

Defamation Act

Principal Act

Act. No. 1960-36	<i>Commencement</i>	16.12.1960
	<i>Assent</i>	15.12.1960

Amending enactments	Relevant current provisions	Commencement date
Regs. of 29.5.1970 Act. 1983-48	s. 32, Sch. ss. 21-23	

English Sources:

Libel Act 1792 (32 Geo. 3.c.60)
Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4.c.8)
Parliamentary Papers Act 1840 (3 & 4 Vict.c.9)
Libel Act 1843 (6 & 7 Vict.c.96)
Libel Act 1845 (8 & 9 Vict.c.75)
Newspaper Libel and Registration Act 1881 (44 & 45 Vict.c.60)
Law of Libel Amendment Act 1888 (51 & 52 Vict.c.64)
Slander of Women Act 1891 (54 & 55 Vict.c.51)
Defamation Act 1952 (15 & 16 Geo.6 and Eliz.2 c.66)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO LIBEL AND SLANDER AND FOR MATTERS CONNECTED THEREWITH.

PART I.
PRELIMINARY.

Short title.

1. This Act may be cited as the Defamation Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires,—

“newspaper” means any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale, and published in Gibraltar periodically, or in parts or numbers at intervals not exceeding thirty-six days between the publication of any two such papers, parts, or numbers, and also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding thirty-six days, containing only or principally advertisements.

(2) Any reference in this Act to words shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning.

(3) The provisions of Part III of the Schedule shall have effect for the purposes of the interpretation of that Schedule.

(4) In this Act “broadcasting by means of wireless telegraphy” means publication for general reception by means of wireless telegraphy within the meaning of the Wireless Telegraphy Act* and “broadcast by means of wireless telegraphy” shall be construed accordingly.

(5) Where words broadcast by means of wireless telegraphy are simultaneously transmitted by telegraph, the provisions of this Act shall apply as if the transmission were broadcasting by means of wireless telegraphy.

PART II.
NEWSPAPERS AND BROADCASTING.

Newspaper reports of proceedings in court absolutely privileged.

* Repealed by the Telecommunications Ordinance (2000-18)

3.(1) A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be absolutely privileged:

Provided that nothing in this section shall authorize the publication of any blasphemous or indecent matter.

(2) The provisions of subsection (1) shall apply and apply only to courts exercising judicial authority within Gibraltar.

Qualified privilege of newspapers.

4. (1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

Defence of publication without malice or negligence, and of publication or offer of apology.

5. (1) In an action for libel contained in any newspaper or other periodical publication it shall be competent to the defendant to plead that such libel was inserted in such newspaper or other periodical publication without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication a full apology for the libel, or, if the newspaper or periodical publication in which the libel appeared was ordinarily published at intervals exceeding one week, had offered to publish such apology in any newspaper or periodical publication to be selected by the plaintiff in such action; and to such plea to such action it shall be competent to the plaintiff to reply generally, denying the whole of such plea.

(2) It shall not be competent to any defendant in such action to file any such plea, without at the same time making a payment of money into court by way of amends, but every such plea so filed without payment of money into court shall be deemed a nullity, and may be treated as such by the plaintiff in the action.

Application of sections 3 and 4 to broadcasting.

6. (1) Sections 3 and 4 shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station within Gibraltar, and in relation to any broadcasting by means of wireless telegraphy of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper; and section 4(2) shall have effect, in relation to any such broadcasting, as if for the words “in the newspaper in which” there were substituted the words “in the manner in which”.

(2) In this section “broadcasting station” means any station in respect of which a licence, granted under any law in force in Gibraltar relating to wireless telegraphy, is in force, being a licence which (by whatever form of words) authorizes the use of the station for the purpose of providing broadcasting services for general reception.

Broadcast statements.

7. For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

PART III.
SPECIAL PROVISIONS AS TO SLANDER.

Slander affecting official professional or business reputation.

8. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken to the plaintiff in the way of his office, profession, calling, trade or business.

Slander of title, etc.

9.(1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage—

- (a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or
- (b) if the words are calculated to cause pecuniary damages to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Section 7 shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

Slander of women.

