

f) Lease and license/Consent.

If one consent to publication of a certain statement the person will not be entitled to sue for libel following the publication. However, the consent must be in writing.

g) Innocent dissemination

Proceeding for defamation may be commenced against the original publisher of the offending statement and against anyone who publishes this offer thereafter

This defense is for the distributors or any other secondary publisher e.g. Wholesaler, retailer, printing company etc., as long as they can show that:-

- a) He didn't know and had no reason to believe that whatever he did contributed to the publication of defamatory statement.
- b) That he took all reasonable care in relation to publication complaint of the defamatory statement.

h) Claimant incapable of further defamation

This is where the claimant already has no reputation.

i) Limitation of action.

Section 4(2) of defamation act give a maximum of 12 months beyond which if the claimant would not have filled a case then he or she better forget to sue.

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This is the intangible loss because it is difficult to calculate because it touches on the injury to reputation.

B) Aggravated damages.

These are awarded in addition to compensatory damage incases where the defendant has behaved particularly badly so that the claimant has suffered more than he would expect in such a case e.g. denying or failing to publish the claimant explanation or even failing to apologize or even pleading for justification.

C) Nominal Damages.

These are ordered where the claimant`s rights have technically been infringed but the court feels that no real damages has been done. They are usually less than twenty pounds (£20)-Kshs.2800

D) Contemptuous damages.

These are ordered where the jury or the judge recognizes that the claimant has been defamed but in the circumstances considered that no action would not have been brought.

The damage amount to the value of the least valuable coin in circulation. A claimant who is awarded contemptuous damage has to pay his cost as well. (Court cost).

II) INJUNCTION

It is an order preventing publication. An injunction can either be interim or permanent. However in recent times the human right act 1998 has changed the way the court may issue an injunction especially if it involves freedom of expression.

NB: The human rights act 1998 has impacted defamation in that it requires the court to pay regard to article 10 of the European convention on freedom of expression. Article 10 doesn't require a choice between two conflicting principals where freedom of expression is. However it also has some limitations.

- iii. The word themselves do not breach any existing copyrights.
- iv. The speaker has not prohibited the use that is, made of words before they were recorded.
- v. The person who has lawful possession of the record consent to the use made of the words.

D.Public interest.

The general public defense may also be raised. This is a common law defense rather than statutory defense which has been developed by the court in circumstances where the materials has been obtained unlawfully e.g.in Hyde

Part resident limited vs. Yelland (2001) case. The son claim that it was covered by the public interest defense because the issue of whether the mother of the future King of England had planned to re-marry was a matter of public interest. The court acknowledged that that the matter surrounding prince Diana's death was of public interest.

Acquiescence

Where the owner of copyright knows that their work is being used and allows this to go on without complaint they may find it difficult to claim a breach of copyright later on e.g. film investors overseas services v home video channel limited 1996..The copy right holder on a collection of porn film had granted the license for their use to the home video channel however the use made of the film went further than the license allowed. The copyright holder was aware of this from early 1993 but did nothing about it. The court accepted the defense of acquiescence because the owner was aware.

Innocent infringement

2. License

A license is a way of giving someone permission to use the work in a particular way or for a particular length of time e.g. freelance writer only grants a license for example the right to publish the article once in a particular magazine, the copyright remains with the writer and if the publisher wants to use the piece elsewhere or again it must get permission.

Rights Clearances.

When producing an original programme, publication, or one that incorporates pre-existing material, it is vital for the producer or editor to 'clear' such rights will result in infringement of the copyrights, moral rights or performers' rights of the contributor and may result in legal action.

The producer or editor must decide whether he wishes to acquire copyright outright, in other words assign it or clear it for specific use under licence. If copyright is to be cleared for specific use, the terms of a license must be agreed between the producer or editor and the contributor that allow the pre-existing material to be exploited as part of the programme or publication.

