

## Understanding **Defamation Laws** In Ghana











## Introduction

When applied legitimately, defamation laws are intended to protect individuals and businesses against false statements that are harmful to their reputation. Yet both civil and criminal defamation laws have the potential to be misused to prevent open public debate.

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in Ghana. This awareness will empower journalists to understand their legal rights and obligations and continue to report on issues of vital public interest. The Guide covers the scope of defamation law, the criminal and civil process of cases in courts, the defences against defamation, sanctions against defamation, and practical steps to mitigate defamation liability.

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## **1. Scope of Defamation**

### What is defamation?

Defamation refers to any false statement made by a person, whether verbal (slander) or written (libel), that causes harm to another person's reputation or character. In Ghana, defamation is primarily governed by common law principles (decisions from previous court cases), and customary law (a set of practices, beliefs, and customs that are accepted as rules of conduct by a community). A "publication" includes:

- (a) Print.
- (b) Writing.
- (c) Effigy.
- (d) Painting.
- (e) Any other method such as exhibition, reading, recitation, description, delivery of defamatory material.

# What constitutes criminal and civil defamation?

There are two key distinctions between criminal and civil defamation:

- (a) the identity of the party bringing the claim; and
- (b) the applicable standard of proof required to prove the claim.

In civil proceedings, the party claiming they were defamed (plaintiff) will file a claim which must be proven on the balance of probabilities (the standard of proof required in civil cases). This means that the evidence presented must be more likely than not to be true. In the case of a criminal offence, the Attorney General institutes the case and must establish the elements of the crime beyond reasonable doubt. This means that there is a higher evidence threshold in criminal cases as opposed to civil cases. Criminal cases are ordinarily punishable by a fine or imprisonment or both. On the other hand, civil defamation is usually punished through damages (money awarded to the plaintiff by the court).

# Can I be charged with criminal defamation?

There is no criminal defamation in Ghana. It was repealed by the <u>Criminal Code (Repeal of Criminal Libel</u> and Seditious Laws) (Amendment) Act, 2001 (Act 602). In other words, defamation is only a civil wrong.

However, dissemination of false information is a criminal offence, especially when the false information threatens public peace or is likely to cause fear and alarm.<sup>1</sup>

### What constitutes civil defamation?

A civil defamation case has two key parties. The plaintiff (the person suing) and the defendant (the person being sued, potentially a journalist or media house). For a plaintiff to win a case of defamation they must prove the following elements in court:

- (a) There was a publication by the defendant: The defendant communicated the defamatory statement to a third party. A statement is considered published if a third party sees, reads or hears it.
- (b) The publication concerned the plaintiff: The defamatory statement must refer to or concern the plaintiff. The plaintiff must be the identifiable subject of the alleged defamation.

However, a person can be considered defamed even though they are not explicitly named if:

- The context and descriptions used in the statement make it clear that they are the intended target.
- A reasonable person, given the circumstances of the publication, is able to identify the plaintiff as the subject of the defamatory statement.

In other words, the court considers whether a reasonable person would be able to "connect the dots" and conclude that the defamatory statement is about the plaintiff, even if their name is not mentioned. If the answer is yes, then the plaintiff can still be considered defamed, even without being directly named.

- (c) The publication was capable of a defamatory meaning in its natural and ordinary sense: The court considers how a reasonable, average person would understand the words or statement, without overthinking or analysing them too deeply. They look at the context in which the words were used and consider whether the words would damage someone's reputation. Ultimately, the person claiming defamation must show that the words actually harmed their reputation.
- (d) (Alternatively or in addition to (c) above) the statement was in fact defamatory of the plaintiff: A statement can be considered defamatory even if its natural or ordinary meaning is not defamatory on its surface, but rather through innuendo, where the statement's meaning is understood to be defamatory when considered in context or with additional knowledge. This principle allows a plaintiff to succeed in a defamation case even if they are not explicitly named.
- (e) The statement must concern a matter of fact, not simply an opinion: Statements of opinion, even if offensive or harsh, are generally not sufficient to support a legal claim for defamation unless they imply undisclosed defamatory facts. However, the defence of 'fair comment' will not be allowed if the facts on which the comment is made are not true, or the comment itself is not fair.
- (f) The statement must be false: The defendant made a false statement.

