



Defamation & Privacy Laws in the Republic of Cyprus

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Modern Cypriot Law: A Brief Introduction

Following an intensely chequered legal history, the Republic of Cyprus finally achieved its sovereignty by gaining independence from the British Empire in 1960.

The new Cypriot Constitution (hereinafter “**the Constitution**” or “**the Cypriot Constitution**”), aimed at assisting the newly-born Republic undergo the smoothest possible transition from colony to independent state, provided that all laws previously applicable on the island would remain in force until such time as these were amended, modified, added to or repealed¹.

As a consequence, the Common Law, which was the existing legal system, was retained and adopted along with the existing laws, an amalgam of Byzantine, French, Greek, German, Ottoman and English laws.

A number of Cypriot statutes, codified in 1959 based on the previous colonial legislation, were thus maintained and along with the Constitution are now considered the pillars of modern Cypriot Law. These statutes remain known as “*chapters*” or “*caps*”, for short (from the Latin word for “*chapter*”).

The Republic of Cyprus acceded to the European Union on 1 May, 2004, becoming a fully fledged member-state and causing European Union Law to have direct applicability, enforceability and precedence over any other law on the island, including the Republic’s Constitution².

Defamation Law: Overview

Modern Cypriot Defamation Law is founded on the **Civil Wrongs Law, Cap. 148**, as amended (hereinafter referred to as “**the Civil Wrongs Law**”)³.

¹ **Article 188**

² **Fifth Amendment to the Constitution Law of 2006, L. 127(I)/2006.**

³ Since its enactment, **Laws 87/1973, 54/1978, 156/1985, 41/1989, 73(I)/1992, 101(I)/1996, 49(I)/1997, 29(I)/2000, 154(I)/20002, 129(I)/2006 and 171(I)/2006**, have amended **Cap. 148**.

The comprehensive repeal of penal defamation provisions from the Penal Code in 2003⁴ left the Cypriot Defamation Law lying solely in the sphere of civil law.

Cypriot Defamation Law is entirely statute-based. In particular, the first eight (8) sections⁵ of **Part III** of the Cypriot **Civil Wrongs Law** lay down the fundamental legal basis and the defences for libel, slander and injurious falsehood⁶.

The **Civil Wrongs Law** has been interpreted by Cypriot courts in accordance with the principles of legal interpretation applicable in England and the expressions used in it are presumed so far as are consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attached to them under English Law and shall be construed in accordance therewith⁷.

Definition

There exist two (2) main types of defamation: libel (a publication in permanent form) and slander (a publication in transitory form).

This distinction is important since in the event where slander is claimed, the plaintiff will be required to prove that he or she has sustained special damages, unless the exceptions listed in **s. 17 (3)** apply, whilst in the case of libel, special damages need not be proved.

s. 17⁸ (1) of the **Civil Wrongs Law** codifies, in essence, the common law definition for Defamation. It provides that the said civil wrong consists of the publication by any person by means of print, writing, painting, effigy, gestures, spoken words⁹ or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy, of any matter which: (a) imputes to any other person a crime, (b) imputes to any other person misconduct in any public office, (c) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office, (d) is likely to expose any other person to general hatred, contempt or ridicule or (e) is likely to cause any other person to be shunned or avoided by other persons.

No action for defamation may be brought by the estate or personal representatives of the defamed individual. Legal persons may also bring a law suit for defamation in instances where there are, for example, allegations as to a company's dishonest behavior or mismanagement.

⁴ **Law 84(I)/2003** repealed **sections 194 to 202** of the **Cypriot Penal Code, Cap. 154**, as amended.

⁵ **s. 17** (defamation); **s. 18** (publication of defamatory matter); **s.19** (special defences to action for defamation); **s.20** (when publication of defamatory matter is absolutely privileged); **s.21** (when publication of defamatory matter is conditionally privileged); **s.22** (unintentional defamation); **s.23** (mitigation of compensation for defamation); **s. 24** (special defence in case of defamatory matter published in newspaper) and **s. 25** (injurious falsehood).

⁶ The aforementioned sections are listed in their entirety in **Appendix A**.

⁷ **Aganthangelou v. Mousoulides & Sons (Successors) (1980) 1 CLR 272**, per Hadjianastassiou J at 276.