10. Words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable:

Provided that, in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages, unless the court certifies that there was reasonable ground for bringing the action.

PART IV.**GIBRALTAR PARLIAMENT PUBLICATIONS.****Proceedings in respect of publication of papers printed by order of the Assembly to be stayed.**

11. It shall be lawful for a defendant in any civil or criminal proceeding commenced or prosecuted in any manner, for or on account or in respect of the publication of any report, paper, votes, or proceedings by such person or by his servants, by or under the authority of the Parliament, to bring before the court in which such proceedings shall have been commenced or prosecuted, first giving twenty-four hours notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the Speaker of the Assembly or of the Clerk to the Assembly, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceeding has been commenced or prosecuted, was published by such person or by his servant by order or under the authority of the Assembly, together with an affidavit verifying such certificate ; and such court shall thereupon immediately stay such civil or criminal proceeding; and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Part.

Proceedings in respect of a copy of paper printed by order of the Assembly to be stayed.

12. In case of any civil or criminal proceeding commenced or prosecuted for or on account or in respect of the publication of any copy of any report, paper, votes, or proceedings, published by or under the authority of the Assembly, it shall be lawful for the defendant at any stage of the proceedings to lay before the court such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such copy, and the court shall immediately stay such civil or criminal proceeding; and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined, and superseded by virtue of this Part.

Defence of extract bona fide made of Assembly paper.

13. (1) It shall be lawful in any civil or criminal proceeding commenced or prosecuted for printing any extract from or abstract of any report, paper, votes, or proceedings, published by

or under the authority of the Assembly, to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published bona fide and without malice ; and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant.

(2) The provisions of subsection (1) shall have effect as if the reference therein to printing included a reference to broadcasting by means of wireless telegraphy.

Part IV not to affect the privileges of the Assembly.

14. Nothing contained in this Part shall be deemed or construed, directly or indirectly, by implication or otherwise, to affect the privileges of the Parliament in any manner whatsoever.

**PART V.
CRIMINAL PROCEEDINGS.**

Publishing defamatory libel known to be false.

15. (1) A person who maliciously publishes any defamatory libel, knowing the same to be false, is guilty of an offence and is liable on conviction to imprisonment for two years and to a fine.

(2) A person charged with an offence under this section may be convicted of an offence under section 16.

Publishing defamatory libel.

16. A person who maliciously publishes any defamatory libel, is guilty of an offence and is liable on conviction to imprisonment for twelve months and to a fine.

Order of Chief Justice required for prosecution of newspaper proprietor, etc.

17. (1) No criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of the Chief Justice in chambers being first had and obtained.

(2) Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

Inquiry as to libel being for public benefit or being true.

18. The magistrates' court, upon the hearing of a charge against a proprietor, publisher, or editor, or any person responsible for the publication of a newspaper, for a libel published therein, may receive evidence as to the publication being for the public benefit, and as to the matters charged in the libel being true, and as to the report being fair and accurate, and

published without malice, and as to any matter which under this or any other law, or otherwise, might be given in evidence by way of defence by the person charged on his trial on indictment, and the court, if of opinion after hearing such evidence that there is a strong or probable presumption that the jury on the trial would acquit the person charged, may dismiss the case.

Defence of truth and public benefit.

19. On the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the matters charged should be published; and to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information, it shall be necessary for the defendant, in pleading to the indictment or information, to allege the truth of the matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the plea, and by the evidence given to prove or to disprove the same:

Provided that—

- (a) the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification;
- (b) in addition to such plea it shall be competent to the defendant to plead a plea of not guilty;
- (c) nothing in this section shall take away or prejudice any defence under the plea of not guilty which it is competent to the defendant to make under such plea to any action or indictment for defamatory words or libel.

Defendant may prove publication by his agent.

20. Whensoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent or knowledge, and that the publication did not arise from want of due care or caution on his part.

21.-23. Repealed

PART VI.
CIVIL PROCEEDINGS.

Unintentional defamation.

24. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section ; and in any such case–

- (a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);
- (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer–

- (a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;
- (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved–

- (a) any question as to the steps to be taken in fulfillment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the Supreme Court, whose decision thereon shall be final;
- (b) the power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question,

and if no such proceedings are taken, the Supreme Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

- (a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
- (b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication ; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

Justification.

25. 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.

Fair comment.

26. 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.

Offer of apology in mitigation of damages.

27. In any action for defamation it shall be lawful for the defendant, after notice in writing of his intention so to do, duly given to the plaintiff at the time of filing or delivering the plea in such action, to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so, in case the action shall have been commenced before there was an opportunity of making or offering such apology.

Consolidation of actions.

28. (1) It shall be competent for the court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(2) In a consolidated action under this section the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the last mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

(3) The provisions of this section shall apply to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to actions for libel; and references in this section to the same, or substantially the same, libel shall be construed accordingly.

Agreements for indemnity.

29. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

Evidence of other damages recovered by plaintiff.

30. In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

**PART VII.
GENERAL.****After verdict or judgment court may order seizure and destruction of copies of libel.**

31. (1) In every case in which any verdict or judgment is obtained against any person for composing, printing, or publishing any libel, it shall be lawful for the court in which such verdict or judgment is obtained, to make an order for the seizure and destruction, in such manner as shall be directed in such order, of all copies of the libel which shall be in the possession of the person against whom such verdict or judgment is obtained, or in the possession of any other person named in the order for his use, evidence upon oath having been previously given to the satisfaction of such court that a copy of the libel is in the possession of such other person for the use of the person against whom such verdict or judgment has been obtained.

(2) Where an order has been made by a court under the provisions of subsection (1) it shall be lawful for any police officer, acting under the order, to search for any copies of such libel in any house, building, or other place whatsoever belonging to or occupied by the person against whom any such verdict or judgment has been obtained or any other person named in the order, and to seize any such copies found therein and to dispose of them in such manner as may be required by such order.

Limitation on privilege at elections.

32. A defamatory statement published by or on behalf of a candidate in any election to the Parliament shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

33. *Omitted.*

SCHEDULE.

Sections 2 and 4

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE.**PART I.****STATEMENTS PRIVILEGED WITHOUT EXPLANATION
OR CONTRADICTION.**

1. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty's dominions outside Gibraltar.
2. A fair and accurate report of any proceedings in public of an international organization of which the Government or Her Majesty's Government in the United Kingdom is a member, or of any international conference to which either such Government sends a representative.
3. A fair and accurate report of any proceedings in public of an international court.
4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside Gibraltar or of any proceedings before a court- martial held outside Gibraltar under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955.
5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the government or legislature of any part of Her Majesty's dominions outside Gibraltar.
6. A fair and accurate copy of or extract from any register kept in pursuance of any law in force in Gibraltar which is open to inspection by the public, or of any other document which is required by any such law to be open to inspection by the public.
7. A notice or advertisement published by or on the authority of any court within Gibraltar or any judge or officer of such a court.

PART II.**STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION.**

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say—
 - (a) an association formed in Gibraltar for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered

by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

- (b) an association formed in Gibraltar for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;
- (c) an association formed in Gibraltar for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

9. A fair and accurate report of the proceedings at any public meeting held in Gibraltar, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

10. A fair and accurate report of the proceedings at any meeting or sitting in Gibraltar of—

- (a) *deleted*;
- (b) any justice or justices of the peace acting otherwise than as a court exercising judicial authority;
- (c) any commission, tribunal, committee or person appointed for the purposes of any inquiry by or under any law in force in Gibraltar;
- (d) *deleted*.
- (e) any local tribunal, board, committee or body constituted by or under, and exercising functions under, any law in force in Gibraltar,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any law in force in Gibraltar or

incorporated by Royal Charter, not being a private company within the meaning of the Companies Act¹.

12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of the Governor or any Government department.

PART III.
INTERPRETATION.

13. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say,—

“international court” means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States ;

“legislature”, in relation to any territory comprised in Her Majesty’s dominions which is subject to a central and a local legislature, means either of those legislatures;

“part of Her Majesty’s dominions” means the whole of any territory within those dominions which is subjected to a separate legislature.

14. *Omitted.*

¹ 1930-07