

Where the aggregated value of the estate, after deducting all debts but without any other deduction—	Amount of duty.
Exceeds £15,000 but does not exceed £25,000	£1,950 plus 18 per cent of the excess over £15,000
Exceeds £25,000 but does not exceed £35,000	£3,750 plus 22½ per cent of the excess over £25,000
Exceeds £35,000 but does not exceed £50,000	£6,000 plus 27½ per cent of the excess over £35,000
Exceeds £50,000 but does not exceed £75,000	£10,125 plus 33½ per cent of the excess over £50,000
Exceeds £75,000 but does not exceed £100,000	£18,500 plus 40 per cent of the excess over £75,000
Exceeds £100,000	28½ per cent of the total value of the estate

“7 Where property passes to a person other than a person mentioned in paragraphs 4, 5, and 6 of this schedule, duty is payable in accordance with the following scale:—

Where the aggregated value of the estate, after deducting all debts but without any other deduction—	Amount of duty.
Does not exceed £5,000	15 per cent of the total value of the estate
Exceeds £5,000 but does not exceed £25,000	£750 plus 20 per cent of the excess over £5,000
Exceeds £25,000 but does not exceed £35,000	£4,750 plus 25 per cent of the excess over £25,000
Exceeds £35,000 but does not exceed £50,000	£7,250 plus 30 per cent of the excess over £35,000
Exceeds £50,000 but does not exceed £75,000	£11,750 plus 35 per cent of the excess over £50,000
Exceeds £75,000 but does not exceed £100,000	£20,500 plus 40 per cent of the excess over £75,000
Exceeds £100,000	30½ per cent of the total value of the estate.”

DEFAMATION.

No. 42 of 1957.

AN ACT to amend the law relating to defamation.
[1 November 1957.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as the *Defamation Act 1957*. Short title.

Repeal.

2 The *Defamation Act 1895* is repealed.

Interpretation.

Cf. 59 Vict.
No. 11 (Tas.),
s. 3.**3** In this Act, unless the contrary intention appears—

“House” means a House of Parliament;

“Joint Committee” means a committee of both Houses;

“Parliament” means the Parliament of this State or the Parliament of the Commonwealth;

“periodical” means any newspaper, review, magazine, or other writing that is published periodically;

“Select Committee” means a committee of either House.

Application of Act.

Tas., s. 42.

4 Nothing in this Act relates to—

(a) the actionable wrong commonly called slander of title; or

(b) the crime of publishing a blasphemous, or a seditious, or an obscene libel.

Defamatory matters.

Tas., ss. 4, 5.

5—(1) An imputation concerning a person or a member of his family, whether that member of his family is living or dead, by which—

(a) the reputation of that person is likely to be injured;

(b) that person is likely to be injured in his profession or trade; or

(c) other persons are likely to be induced to shun, avoid, ridicule, or despise that person,

is defamatory, and the matter of the imputation is defamatory matter.

(2) An imputation is defamatory whether it is expressed directly or by insinuation or irony.

(3) The question whether matter is or is not defamatory is a question of fact.

(4) The question whether matter that is alleged to be defamatory is or is not capable of bearing a defamatory meaning is a question of law.

What constitutes defamation.

Tas., s. 6.

6 A person who, by words either spoken or intended to be read, or by signs or visible representations, publishes a defamatory imputation concerning another person, defames that other person.

Publication.

Tas., s. 7.

7 For the purposes of this Act, publication is—

(a) in the case of words spoken, the speaking of those words in the hearing of a person other than the person defamed; or

(b) in the case of other defamatory matter, the delivery, reading, or exhibition of it, or the

causing of it to be delivered, read, or exhibited, or the communication, in any other manner, of its contents or any part thereof to a person other than the person defamed, if the person making the publication knows, or has the opportunity of knowing, the contents or nature of the document or other thing containing the defamatory matter.

8 It is unlawful to publish defamatory matter unless the publication thereof is protected, justified, or excused by law. Publication of defamatory matter unlawful.

Tas., s. 8.

9—(1) The unlawful publication of defamatory matter (including words spoken) is an actionable wrong without proof of special damage to the person defamed. Defamation actionable.

Cf. Tas., ss. 9, 20.

(2) In a case other than that of words intended to be read, it is a good defence to an action for defamation to prove that the publication was made on an occasion when, and in circumstances in which, the person defamed was not likely to be injured thereby.

10—(1) A member of either House does not incur any liability as for defamation by the publication of defamatory matter in the course of a speech made by him in Parliament. Privilege of Parliament.

Tas., s. 10.

(2) A person who presents a petition to either House does not incur any liability as for defamation by the publication to that House of defamatory matter contained in the petition.