## Does the law criminalise hate speech?

The law seeks to balance the right to free expression with the need to maintain public order and protect individuals from harm.

There is no specific law exclusively addressing hate speech in Ghana. Various legal provisions and regulatory frameworks are in place to curb expressions that incite violence, discrimination, or societal discord.

To avoid hate speech in their work, journalists can rely on the <u>National Media Commission (NMC)</u> <u>Guidelines</u> developed in collaboration with the National Peace Council to address hate speech and indecent expressions in the media. These guidelines aim to promote responsible journalism and prevent the dissemination of content that can incite violence or discrimination. The Guidelines define hate speech as:

Degrading, threatening, harassing or stigmatising speech which affects an individual's or group's dignity, reputation and status in society by means of verbal and or visual effects that promote negative feelings, attitudes and perceptions based on characteristics such as ethnicity, race, colour, religion, political affiliation, language, gender, disability, sexual orientation, age, or other opinions.

Journalists also need to be wary of the following offences:

- Publication of false statements or rumours likely to cause fear and alarm to the public or disturb public peace.<sup>2</sup>
- Use of electronic communications to intentionally send messages that are false or misleading and likely to cause harm or inconvenience.<sup>3</sup>

# What are possible consequences for being found liable for civil defamation?

If you are successfully sued for defamation, the court may order:

(a) **Injunction:** Courts can order the defendant to stop making any other defamatory statements about the plaintiff.

<sup>2</sup> Section 208, Criminal Offences Act, 1960

<sup>3</sup> Section 76, Electronic Communications Act, 2008 (Act 775)

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- (b) **Retraction and/or apology:** Courts may grant an order for retraction of the offending article and an apology when requested by the plaintiff depending on the facts of the case.
- (c) **Damages:** If the defamatory statement has already been published and the plaintiff has proved defamation, the court may order an award of damages to the plaintiff. The damages compensate for the harm to the plaintiff's dignity and reputation. Courts may award general damages and special damages. General damages compensate for reputational harm while special damages compensate for specific financial losses as a result of the publication of defamatory information.

There is no formula for the determination of damages by courts. The award of damages in defamation cases is discretionary. The court may consider such factors as: the gravity of the libel; the medium in which it is published and the extent of circulation of the offending publication; any repetition; and the conduct of the defendant after publication and during trial, including whether there was an apology issued.



### **Case examples**

#### Hassan Zein v. Kwame "A-Plus" Asare Obeng <sup>4</sup>

In this case, the plaintiff, Hassan, sued A-Plus in the High Court of Ghana in 2022 for publishing alleged defamatory information against him. Before the case was concluded, A-Plus decided to settle the matter out of court through an apology and retraction as well as payment of damages of GHS 100, 000.

In the case, the court examined whether the statements made by the defendant were false and, if so, whether they had the potential to cause public fear and alarm. While the case was eventually discontinued, it highlighted the application of Section 208 of the <u>Criminal Offences Act</u>, 1960 (Act 29) in situations where false information is disseminated, potentially disturbing public peace. This case serves as a reminder to individuals and media practitioners to verify the accuracy of information before dissemination to avoid legal repercussions.

#### ■ Benjamin Kwasi Duffour v. Bank of Ghana & Another <sup>5</sup>

In this case, the plaintiff, Benjamin, initiated a defamation lawsuit against the Bank of Ghana and Graphic Communications Group Ltd. The dispute arose from a publication in the 'Daily Graphic' newspaper on June 30, 2008, which reported that Benjamin and another individual were dismissed from their positions at the Bank of Ghana. The article suggested that their dismissal was related to union activities. The court found that the statements complained of were not defamatory. People would not think less of the plaintiff just because his employment was terminated rather than dismissed. Even if the publication was considered defamatory, it was protected by qualified privilege since it served the public interest, and there was no proof of malice. Therefore, the defense of qualified privilege was valid for the respondent, and the appeal was dismissed.