The producer or editor must determine at the outset whether the contributors work is to be exploited in only one form of media e.g. TV or print or in all forms of media.

Rights clearance is a time-consuming and costly process. Broadcasters and distributors should always ensure that producers and editors give appropriate warranties and indemnities.

The three types of rights the producer or editor must clear are copyrights

- i) Moral rights
- ii) Copyrights
- iii) Performers rights such as actors or musicians by consent to exploit.

1. The information is not confidential since it's in public domain.

Confidentiality will not attach to information that is already in general public knowledge or in public domain. It may not be enough for the defendant to show that the information is already available to the public in some form but he has to show that the information is widely published so as to destroy its confidentiality.

2. The owner has permitted its publication.

If the owner of the information consents to its publication he/she cannot later prevent or restrict its publication. It is important to obtain consent from the right person who in this case should be the owner or confider.

3. The consent must be writing. The information discloses iniquity.

An iniquity is a wrong doing or an act of wickedness. It includes crime, financial malpractice and police corruption.

To prove an iniquity, you must assess the authenticity of the source, carry out any possible investigation to corroborate allegations. The court may find the breach of confidence is justified on the ground of iniquity but only to the extent that the information is handed to the proper authority e.g. police, employer etc. and not to the general public.

4. Public interest requires disclosure.

The definition of public interest in the press complain commission code of practice include not detecting or exposing crime but also protecting public safety and preventing the public from being misled by some statement or action by an individual or organization.

Remedies.

The remedies to the breach of confidence are similar like those of copyright:-

i) Interim injunction.

ii) Damages

iii) Account of profit

iv) Delivery up.

i) Interim injunction

An interim injunction is usually the most important aspect of claim of breach of confidence. This is because under the civil procedural rule its normal in an action for breach of confidence to seek an interim injunction. The argument is that once the information is given is given out to the public the damage cannot be replaced. It is hard to calculate the damage since there's no proper damage that can compensate the owner.

ii) Damages.

Damages are not normally applicable to most media cases because no amount of money can compensate the revelation of the information to the public.

However in business and trade secrets information, the claimant may require damages using the market value of information.

iii) Account of profit.

An account of profit is the most relevant to the group publishers. The claimant can recover all profit generated by defendant by use of claimant secrets.

iv) Delivery up.

The court can order that the defendant return to the claimant all the claimant confidential informational document. Any defendant who is ordered to hand back the material should bear in mind section 10 of the contempt of court Act 1981 which protects the identity of the source.

Contempt of court.-

3. The processing is carried out in a legitimate cause and activity by a non-profit organization, religious or trade union body to where the member is connected.

The processing is necessary to protect the vital interest of the data subject.

The processing for the administration of justice.

The processing is necessary for medical purposes

The processing is necessary with connection with legal proceeding, legal advice or rights.

The processing is of sensitive informational data consisting of information relating to racial or ethnic origin necessary for identifying equality of opportunity or treatment

Rights of the subject of the personal data.

1. Right to access.

The data owner or subject is entitled to apply in writing or payment of a certain fee of whatever information is being processed (personal data) from the data controller.

The information must be provided within forty days.

2. Right to prevent processing: Damages and distress.

A person is entitled at any time to right to data controller stopping the process of personal data concerning him/her because it is causing substantial damage or distress to him or another person.

The data controller must inform the applicant in writing within 21 days to whether he has or will comply or the reason why he thinks the request is unjustified.

3. Right to prevent processing: Direct marketing.

A person is entitled at anytime to right to a data controller, requesting that a controller sees or doesn't begin to process personal data concerning you for the purpose of direct marketing to him. This is an absolute right.

4. Right to prevent automated decision making.

A person is entitled to anytime to write to data controller requiring that no decision is taken that significantly affect the individual automatic processing of personal data e.g. personal performance at work, credit worthiness etc. The data controller must reply within 21 days.

5. Right to rectification, eraser, blocked and destruction.