(3) A person does not incur any liability as for defamation by publishing, by order or under the authority of either House, a paper containing defamatory matter.

11 A person does not incur any liability as for defamation by publishing defamatory matter in the course of— Privilege of judges, witnesses, &c.

Tas., s. 11.

(a) a proceeding held before or under the authority of a court of justice;

(b) an inquiry made under the authority of an Act, or by or under the authority of Her Majesty, the Governor, or either House or both Houses or by a Select Committee or a Joint Committee; or

(c) any appeal or matter heard or determined by or before a statutory authority that is authorized or required by law to hear or determine the appeal or matter.

12 A person who is appointed under the authority of an Act, or by or under the authority of Her Majesty or the Governor, to hold an inquiry, does not incur any liability as for defamation by publishing defamatory matter in an official report made by him of the result of the inquiry. Reports of official inquiries.

Tas., s. 12.

Publication of
matters of
public in-
terest.
Tas., s. 13.

13—(1) It is lawful to publish in good faith for the information of the public—

- (a) a fair report of the proceedings of either House or of a Select Committee or Joint Committee, except so far as the publication is in contempt of either House or both Houses;
 - (b) a copy of, or an extract from or abstract of, a paper that is published by order or under the authority of either House;
 - (c) a fair report of the public proceedings of a court of justice, whether the proceedings are preliminary, interlocutory, or final, or of the result thereof, unless—
 - (i) in the case of proceedings that are not final, the publication has been prohibited by the court; or
 - (ii) the matter published is blasphemous or obscene;
 - (d) a fair report of the proceedings of an inquiry held under the authority of an Act, or by or under the authority of Her Majesty or of the Governor, or an extract from or abstract of those proceedings or a copy of, or an extract from or abstract of, an official report made by the person by whom the inquiry is held;
 - (e) a fair report of the proceedings of or relating to any appeal or matter heard or determined by a statutory authority that is authorized or required by law to hear or determine the appeal or matter, or an extract from or abstract of those proceedings, or a copy of, or an extract from or abstract of, an official report made by the authority by which or by whom the appeal or matter is heard or determined;
 - (f) at the request of any department or office of the Government of this State, or of an officer of the State or a police officer, a notice or report issued by that department, office, officer, or police officer;
 - (g) a fair report of the proceedings of a local authority, board, or body of persons constituted by or under an Act for the discharge of public functions; or
 - (h) a fair report of the proceedings of a public meeting, so far as the matter published relates to matters of public concern.
- (2) For the purposes of this section—
- (a) a publication shall be deemed to be made in good faith for the information of the public if—

- (i) the person by whom it is made is not actuated in making it by ill-will to the person defamed or by any other improper motive; and
 - (ii) the manner of the publication is such as is ordinarily and fairly used in the case of the publication of news; and
- (b) in the case of the publication in a periodical of the report of a public meeting, it is evidence of a want of good faith if the proprietor, publisher, or editor of the periodical has been requested by the person defamed to publish in the periodical a reasonable letter or statement by way of contradiction or explanation of the defamatory matter, and has refused or neglected to publish it forthwith.

(3) In this section, "public meeting" means a meeting lawfully held for a lawful purpose and for the furtherance or discussion, in good faith, of a matter of public concern, or for the advocacy of the candidature of a person for public office, whether the admission to the meeting is open or restricted.

14—(1) It is lawful to publish a fair comment respecting—

- (a) any of the matters with respect to which the publication of a fair report in good faith for the information of the public is declared by section thirteen to be lawful;
- (b) the public conduct of a person who takes part in public affairs, or the character of such a person, so far as his character appears in that conduct;
- (c) the conduct of a public officer or public servant in the discharge of his public functions, or respecting the character of a public officer or public servant, so far as his character appears in that conduct;
- (d) the merits of a case, whether civil or criminal, that has been decided by a court of justice, or the conduct in that case of a person as a judge, party, witness, counsel, or solicitor, or as an officer of the court, or the character of such a person, so far as his character appears in that conduct;
- (e) a published book or any other literary production, or the character of the author thereof, so far as his character appears by that book or production;
- (f) a composition or work of art or performance that is publicly exhibited, or the character of

Fair comment.

Tas., ss. 14, 15, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66. (Imp.), s. 6.

the author, performer, or exhibitor thereof, so far as his character appears from the matter that is so exhibited;

- (g) a public entertainment or public sports, or the character of a person who conducts or takes part therein, so far as his character appears from the matter of the entertainment or sports or the manner of conducting the entertainment or sports; or
- (h) a communication made to the public on any subject.

(2) In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment does 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.

(3) The question whether a comment is fair is a question of fact, and if it is not fair and is defamatory the publication of it is unlawful.