⁸ **Alithia Publishing Company Ltd & Alekos Constantinides v. Andrea Alonefti (2002) 1 CLR 2002 1864** – Held that the constitutional right to freedom of speech and expression (Article 19) may be lawfully restricted when it comes to the safeguarding of the reputation of an individual and his social standing. The restrictions to Article 19 of the Constitution that are found under **s. 17** of the **Civil Wrongs Law** are permitted and properly supported under Article 19.3 of the Constitution. Affirmed in **Loukis Loukaidis v. Alithia Publishing Company Ltd (2003) 1 CLR 22**.

⁹ **Sotiris Damianou v. Ioanni Ioakim (2006) 1 CLR 219** – use of words before third parties which injured the plaintiff's reputation.

Elements Required for the Establishment of a Claim

In order to succeed in establishing a case and thus succeed in his claim, a plaintiff suing for defamation will need to prove:

- (a) That the publication in question was defamatory¹⁰;
- (b) That the publication referred to the plaintiff¹¹;
- (c) That there was publication¹²;
- (d) That the plaintiff incurred special damages (*only for slander*).

s. 7 of the **Civil Wrongs Law** provides that a legal person needs to prove special damage in order to succeed in its claim for any civil wrong. However, the Cypriot Supreme Court has held that in the event where the elements of defamation simultaneously constitute injurious falsehood under either of ss. 25(1) or 25(2) of the **Civil Wrongs Law**, then no special damage needs be proven¹³.

In a law suit for defamation, the words used constitute essential facts and therefore must be included in the Particulars of Claim.¹⁴

The meaning and importance of a defamatory publication are judged according to the place, time and circumstances under which this has taken place¹⁵.

¹⁰ The test for deciding whether the publication complained of was capable of having any defamatory meaning is an objective one and the criterion is whether under the circumstances in which the writing was published, reasonable men, to whom the publication was made, would be likely to understand it in a libelous sense (**Aganthangelou v. Mousoulides & Sons (Successors) (1980)**, *ibidum*, where the Supreme Court of Cyprus adopted and applied the principles decided in English cases such as, *inter alia*, **Capital and Counties Bank Ltd v. Henty & Sons (1882) App. Cas.741 (HL)**, **Nevill v. Fine Art and General Insurance Company (1897) AC 68 (HL)**, **Lewis v. Daily Telegraph Ltd (1964) AC (HL)** and in **Morgan v. Odhams Press Ltd (1971) 1 WLR 1239 (HL)**). Each publication must be judged in its entirety and at the same time the alleged defamation must flow from the natural meaning of the defamatory words – **Arktinos Publications Ltd v. Andrea Vasiliou (2005) 1 CLR 683**.

¹¹ The plaintiff must prove that the publication in question was referring to himself or that reasonably thinking men who know him would connect the publication with the plaintiff (**Countas & Another v. Courtis (1973) 1 JSC 113**). No testimony is necessary where the publication makes an express mention to the plaintiff by name (**Alithia Ekdotiki Etaireia Ltd v. Charalambos Leonidas (1997) 1(A) CLR 550** per Nikitas J. at 558). There cannot be defamation of a category of persons unless that category is so small that reasonably thinking people would be able to connect the publication to the plaintiff (**Knupffer v. London Express Newspaper Ltd (1944) QBD 495**; cited and adopted recently in **Theodoros Stylianou v. Arktinos Publications Ltd, et al., Civil Appeal No. 89/2005, issued 20.7.2007** (as yet unreported). There is, further, no need, under Cypriot Law, for the plaintiff to prove the defendant's intention to refer specifically to the plaintiff or that the defendant knew of the plaintiff's existence, adopting the principles laid down in **Hulton & Co. v. Jones (1910) AC 20**. The test was reaffirmed recently in **Koutsou v. Alithia Publishing Company Ltd et al. (2003) 1 CLR 1198** – the publication will be judged as a whole, while the words will have their natural and common meaning and the test as to whether the publication refers to the plaintiff is the perception of the common, reasonable person. It is for the court to decide whether or not this is the case.

¹² s. 18 of the **Civil Wrongs Law**.

¹³ **Kemsley Newspapers Ltd v. Cyprus Wines & Spirits Co. Ltd “KEO” (1958) 1 CLR 1**.

¹⁴ **Alekos Constantinides, et al. v. Sotiri Pappasava (2004) 1 CLR 981**. Cf: **Andri Charalambous v. Chrystalla Eleftheriou**, Civil Appeal No. 170/2006, issued 24.4.2007 (as yet unreported) – held that a written deposit of fifteen (15) hand-written pages and the comments broadcast on it by the media, constituting the defamatory publications, could not be expected to be included in their entirety by the plaintiff either in the Writ of Summons or the Particulars of Claim; per Artemides P.

