

General Introduction

Every Individual has a right to free speech. This right is an inalienable Fundamental Human Right guaranteed under the Constitution.

The right to free speech in a civilised society is however subject to the right of others not to have their reputation tarnished or injured in the course of the exercise of the right to freedom of expression. Thus, the Supreme Court has held in many cases that every person has the right to the protection of their good name, reputation and the estimation in which they are held by other members of the society.

Based on the legal position therefore, any person who utters, publishes, broadcasts or communicates anything to a third party, which communication is injurious to the good name, character or reputation of another person, commits the tort of Defamation.

Defamation and Business

Competition is second nature to business. And in the course of business competition, some statements, comments, representation, innuendos, etc can be made about a competitor or some other business stakeholder, which comments, statements or representation are defamatory in Law and can form the basis for a legal action from which compensatory damages, a retraction, public apology, etc may be awarded by a Court of Law. As a Business Owner, you must be mindful of the risks that defamation can bring to your business when competing in the market place.

What is Defamation under the Law?

Defamation is the making of false, malicious, derogatory and harmful statements, comments or representations, either in public or in private, in print or orally, about another person's business practices and character, financial situation, morals or reputation. Usually, such false statements lower the reputation of a person in the eyes of right-thinking members of the society.

However, no matter how despicable or heinous a defamatory statement or representation is, the offended person must prove to a Court of Law that the defamatory statement was communicated to a third person or persons other than the person or entity of whom the defamatory statements were made.

Comparison - Libel and Slander

Libel, which is the more common form of defamation that ends up in Court, is usually in a written and permanent form; while Slander is/are defamatory comments that are spoken and transient in nature. As Libel is in a written form, minimum proof of actual damage is required provided that the publication of the Libel to a third person is established or proved. In the case of Slander, proof of actual publication and damage resulting from the publication must be provided before a Court of Law can award damages for the libel.

Award of Damages for Corporate Defamation

Just as a human being can be defamed in character, a Corporation or limited liability company can be ruined by false defamatory allegations. However, damages for defamation are only awarded to a Corporation for possible loss in its earnings and goodwill arising from the defamatory statements. Defamatory damages are never awarded for a Corporation's hurt feelings as a Corporation is not a natural person or human being.

Conclusion

The need for a trading Company or Corporation to protect its most valuable asset, which is its business reputation, cannot be over-emphasised. Every Corporation has a trading character, which if defamed could adversely affect its business existence.

Corporations should therefore seek reliefs from Courts of Law for any defamatory comments or representations targeted against their reputation and goodwill.

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