Truth.
Tas., s. 16.

15 It is lawful to publish defamatory matter if—

- (a) the matter is true; and
- (b) it is for the public benefit that the publication should be made.

Qualified
Protection.
Tas., s. 17.

16—(1) It is a lawful excuse for the publication of defamatory matter if the publication is made in good faith—

- (a) in the course of a censure passed by a person on the conduct of another person over whom he has lawful authority, being conduct in matters to which that lawful authority relates;
- (b) for the purpose of seeking remedy or redress for a private wrong or grievance or a public wrong or grievance from a person who has, or is reasonably believed by the person who makes the publication to have, authority over the person defamed with respect to the subject-matter of the wrong or grievance;
- (c) for the protection of the interests of the person who makes the publication, or of some other person, or for the public good;
- (d) in answer to an inquiry made of the person who makes the publication in relation to a subject as to which the person by whom or on whose behalf the inquiry is made has, or is reasonably believed by the person who makes the publication to have, an interest in knowing the truth;

- (e) for the purpose of giving information to the person to whom it is made with respect to a subject as to which that person has, or is reasonably believed by the person who makes the publication to have, such an interest in knowing the truth as to make the last-mentioned person's conduct in making the publication reasonable in the circumstances;
- (f) on the invitation or challenge of the person defamed;
- (g) in order to answer or refute some other defamatory matter published by the person defamed concerning the person by whom the publication is made or some other person; or
- (h) in the course, or for the purposes, of the discussion of a subject of public interest the public discussion of which is for the public benefit.

(2) For the purposes of this section, a publication shall be deemed to be made in good faith if—

- (a) the matter published is relevant to the matters the existence of which may excuse the publication in good faith of defamatory matter;
- (b) the manner and extent of the publication does not exceed what is reasonably sufficient for the occasion; and
- (c) the person by whom the publication is made—
 - (i) is not actuated by ill-will to the person defamed, or by any other improper motive; and
 - (ii) does not believe the defamatory matter to be untrue.

17—(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 that case—

Unintentional
defamation.
Imp. s. 4.

- (a) if the offer is accepted by the party aggrieved and is duly performed, no action for defamation shall be commenced or continued by that party against the person making the offer in respect of the publication (but without prejudice to any cause of action against any other person who is jointly responsible for that publication); or
- (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it is a defence, in an action by him for defamation against the person making the offer in respect of the publication, 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 shall be expressed to be made for the purposes of this section, and shall be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words were published by him innocently in relation to the party aggrieved, and for the purposes of a defence under paragraph (b) of subsection (1) of this section no evidence, other than evidence of facts specified in the affidavit, is admissible on behalf of that person to prove that the words were so published.

(3) For the purposes of this section, an offer of amends under this section means 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; and

(b) where copies of a document or record containing those 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 fulfilment of the offer as so accepted shall, in default of agreement between the parties, be referred to and determined by the Supreme Court, and the Court's decision thereon is final; and

(b) the power of the Supreme Court to make orders as to costs in an action by the party aggrieved against the person making the offer in respect of the publication, or in proceedings in respect of the offer under paragraph (a) of this subsection, includes 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 by that party in consequence of the publication,

and, if no such action or proceedings are taken, the Court may, upon application made by the party aggrieved, make such order for the payment of those costs and expenses as could be made in that action or those 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) of this section does not apply in relation to the publication by a person of words of which he is not the author unless he proves that the words were written by the author without malice.

18 In an action for defamation in respect of words containing two or more distinct charges against the plaintiff, a defence of justification does 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.

Justification.
Imp., s. 5.

19 When a question arises as to whether a publication of defamatory matter was or was not made in good faith and it appears that the publication was made in circumstances that would afford lawful excuse if it was made in good faith, the burden of proving the absence of good faith lies on the party alleging the absence thereof.

Burden of proof of absence of good faith.
Tas., s. 18.

20 The questions whether—

- (a) any defamatory matter is or is not relevant to any other matter; and
- (b) the public discussion of any subject is or is not for the public benefit,

Relevancy and public benefit questions of fact.
Tas., s. 19.

are questions of fact.

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

Agreements for indemnity.
Imp., s. 11.

Offer of apology admissible in evidence in mitigation of damages.
Tas., s. 21.

22 In an action for defamation, the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for the defamation—

- (a) before the commencement of the action; or
- (b) if the action was commenced before there was an opportunity of making or offering an apology, as soon after the commencement of the action as he had an opportunity of doing so.

Actions against periodicals.
Tas., s. 22.