¹⁵ **Renos Stavrakis v. Kikis Konteatis (2004) 1 CLR 1957**.

Publication of defamatory material

s. 18 of the **Civil Wrongs Law** codifies the common law on what constitutes “*publication*”. Publication may be effected in various ways but the one prerequisite that must definitely be met to prove publication is that the defamatory material must have become known to at least one person other than the plaintiff or the defendant’s spouse (so long as their marriage is subsisting).

In the event where there is an email or a telegram sent, a letter posted or a document printed, publication of the defamatory material is presumed and then the onus of proof rests with the defendant to disprove the existence of publication.

For publication to take place, the intended recipient of the publication must have comprehended the defamatory material’s meaning as well as understand that it refers to the plaintiff¹⁶.

Publication taking place abroad is still considered a publication¹⁷ and the Cypriot courts have jurisdiction over such a publication provided the action constitutes a civil wrong both in Cyprus and in the country in which the publication has taken place and the defendant is in Cyprus at the time this comes before the court¹⁸.

It is for the court to decide whether or not to adopt the opinion of the witnesses regarding the meaning in which they understood the words. The court is entitled to form its own opinion on the matter¹⁹.

Repetition and dissemination, with the exception of innocent dissemination, of a defamatory material also constitutes publication. The author, the publisher as well as the printer of a defamatory publication will all be held identically accountable for the publication of the same defamatory material²⁰.

Innuendo

The concept of innuendo applies in Cypriot law as it does in English law. Innuendo can appear in two forms: (a) true or legal innuendo, where extrinsic facts are required to be included in the Particulars of Claim and proved, before defamation can be identified and established and (b) false innuendo, where a plaintiff can show defamation based solely and only on the ordinary and natural meaning of the defamatory words²¹.

¹⁶ Cypriot Law adopts the decision of the English court in **Sadgrove v. Hole (1901) 2 KB 1**

¹⁷ **Georgiades & Son v. Kaminaras 23 CLR 276** – publication held to have taken place even though the defamatory material was in the form of a sealed letter which was dispatched from Cyprus to Germany.

¹⁸ **Jupiter Electrical (Overseas) Ltd and Another v. Christides (1975) 1 CLR 144.**

¹⁹ **Papadopoulos v. Kyrix Publishing Co. Ltd (1963) 1 CLR 290**; affirmed by **Phileftheros Ltd et al. v. Andreas Sofocleous (2003) 1 CLR 549.**

²⁰ **Cacoyiannis v. Kyrou and Others (1976) 12 JSC 1883.**

²¹ **Georgios Ioannou v. PPM (Paphos) T.V. Station Co Ltd (2006) 1 CLR 344**; **Arktinos Publications Ltd, et al. v. Nikou Stelikou (2004) 1 CLR 949**; **Publishing Company “Themelio” Ltd, et al. v. Takis Kazolidis (1991) 1 CLR 607**; **United Publishing Company Dias Ltd v. Minas Chadjicostas (1990) 1 CLR 244** (distinguishing characteristics of true and false innuendos were laid down by the Cyprus Supreme Court, in line with the English decisions of *Slim v. Daily Telegraph Ltd (1968) 1 All ER 497*, *Allsop v. Church of England Newspaper (1972) 1 All ER 26*, *Loughans v. Odham Press Ltd (1963) 1 QB 299* and *DOSA Ltd v. Times Newspapers (1972) 3 All ER 417*).

If there is no mention or inclusion of the innuendo in the Particulars of Claim, any pertinent evidence later submitted to prove such an innuendo will be inadmissible²². As an exception to the general rule, that, where legal innuendo is claimed, it is necessary for the plaintiff to mention in his Particulars of Claim that the words were directed to a specific person or persons and that the latter were aware of special facts giving them the ability to realize that the words in the innuendo referred to the plaintiff, in the event where the publication was in a newspaper of pan-Cyprian circulation or on the Internet, then the plaintiff need not mention in his Particulars of Claim any special facts, or to specify persons or categories of persons who knew such facts and who could realize to whom the publication was referring to nor does he need to mention that he is basing his claim on the natural and ordinary meaning of the words and that he does not impute any other meaning to such words²³.

Burden of Proof

The burden of proof for defamation is that of the balance of probabilities and it initially rests on the plaintiff.

Defences

s. 19 of the **Civil Wrongs Law** codifies the defences to defamation as those of: (a) Justification, (b) Fair Comment, (c) Privilege (Absolute and Qualified) and (d) Offer of Amends.