The Supreme Court of Ghana established the elements that must be proved by the plaintiff in a defamation case as discussed above:

- (a) there was publication by the defendant;
- (b) the publication concerned the plaintiff;
- (c) the publication was capable of a defamatory meaning in its natural and ordinary sense;
- (d) alternatively or in addition to (c) above, from the facts and/or circumstances surrounding the publication, it was defamatory of the plaintiff;
- (e) the statement concerned a matter of fact, not simply an opinion; and
- (f) the statement was false.
- 4 Suit No. GJ/0268/2022
- 5 [2022] GHASC 36

#### Tsikata v. Newspaper Publishing PLC<sup>6</sup>

During the period of military rule in Ghana from 1981 to 1992, three judges and a retired army officer were abducted and murdered in 1982. A special inquiry implicated ten individuals, including Captain (Retired) Kojo Tsikata, as the mastermind behind the plot. Captain Tsikata sued Newspaper Publishing Plc for defamation following their publication of an article implicating him.

The case discussed the defence of qualified privilege. The court examined whether statements made in a newspaper article about the plaintiff were made in good faith and related to a matter of public interest. The court in dismissing the case ruled that qualified privilege applied to the statements as they were made in the context of an ongoing public debate. However, the court emphasised that if the statements were made with malice, the privilege would not apply.

#### Anas Amereyaw Anas v Kennedy Agyepong<sup>7</sup>

In this case, the applicant, Anas Aremeyaw Anas, an investigative journalist, filed a defamation suit against Kennedy Ohene Agyapong, alleging that Agyapong made defamatory statements about him, including accusations of criminal activities such as murder and corruption. The High Court dismissed the defamation case. Anas petitioned Supreme Court claiming that initial judge exhibited bias against him, as evidenced by the judgment's language, which criticized Anas investigative methods and labelled them as "investigative terrorism." The Supreme Court agreed that Anas had been defamed and overturned the decision of the High Court.

The Court emphasised truth as an absolute defence. It said that "it must be appreciated from the settled law on the tort of defamation that truth and justification are critical defences to a charge of defamation."

#### Ace Anan Ankomah v Kevin Taylor and Another<sup>8</sup>

In this case, Mr. Ace Anan Ankomah, a barrister and solicitor, filed a defamation lawsuit against the defendants. The dispute arose from statements made by Mr. Taylor, the 1st defendant in a video shared on Facebook and YouTube, where he accused Mr. Ankomah of being complicit in a business scandal involving Nana Appiah Mensah. Mr. Taylor alleged that Mr. Ankomah, along with others, failed to act on information to apprehend fraudsters, which led to wrongful accusations against Nana. Mr. Ankomah denied these allegations, claiming they damaged his reputation. He sought damages of Ten Million Ghana Cedis and other reliefs.

The question before the court was whether statements constituted defamation under Ghanaian law, given their publication on social media. The court affirmed that statements made on social media platforms like Facebook constitute "publication" in the context of defamation law. The court concluded the statements in question were defamatory and awarded damages to the plaintiff. This case serves as a cautionary example for journalists and individuals in Ghana, emphasizing the importance of verifying information before sharing it on social media platforms.

- 6 [1997] 1 All ER 655
- 7 (J5/72/2023) [2024] GHASC 5
- 8 [2020] DLHC10549



## 2. Procedure for Launching Civil Defamation Cases

# How does an aggrieved party sue a journalist/media outlet for defamation?

Any person, whether legal (such as companies) or natural (individuals), can sue for defamation. Public officials may sue but they must meet a higher standard by proving actual malice (knowledge of falsity or reckless disregard for the truth on the part of the journalist). Family members may pursue claims on behalf of dead persons if reputational harm extends after their death.