23—(1) In an action in respect of the publication of defamatory matter in a periodical, the defendant may plead—

- (a) that the matter was published—
 - (i) without actual ill-will to the person defamed or any other improper motive; and
 - (ii) without gross negligence; and
- (b) that—
 - (i) before the commencement of the action, or at the earliest opportunity thereafter, he inserted in the periodical a full apology for the defamation; or
 - (ii) if the periodical in which the defamatory matter was published is ordinarily published at intervals exceeding one week, he offered to publish the apology in any periodical to be selected by the plaintiff,

and, if he so pleads, the defendant shall pay into court a sum of money by way of amends for the injury sustained by the plaintiff by reason of the publication of the defamatory matter.

(2) A payment into court pursuant to this section is of the same effect in all respects as in other cases of payment into court.

Consolidation of actions.
Tas., s. 23.

24—(1) The Supreme Court, upon an application by or on behalf of two or more defendants in actions in respect of the publication of the same, or substantially the same, defamatory matter brought by one and the same person, may make an order for the consolidation of those actions, so that they shall be tried together, and after the order has been made, and before the trial of the actions, the defendant in any new action instituted in respect of the publication of the same, or substantially the same, defamatory matter is also entitled to be joined in a common action upon a joint application being made by the new defendant and the defendants in the actions already consolidated.

(2) In an action that is consolidated under this section—

- (a) the judge or jury shall assess the whole amount of the damages, if any, in one sum, but a separate

verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately;

- (b) if a verdict is given against the defendants in more than one of the actions so consolidated, the judge or jury shall proceed to apportion the amount of damages so found between and against the last-mentioned defendants; and
- (c) the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he deems just for the apportionment of the costs between and against the defendants.

25 At the trial of an action for the publication of defamatory matter in a periodical, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered, or has brought actions for, damages, or has received or agreed to receive compensation, in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

Evidence in mitigation of damages.
Tas., s. 24.

26—(1) A person does not incur any liability as for defamation by selling a number or part of a periodical unless he knows that that number or part contains defamatory matter, or that defamatory matter is habitually or frequently contained in that periodical.

Protection of innocent sellers of periodicals and books.
Tas., ss. 32, 33.

(2) A person does not incur any liability as for defamation by selling a book, pamphlet, print, writing, or other thing not forming part of a periodical, notwithstanding that it may contain defamatory matter, if at the time of the sale he does not know that the defamatory matter is contained therein.

27 The sale by a servant of a book, pamphlet, print, writing, or other thing, whether a periodical or not, does not make his employer responsible in respect of defamatory matter contained therein, unless it is proved that the employer authorized the sale knowing that the book, pamphlet, print, writing, or other thing contained defamatory matter, or, in the case of a number or part of a periodical, that defamatory matter was habitually or frequently published in that periodical.

Protection of employers.
Tas., s. 34.

28—(1) On the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical, the production of the book, or of a number or part of the periodical, containing a printed statement that it is printed or published by or for the defendant, is *prima facie* evidence of the publication of the book, or of the number or part of the periodical, by the defendant.

Evidence.
Tas., ss. 36, 37.

(2) On the trial of an action for unlawfully publishing defamatory matter contained in a periodical, after evidence sufficient in the opinion of the trial judge has been given of the publication by the defendant of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical formerly or subsequently published are admissible in evidence on either side, without further proof of publication of them.

Proceedings
to be stayed
in certain
cases.
Tas., ss. 38,
39.

29—(1) The defendant in an action commenced in respect of the publication of a paper published by the defendant, or by his servant, by order or under the authority of either House may, after first giving to the plaintiff twenty-four hours' notice of his intention so to do, bring before the Supreme Court, or a judge, a certificate under the hand of the presiding officer or clerk of the relevant House stating that the paper in respect of which the action is commenced was published by the defendant or his servant by order or under the authority of the House, together with an affidavit verifying that certificate.

(2) Upon a certificate under subsection (1) of this section being brought before the Court or a judge, the Court or judge shall forthwith stay the action, and may order the plaintiff to pay the defendant his costs of defence.

(3) In an action commenced in respect of the publication of a copy of, or an extract from or abstract of, a paper to which subsection (1) of this section relates, the defendant may, at any stage of the proceedings, lay before the Supreme Court or a judge an original of that paper, together with an affidavit verifying it, and the Court or judge may thereupon stay the action and may order the plaintiff to pay the defendant his costs of defence.

(4) In this section, "presiding officer" means—

- (a) in the case of the Senate or of the Legislative Council, the President thereof; and
- (b) in the case of the House of Representatives or of the House of Assembly, the Speaker thereof.

Certain
verdicts not
to carry costs.
Tas., s. 41.

30 If the plaintiff in an action for defamation recovers a sum less than two pounds, he is not entitled to recover from the defendant any of the costs of the action.