Justification²⁴

If this defence is expressly stated in the Defence to the Particulars of Claim and the defendant is successful in proving that the alleged defamatory words contained in the Particulars of Claim were, in essence, true²⁵, then this is a complete defence to a defamation claim.

In the event where there are two or more allegations for defamation in the same claim, the success by the defendant in proving only part of these as true, will not cause the defence to fail unless damage has in essence been caused to the plaintiff's reputation.

Fair comment²⁶

This defence can be utilized only where the alleged defamation concerns a matter of public interest, as for instance, matters of central and local government or administration, the behavior of public

²² **Michalis Attalides v. Christou Rodoouli (2004)**, post.

²³ **Arktinos Publications Ltd v. Theodorou Stylianou (2006) 1 CLR 632**, per Nicolatos J. at p.p. 638, 639, adopting the decisions in **Fullam v. Newcastle Chronicle and Journal Ltd (1977) 1 WLR 651**, per Scarman L.J. and **Grappelli v. Derek Block Ltd (1981) 1 WLR 822**, per Dunn L.J.

²⁴ **Chrysostomos Philippou v. Arktinos Publications Ltd (2006) 1 CLR 1124** - this defence succeeds if the defendant proves on the basis of the balance of probabilities that the essence of the defamatory words was true.

²⁵ **Glafx Ltd v. Loizia (1984) 1 CLR 729** – the defendant is not allowed to present his own version of the defamatory words in order to prove their truthfulness; no less than the truth of the words, as these are mentioned in the Particulars of Claim, must be proved.

²⁶ **Elias Onoufriou, et. al. v. K.K. Sichrones Kourses Ltd (2006) 1 CLR 742** (publication of comment in equestrian magazine of wide circulation concerning the doping of 14 horses in a race horses' farm was considered a matter of public interest and thus the comment was held to have been fair); **Michalis Attalides v. Christou Rodoouli (2004) 1 CLR 1690**; **Phileleftheros Ltd et al. v. Andreas Sofocleous (2003) 1 CLR 549** – reiteration of the test for fair comment.

persons²⁷, the police, works of art, books, cinematic or theatrical works, television and radio broadcasts, etc.

For the defence to succeed, the defendant must prove that the publication consisted of an opinion or comment but not of a declaration of fact²⁸ and the alleged defamatory comment or opinion must be examined within the context of the entire publication and not out of context²⁹.

If the alleged defamatory comment is based on facts also referred to in the publication, the truth of these facts need to be proven before the defendant can succeed in his defence.

Furthermore, such a comment must be shown to have been the fair and honest opinion of the defendant regardless of the fact that it may show the plaintiff in a hypocritical, dishonest or immoral light.

In the event it is proven that the alleged defamatory publication was performed maliciously, that is that the publication is untrue and the defendant did not believe in its truthfulness or that it is untrue and he proceeded with publishing it without exercising reasonable care to check the truthfulness or not of it or by publishing it he acted intending to harm the plaintiff to a substantially greater degree or in a substantially different manner as was reasonably necessary for the interest of the public or for the protection of the private right or interest which the defendant claims to be privileged, then the defence for fair comment fails³⁰.

Privilege

The defence of Privilege can be divided into the categories of absolute and qualified privilege.

This is where the right to freedom of speech outweighs the personal right to reputation because doing so would best serve the public interest.

Absolute privilege situations, which bar completely every action for libel, are the ones listed in **s.20** of the **Civil Wrongs Law**. Amongst others, any publications effected by members of the judicial body before the latter, declarations before the President of the Republic or member of the Cabinet of Ministers, publications by the President of the Republic and by the Cabinet, statements referring to discipline in the military, navy and the police, as well as police, army and navy statements and as statements or publications occurring in judicial procedures by a judge, an attorney, a witness or a party, may constitute cases where the defence of absolute privilege will arise.

The defence does not extend, however, to bodies exercising administrative duties³¹.

²⁷ **Papastratis v. Hadjiefthymiou, et al. (1986) 1 CLR 905.**

²⁸ **Journalistic Company C.L.S. Ltd, et al. v. Christakis Philippou (1998) CLR 958** – general principles for fair comment defence.

²⁹ **Stefis A. Stephanou v. Michael Hjiefthymiou, et al. (1976) 1CLR 225.**

³⁰ **s. 21(2); Synomospondia Ergaton Kyprou, et al. v. Cyprus Asbestos Mines Ltd and Another (1965) 1 CLR 222.**

³¹ Cypriot law acknowledges and applies this English law principle established in *Hasselblad (UK) Ltd v. Orbinson (1985) 1 All ER 173*.

