defamation law has been adapted to suit the nation's unique legal and cultural landscape.

## **THE DEFAMATION ACT 1957**

The Malaysian **Defamation Act 1957** governs issues of defamation, addressing both libel and slander, as well as other malicious falsehoods. Under section 3 of the Civil Law Act 1956, the common law of England as it stood on 7 April 1956 applies to defamation law in Malaysia.

The **Defamation Act 1957** does not provide a specific definition for *slander* and *libel*, but both are forms of defamation involving false statements that damage a person's reputation. Here are the key distinctions:

- **Slander** refers to defamation that is communicated through spoken words or gestures.
- **Libel** pertains to defamation that is expressed in a fixed medium, such as written words, printed material, or images.

While both slander and libel involve damaging someone's reputation with false statements, the primary difference lies in the medium through which the defamatory statement is made.

### THE COURT'S TASK

The first task of the court in a defamation action is to determine whether the words complained of are capable of bearing a defamatory meaning. This is a question of law, dependent on the construction of the published words. In *Jones v. Skelton*<sup>[1]</sup> Lord Morris explained:

*“The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see Lewis v. Daily Telegraph Ltd [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.”*

### ESSENTIAL ELEMENTS TO ESTABLISH DEFAMATION IN MALAYSIA

In *Ayob Saud v. TS Sambanthamurthi*,<sup>[2]</sup> the court specified three essential elements to establish defamation. The claimant must prove all three elements:

(1) **The Statement is Defamatory**

A defamatory statement lowers the claimant in the estimation of right-thinking members of society, potentially exposing the claimant to hatred, ridicule, or contempt or causing others to shun or avoid them. The claimant need not prove the intent to harm but must show that the natural and ordinary meaning of the words was defamatory.

In *JB Jeyaretnam v. Goh Chok Tong*,<sup>[3]</sup> the Court provided guidance on the test to be applied in determining whether words are defamatory. The test can be summarised as follows:

**Do the words published, in their natural and ordinary meaning, impute to the plaintiff any dishonourable or discreditable conduct, motives, or a lack of integrity?**

If the answer to this question is affirmative, the words complained of are deemed defamatory.

In *Chok Foo Choo v. The China Press Bhd*,<sup>[4]</sup> defamatory meaning was defined as anything that would lead reasonable persons to regard the claimant as dishonourable or lacking integrity.

Once it has been determined that the words complained of are capable of bearing a defamatory meaning, the next step is for the court to ascertain whether the words are, in fact, defamatory. The judge acts as the sole arbiter of both questions of law and questions of fact.

(2) **The Statement Refers to the Claimant**

The claimant must prove the statement refers to them explicitly or implicitly. This element is satisfied if a reasonable person would conclude that the statement pertains to the claimant.

**(3) Publication of the Statement to a Third Party**

The defamatory statement must be communicated to at least one person other than the claimant. Defamation can occur *via* spoken words, printed media, or online platforms.

## **DEFENCES IN DEFAMATION**

Defendants in a defamation case may rely on the following defences:

**(1) Justification (Truth)**

**Section 8 of the Defamation Act 1957** states that:

*“In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”*

Under **section 8 of the Defamation Act 1957**, if the defendant proves the statement is substantially true, they have a complete defence, regardless of malice or intent.

In *Dato’ Seri Mohammad Nizar Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor*,<sup>[5]</sup> the Court of Appeal emphasised that the defendant must prove the truth on the balance of probabilities. This defence provides immunity, though unsuccessful justification may increase damages awarded.

## (2) Fair Comment

**Section 9 of the Defamation Act** provides:

*“In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.”*

**Section 9 of the Defamation Act** protects opinions that are fair, based on true facts, and related to matters of public interest.

In *Sutherland & Ors v. Stopes*,<sup>[6]</sup> Viscount Finlay explained that:

*“The defence of fair comment on matters of public interest is totally different. The defendant who raises this defence does not take upon himself the burden of showing that the comments are true. If the facts are truly stated with regard to a matter of public interest, the defendant will succeed in his defence to an action of libel if the jury are satisfied that the comments are fairly and honestly made.”*

*London Artists Ltd v. Littler*<sup>[7]</sup> established that for the defence of fair comment to succeed, the facts upon which the comment is made must be true. If the facts are untrue, the publication must have occurred on a privileged occasion.