#### Avenues for pursuing civil defamation suits

- (a) Defamation claims are typically pursued in the High Court or Circuit Court, depending on the complexity and value of the claim. Circuit Court claims are limited to a value of GHS 2,000,000.00.
- (b) Defamation claims can be resolved using alternative dispute resolution (ADR) mechanisms. Mediation can, for example, be used to resolve defamation disputes amicably, particularly where the parties seek to preserve relationships.
- (a) The NMC provides quasi-judicial avenues for resolving media-related disputes, including defamation cases. However, this process does not replace the courts. The NMC Complaints Settlement Committee handles the investigation, mediation and settlement of complaints made against or by the press or other mass media. It considers both documentary and oral evidence provided by the parties and rules on the issues as it considers just in all circumstances. The Committee has no power to summon any editor who infringes or refuses to honour an invitation.

Civil defamation claims in Ghana are guided by procedural rules under the <u>High Court (Civil Procedure)</u> <u>Rules, 2004 (C.I. 47)</u>. The process typically involves the following steps:

#### Step 1: Establishing a cause of action

The plaintiff must determine that a valid cause of action (legal basis for the suit) exists by satisfying the elements of defamation discussed above.

#### Step 2: Filing a writ of summons and statement of claim

The plaintiff initiates the case by filing a writ of summons (official legal document summoning someone to appear in court within a specified time) accompanied by a statement of claim in the appropriate court (High Court or Circuit Court). The statement of claim outlines:

- The defamatory statements made.
- How the statements were published or communicated.
- The reputational harm suffered.
- The remedies sought (e.g., damages, injunctions, or apologies).

#### **Step 3: Service of process**

The writ of summons and statement of claim are delivered to the defendant, notifying them of the case and providing an opportunity to respond.

#### Step 4: Defendant's response

Where a journalist is sued for defamation, they must file a Statement of Defence within 14 days of receiving the plaintiff's documents. This must:

- Specifically deny the allegations (where a statement/alleged fact in the statement of claim is not denied, it may be taken to be an admission)
- State any defences (e.g., truth, fair comment)

#### **Step 5: Discovery and pre-trial procedures**

Both parties engage in discovery to exchange evidence and clarify issues. Discovery, in the law of common law jurisdictions, is a phase of pretrial procedure in a lawsuit in which each party, through the law of civil procedure, can obtain evidence relevant to the case from other parties. This allows parties to prepare adequately. The court may hold case management conferences to streamline proceedings.

#### Step 6: Trial

At trial, the plaintiff must prove their claim on a balance of probabilities (the defamation more likely than not happened). Evidence produced includes witness testimonies, documents, or recordings of the defamatory statements.

#### Step 7: Judgment

The court delivers its judgment, determining whether defamation has been proved and awarding appropriate remedies if the plaintiff succeeds.



# What should I do if I am served with a defamation suit

When a journalist is sued for defamation, they must take the following steps to respond effectively:

**Step 1: Seek legal representation:** Engage a lawyer specialising in defamation or media law to guide their defence.

**Step 2: Review the statement of claim:** Carefully analyse the allegations to identify the specific defamatory statements and assess their validity.

#### **Step 3: Gather evidence**

Collect supporting evidence to refute the claim or establish defences as below:

- » Sources for the publication.
- » Get documents or recordings supporting the truth of the statements.
- » Get testimonies from witnesses.

**Step 4: File a statement of defence:** Submit a response to the claim, outlining defences such as truth, fair comment, or privilege.

**Step 5: Consider settlement:** If the claim has merit, explore settlement options, including issuing retractions or apologies.

**Step 6: Prepare for Trial:** Work with a lawyer to prepare a robust rebuttal case, including witness preparation and legal arguments.



# **3. Defences to civil defamation**

Where it is found that a journalist has published a defamatory statement, the journalist is expected to raise a defence that establishes a lawful justification or reason to the defamation charge. Journalists (or defendants) in defamation cases may rely on several defences to avoid liability:

#### **Truth/Justification**

If the defendant proves that the defamatory statement is true, the claim fails. This is an absolute defence to defamation as discussed above.