Qualified privilege is, in turn, codified by **s.21** of the **Civil Wrongs Law**. This defence can succeed only in the event where the publication was brought about in good faith and with the contention that it was true.

There must be some legal, moral or social duty shown, on behalf of the defendant, to effect the publication and a corresponding duty on the other side to receive it³².

Still, this defence fails where the publication exceeds, either in essence or in length, what is reasonable under the circumstances³³.

Offer of Amends³⁴

Where the publication occurred inadvertently, one may call upon this defence which is laid down by **s. 22** of the **Civil Wrongs Law**. To succeed, the defendant must prove that he did not intend to refer to the plaintiff and that he was not aware of the specific circumstances under the light of which the publication could be taken to have been referring to the plaintiff³⁵ or that he was unaware of the specific circumstances under the light of which the innocent and harmless publication could become defamatory³⁶. The defendant needs further to show that, in any event, he exercised reasonable due diligence concerning the publication.

To succeed in raising this defence, the defendant must: (a) expressly declare that the offer of amends is made under **s. 22** of the **Civil Wrongs Law**, (b) accompany his offer with an affidavit listing the facts on which he will be based in order to show that the publication was unintentional, (c) offer a publication which would sufficiently refute the defamatory publication as well as include an adequate apology and (d) offer the taking up of reasonable measures in order to communicate to persons who received copies of the publication that this is defamatory in nature for the plaintiff.

In the event such an offer of amends is accepted by the plaintiff, the latter cannot proceed or instigate legal measures against the author albeit the court does have the authority to order for the indemnification of the plaintiff for his expenses and costs.

In the event the offer of amends was done properly but was not accepted, it constitutes a defence if it is proven that the defamatory publication was effected inadvertently as to the plaintiff's person, the offer was made as soon as possible, and with no delay and it has not been withdrawn by the defendant³⁷.

In addition to the above, by proving any of the elements under **s. 23** of the **Civil Wrongs Law**, a defendant may succeed in reducing the adjudicated damages against him by a court of law.

³² **Constantinides & Another v. Vassiliou (1986) 1 CLR 75; Countas & Another v. Courtis (1973) 1 JSC 113** (where such a duty to effect the defamatory publication was not proven on either side).

³³ **Ergaton Kyprou, et al. v. Cyprus Asbestos Mines Ltd and Another**, *ibidum* and **Alithia Publishing Company Ltd & Alekos Constantinides v. Andrea Alonefti (2002)**, *ibidum* (per Chadjichampis J. (dissenting) the possibility of raising the defence of qualified privilege was noted by the Supreme Court but said its examination should have been made by the lower instance court).

³⁴ The existence of such an offer of amends will not be a factor capable of mitigating adjudicated damages – **“Alithia” Publishing Company Ltd & Another v. Leonida (1997) 1(A) CLR 550**.

³⁵ *Newstead v. London Express Newspapers Ltd (1940) 1 KB 337*, adopted and followed under **s.22**.

³⁶ *Cassidy v. Daily Mirror Newspapers Ltd (1929) 2 KB 331*, also adopted and followed under **s.22**.

³⁷ **Constantinides v. Koureas (1978) 1 CLR 139**.

s.24 of the **Civil Wrongs Law** lays down a special defence available to the owner of the publishing company, where the defamation was published in a newspaper. The owner must also deposit an adequate sum of money with the court and then prove that there was no malice or gross negligence in the publication and that prior to or immediately after, the publication, he published a full apology. This defence, however, will preclude the raising of any other defence by the defendant owner.

Injurious Falsehood

Section 25 of the **Civil Wrongs Law** codifies the common law on what constitutes injurious falsehood. Albeit a separate and distinct tort from that of defamation, this is still considered to be a connected tort.

s. **25(1)** is deemed to provide a separate and distinct cause of action for injurious falsehood from that provided under s. **25(2)**³⁸.

This tort is committed when a person causes damage to another by the publication of a false statement. To prove the tort, a plaintiff must prove that: (a) there was publication of the words, (b) the words were false – but need not be defamatory – and (c) were published maliciously, that is were published *mala fides* with the intention to cause damage to the plaintiff³⁹.

The main distinction between the torts of defamation and injurious falsehood is that the latter concerns the incursion of damage to commercial interests, while the former, to the fame and reputation of a person.