*Joshua Benjamin Jeyaretnam v. Goh Chok Tong*<sup>[8]</sup> clarified that the comment must be:

- (a) clearly opinion;
- (b) on a matter of public interest;
- (c) based on true facts; and
- (d) reasonable for a fair-minded person to make.

The Federal Court in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli*<sup>[9]</sup> considered the four essential elements identified in *Joshua Benjamin Jeyaretnam v. Goh Chok Tong*. These elements provide the framework for assessing whether the defence is available and applicable in a given case. **It is to be noted that each case is fact-sensitive.**

### (3) Qualified Privilege

This defence applies where the defendant had an interest or duty to communicate, and the recipient had a duty to receive the information, as seen in *Dato Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals*.<sup>[10]</sup>

*“Qualified privilege depends on the occasion upon which the communication is made, and not the communication itself. A qualified privilege occasion is an occasion where the person who makes a communication has an interest or a duty, legal, social or moral to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. If the communication were made in pursuance of a duty or on a matter in which there was a common interest in the party making and the party receiving it, the occasion is said to be one of qualified privilege. Whether an occasion is a privileged occasion depends on the circumstances of each case, the nature of the information and the relation of speaker and recipient. It is for the judge alone to determine as a matter of law whether the occasion is privileged (Adam v. Ward [1917] AC 309; [1916–17] All ER Rep 157).”*

In *Abdul Rahman Talib v. Seenivasagam & Anor*,<sup>[11]</sup> it was noted that qualified privilege can be negated by malice. Malice can be inferred if the defendant’s motive appears improper, such as through harsh language or prior hostility.

## REMEDIES IN DEFAMATION

If the claimant succeeds in proving defamation, they may be awarded damages to compensate for the harm caused. There are several remedies, including:

### (1) Damages

- **General Damages:** Compensate for reputational harm, mental distress, and general harm to standing. The amount is determined by factors such as the seriousness of the defamation and the claimant's status.
- **Aggravated Damages:** This may be awarded if the defendant acted maliciously, as seen in *Broome v. Cassell & Co Ltd*<sup>[12]</sup> and *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals*.<sup>[13]</sup> In *Dato' Sri Dr Mohammad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor*,<sup>[14]</sup> the Court held that aggravated damages may be awarded because the defendant's conduct had aggravated the injury to the plaintiff.
- **Exemplary (Punitive) Damages:** Rare but awarded for particularly outrageous conduct. In *Rookes v. Barnard*,<sup>[15]</sup> exemplary damages were awarded for egregious actions.

Malaysian cases, such as *Lim Guan Eng v. Ruslan Kassim & Another Appeal*<sup>[16]</sup> have emphasised that the purpose of damages in defamation claims is to vindicate the claimant's reputation rather than to provide financial enrichment.<sup>[17]</sup>

*MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals*<sup>[18]</sup> also emphasised that reputational harm is presumed, with courts considering the claimant's standing, the gravity of the defamation, and the extent of publication.



## (2) Injunctions

An injunction may prevent further publication if there is a risk of continued harm, as considered in *Greene v. Associated Newspapers Ltd.*<sup>[19]</sup> This is particularly relevant for persistent publications.

## (3) Apologies and Retractions

Courts may order apologies or retractions to mitigate harm. *Milne v. Express Newspapers*<sup>[20]</sup> highlighted how apologies can lessen damages by showing the defendant acknowledges the harm caused.

*Apology in Mitigation of Damages under section 10 of the Defamation Act 1957*

### (a) General Apology (subsection 1):

In defamation actions, the defendant may present evidence to mitigate damages by showing that they made or offered an apology to the plaintiff:

- Before the lawsuit began, or
- As soon as reasonably possible after the lawsuit started, provided there was no earlier opportunity to apologise.

This requires written notice of intent to rely on such evidence, which is given when filing the defence.

### (b) Libel in Newspapers (subsection 2):

In cases of libel published in newspapers, a defendant who has paid money into court can claim in mitigation of damages that:

- The libel was published without actual malice or gross negligence.
- An apology was published or offered:
  - (i) Before the lawsuit began, or

(ii) At the earliest opportunity thereafter.

- If the newspaper is published less frequently than weekly, the defendant may offer to publish the apology in a different newspaper chosen by the plaintiff.