#### Privilege

Certain statements, even if false and potentially defamatory, are protected under the defence of privilege. Privilege can be absolute or qualified, providing immunity from defamation claims in specific contexts. The principle behind privilege is that some statements, due to their context, importance, or the relationship between the parties, should not expose the speaker to defamation claims.

There are two types of privileges:

- (a) Absolute Privilege: This provides complete protection for certain statements, regardless of whether they are defamatory or made maliciously. Absolute privilege applies in specific situations, such as during parliamentary proceedings, judicial proceedings, and communications between spouses. For example, statements made by a judge in court or by a witness under oath are absolutely privileged.
- (b) **Qualified Privilege**: This applies to situations where the person making the statement has a duty or interest to make the statement, and the recipient has a corresponding duty or interest to receive it. Qualified privilege can be used as a defence in relation to statements made in good faith on matters of mutual interest or duty, such as employment references, certain media publications, and public interest commentary. However, if the statement is made with malice or is not relevant to the matter at hand, the defence will fail.

Thus, privilege offers protection in defamation cases, especially in matters where public interest or legal obligations are at stake. However, this privilege is not absolute, and its application is subject to conditions such as good faith and the absence of malice.

#### **Fair comment**

Applies to honest opinions on matters of public interest, provided the opinions are based on true facts. This defence will be disqualified if the plaintiff proves that the publication was made with malicious intent.

#### **Innocent dissemination**

Protects intermediaries (e.g., printers or distributors) who had no knowledge of the defamatory content.

#### Lack of publication

If the statement was not communicated to a third party, no liability arises.

#### Consent

If the plaintiff consented to the publication, the claim is invalid.

#### **Issuing an apology or retraction**

This may mitigate damages, although it is not a full defence.



Photo by Joshua Hoehne on Unsplash

## 4. Practical Steps to Mitigate Against Defamation Liability

Journalists in Ghana should be guided by the <u>Code of Ethics</u> issued by the <u>Ghana Journalists Association</u> as well as the <u>Guidelines</u> developed by the <u>National Peace Council</u> (NPC) in collaboration with the <u>National Media Commission</u> (NMC). There are also other guidelines developed by the NMC. These can be found under <u>Publications</u> in the NMC's website.

### Summary

It is worth remembering that truth is a complete defence to a defamation action. There may be other limitations on publishing information, but to the extent that the information is and can be proved to be true, a defamation action will not be successful. A good rule of thumb is to only report what you are confident you can prove. A rigorous focus on fair and accurate reporting at each stage and verifying the truth of the matters reported will put you in the best possible position if faced with legal threats or claims.

The suggestions below are intended to help you to think about practical means of achieving this. There are also other defences to a defamation claim which may be available to you depending on the jurisdiction, some of which are mentioned below.

#### **Newsgathering**

- Gather information early as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution if you rely solely on information from a confidential source in respect of certain allegations or statements in your reporting, be aware proving the truth may be more difficult.
- Non-disclosure agreements are permissible and effective to protect journalists from disclosing their source. If you do not conclude such an agreement – expressly or impliedly – you are not contractually (although you may be ethically) obligated to protect sources and maintain confidentiality.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to use audio or visual recording, always pause to consider whether you can record without permission, or whether permission is required. When in doubt, ask for consent.
- Keep a good record of your notes, meetings, etc.
- Research carefully. Verify sources and double-check your facts to ensure accuracy. Generally, you may only adopt communications from authorities and recognised agencies without further verification where you clearly attribute the source of the information.

#### Drafting and vetting the article

- Familiarise yourself with defamation law in the countries where you're working (see above). Be aware there may be more restrictive laws in some countries for example in some countries it is easier for a company to bring a defamation challenge than others.
- Familiarise yourself and comply with your news organisation's ethics guidelines and policies.