#### (4) Costs

Claimants may recover legal costs incurred.

## CONCLUSION

The above cases, together with the statutory framework, demonstrate the Malaysian courts' approach to balancing freedom of speech with the protection against unwarranted reputational harm. Each remedy aims to redress injury to reputation, while the defences ensure room for fair comment and justified statements on matters of public interest.

---

\*Copyright © 2025 Messrs Rosli Dahlan Saravana Partnership.

\*\*Barrister, 2 King's Bench Walk (London) & Partner of Messrs Rosli Dahlan Saravana Partnership.

### Endnotes:

[1] [1963] 3 All ER 952 at p 958.

[2] [1989] 1 CLJ Rep 321.

[3] [1985] 1 MLJ 334; [1984] CLJU 139.

[4] [1999] 1 CLJ 461.

[5] [2014] 3 CLJ 560.

[6] [1925] AC 47 [62].

[7] [1969] 2 QB 375.

[<sup>8</sup>] [1989] 3 MLJ 1; [1989] CLJU 34 (PC) per Lord Ackner.

[<sup>9</sup>] [2022] 5 CLJ 487.

[<sup>10</sup>] [2017] 8 CLJ 369 [46].

[<sup>11</sup>] [1966] 2 MLJ 66; [1966] CLJU 5.

[<sup>12</sup>] [1972] AC 1027.

[<sup>13</sup>] [1995] 2 CLJ 912 (*'MGG Pillai case'*).

[<sup>14</sup>] [2021] 4 CLJ 327.

[<sup>15</sup>] [1964] AC 1129.

[<sup>16</sup>] [2021] 4 CLJ 155.

[<sup>17</sup>] However, see *Lim Guan Eng v. Mahiaddin Md Yassin* [2024] CLJU 2481 for further consideration.

[<sup>18</sup>] *MGG Pillai case* (n 13).

[<sup>19</sup>] [2005] 1 All ER 30.

[<sup>20</sup>] [2003] 1 All ER 482.

### Case Analysis Synopsis

The following cases illustrate the principles of Malaysian defamation law:

- *Ayob Saud v. TS Sambanthamurthi*: Defined essential elements of defamation.
- *Chok Foo Choo v. The China Press Bhd*: Addressed the definition of defamatory meaning.
- *Dato' Seri Mohammad Nizar Jamaluddin v. Sistem Television Malaysia & Anor*: Emphasised truth as a defence.
- *Joshua Benjamin Jeyaretnam v. Goh Chok Tong*: Clarified requirements for fair comment.

- *Dato Dr Low Bin Tick v. Datuk Chong Tho Chin & Other Appeals*: Discussed qualified privilege.
- *Abdul Rahman Talib v. Seenivasagam & Anor*: Addressed malice as a limitation to privilege.
- *Lim Guan Eng v. Ruslan Kassim & Another Appeal*: Clarified damages in defamation cases.
- *MGG Pillai v. Tan Sri Dato' Vincent Tan Chee Yioun & Other Appeals*: Provided guidance on damages and reputation.
- *Broome v. Cassell & Co Ltd* and *Rookes v. Barnard*: Examined aggravated and exemplary damages.
- *Greene v. Associated Newspapers Ltd*: Highlighted injunctions as preventive remedies.
- *Milne v. Express Newspapers*: Showed the mitigating effect of apologies.
- Established cost recovery as part of the remedy: consider *Vardy v. Rooney (2024) UK*.

One of the most talked-about defamation cases in recent years is *Vardy v. Rooney*, popularly referred to as the “**Wagatha Christie**” case. This high-profile dispute arose from a claim by Rebekah Vardy against Coleen Rooney after Rooney made accusations against Vardy on social media. The case garnered significant media attention, with the court ultimately ruling in Rooney’s favour, determining that her statements were substantially true.

The financial implications of the case were considerable. Vardy was ordered to pay a large portion of Rooney’s legal costs. Initially, this amounted to **£1.5 million**, but it was later revealed that an additional **£100,000** was added, bringing the total to **£1.6 million**.

This case highlights the substantial financial risks inherent in pursuing defamation claims, particularly when unsuccessful. In addition to losing the case, Vardy faced hefty legal expenses, serving as a cautionary tale for anyone

considering litigation. Potential claimants should carefully evaluate the possible financial repercussions before proceeding with such actions.