- Use credible sources to verify the accuracy of any potentially defamatory statements.
- Ask yourself whether there are any statements directed to identifiable individual(s) or companies that could be reputationally damaging. Confirm accuracy, and if doubt remains, weigh the benefits of keeping the statement in versus taking it out.
- Make your reliance on trustworthy and non-confidential sources transparent (for example, by hyperlinking to or otherwise disclosing the relevant reports or public records).
- A cornerstone of responsible journalism is seeking comment from the subject(s) of the reporting you intend to publish, in particular where you intend to make allegations about them or their conduct – you should clearly put the substance of the allegations to the subject, in advance and invite their response.
- Ensure, especially where you are engaging in investigative reporting, the subjects of your reporting have sufficient time to respond and have enough information to respond adequately. You should not show them a draft of your intended reporting but you should be prepared to share the substance of the intended publication.
- Reflect the comment /response in the article (you may use your editorial discretion in doing so). Even noting "no comment" or source "did not respond to requests for information" will go a long way in showcasing the steps you took to report factual information.
- Be precise with your language and the meaning you intend to convey. Avoid any ambiguity, over-exaggerations or speculations. To the extent that you've made any assumptions, disclose them clearly as such.
- Always reproduce quotations correctly and attribute them clearly.
- Consider exculpatory circumstances and avoid one-sided reporting. Reporting should be balanced and not create a distorted picture of reality.
- Do not spread mere rumours, whether about public or private matters. Report only when a minimum body of evidence is available and say what you don't know, where applicable.
- Consider how litigious and risky the subjects of your reporting are, and plan accordingly. If it is someone with a history of litigious activity toward the press, engage your news organisation's legal/compliance team early.
- Consider whether you are making an assertion of fact or a potentially protected opinion. There must be sufficient evidence for a statement of fact. If there is any uncertainty or doubt, consider formulating it as an expression of opinion (based on true facts) or presenting it as an assumption.

- Beware of republication liability. If you take information from another medium for your reporting, you assume responsibility for its content. Always conduct the research yourself.
- Consider whether any available defences to defamation for example truth, public interest reporting, qualified or absolute privilege, fair and accurate reports of certain proceedings – apply.
- There are several defences to a defamation action other than truth/justification, some of which may be particularly applicable to journalists for example in some countries there is defence for reporting in the public interest. There may also be defences available where an article expresses an opinion and is written in the public interest. However, these defences are not fool proof and will usually involve satisfying a number of requirements. If you intend to rely on a defence, consult your legal team or research precedent to ensure that the defence is likely to be available.

### **After publication**

- Stay informed of any developments in the subject matter that might change, call into question, or shed new light on the published information. Originally permissible reporting may generally be kept in the online archive. You typically have no active duty to investigate or update the reporting.
- Only if an affected party raises a qualified complaint about the reporting, you may be required to add supplementary information or take reasonable precautions to prevent the reports from being found in search engines in name-related search queries ("right to be forgotten").
- Consider whether to keep your notes and relevant communications and, if so, for how long – knowing the limitation period for defamation claims in the relevant jurisdiction may assist.
- Be willing to correct or retract your mistakes and issue an apology to the extent necessary for the justification/truth defence. You may be required to correct factual allegations that have subsequently proven to be incorrect and have a lasting effect on the personal rights of the person concerned. This is usually done via a supplement/ correction in the next issue or on the website.

Please note that journalists must also remain cognisant of emerging trends in other areas of the law that place their wellbeing at risk, or which could create legal risk – such as applicable privacy laws.

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Through a rigorous deployment of data journalism, storytelling and policy advocacy tools, iWatch Africa is shaping the national and regional discourse to deepen transparency and accountability, as well as to encourage citizen participation in the governance process in Africa.

### **Acknowledgements & Disclaimer**

The Thomson Reuters Foundation and iWatch Africa would like to acknowledge and extend their gratitude to the legal team at HB&O Legal PRUC, who contributed their time and expertise on a pro bono basis to make this Guide possible. This Guide is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances. We intend the Guide's contents to be correct and up to date at the time of publication, but we do not guarantee their accuracy or completeness, particularly as circumstances may change after publication. HB&O Legal PRUC and the Thomson Reuters Foundation accept no liability or responsibility for actions taken or not taken or any losses arising from reliance on this Guide or any inaccuracies herein



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