Although the proof of special damage is also a condition precedent to proving the commission of injurious falsehood, this is not necessary once the plaintiff shows that the false words upon which the action is founded were (a) calculated to cause pecuniary loss to the plaintiff and are published in written or some other permanent form or (b) calculated to cause pecuniary loss to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of publication.

Remedies

Section 23 of the **Civil Wrongs Law** lists some of the mitigating factors a defendant may call upon in court against a pecuniary claim for compensation.

Other relevant factors, which may affect the height of the award, are, for instance, the fact that the defamatory statement was made by way of repetition, that the tortfeasor believed in the statement's truth, that he or she did not intend to refer to the plaintiff and that he or she was not aware of the existence of the plaintiff. Recently, the Supreme Court has reiterated its support in the trend of ever-increasing awards for damages⁴⁰.

It is a well documented legal principle that the Supreme Court of Cyprus will not intervene on appeal and amend an award for damages, unless it is of the opinion that the first instance court directed itself

³⁸ **Saba & Co. (TMP) v. TMP Agents (1994) 1 CLR 426; T.M.P. Agents v. Saba & Co. (T.M.P.) (2007)**, Civil Appeal No. 11911, issued 16.4.2007 – if the words are not false, a claim for injurious falsehood cannot succeed.

³⁹ **Soteriades v. Giles (1965) 1 CLR 71**, per Iosifides J.

⁴⁰ **Demetris Mita v. Ioanni Leonti (2005) 1 CLR 1299**.

erroneously on principles for deciding the measure of such an award and / or, following an objective test, that the award was exorbitant⁴¹.

An apology, especially if performed properly, without reservations and promptly, can become a significant mitigating factor⁴².

Aggravated damages may be awarded in the event where aggravating elements exist but otherwise the adjudication of exemplary or punitive damages is not permitted. The pertinent principles laid down by the English decisions in **Rookes v. Barnard (1964) 1 All ER 367** and in **Mc Carey v. Associated Newspapers Ltd (1964) 3 All ER 947** were initially rejected but later on accepted and adopted by the Cypriot courts⁴³.

Other than the granting of a pecuniary award, where a court foresees that there is a risk that the defendant could proceed with another defamatory publication which will cause direct and irreversible damage, it may choose to issue an interim order for a prohibitory injunction as part of the remedies provided under a defamation or injurious falsehood action, prohibiting the publication or circulation of the allegedly defamatory material. Such an interim order can only be issued in exceptional cases and only when: (a) the statement is undoubtedly defamatory; (b) there are no reasons which can lead one to the conclusion that the statement may be true; (c) there is no other defence with a possibility to succeed; and (d) there is evidence as to the intention to repeat or publish the defamatory material⁴⁴.

The general principles for the estimation of the proper measure for damages in all civil wrong actions, as laid down in **Paraskevaides (Overseas) Ltd v. Christofis (1982) 1 CLR 789**, were recently affirmed and reiterated in a Supreme Court judgment in the defamation case of **Loukis Loukaidis v. Alithia Publishing Company Ltd (2003)**, *ibidum*: “*In the event of libel, equitable remedy is that damage which can reinstitute, in essence, the victim of the defamation – to the degree this is possible – through the medium of money*”⁴⁵.

In **Arktinos Publications Ltd, et al. v. Nikou Stelikou (2004)**, *ibidum*, it was held that the amount of damages to be awarded is directly connected to the nature and the extent of the insult on the reputation of the individual.

⁴¹ **Alithia Publishing Company Ltd and another v. Charalambos Leonida (1997) 1 (A) CLR 550; Alekos Constantinides and others v. Mustafa Emin (1996) 1 (B) CLR 1216**

⁴² **Christos Saveriades and another v. Elias Georghiades and 9 others (1983) 1 CLR 574**

⁴³ **Lordos v. Hadjinicolaou and another (1987) 1 JSC 294; Erotocritou v. Theodorou and others (1997) 1 (C) CLR 1800; Christos Saveriades and another v. Elias Georghiades and 9 others, *ibidum***

⁴⁴ per Eliades J. in **C.T. Tobacco Ltd v. Arktinos Publications Ltd, et al. (2003) 1 CLR 853** – the test and basic principles for the issuing of such an interim order, based on English law and the case law of European Court of Human Rights, were laid down; **Newspaper or Magazine Apokalipsi tis Pafou Ltd, et al. v. Spyrou Konioti (2004) 1 CLR 1847** - such an interim order is issued rarely and in exceptional circumstances, per Artemides P. at p. 1850; **Anastasios Panayiotou v. Avraam Moulazimi, Civil Appeal No. 198/2005, issued 26.1.2007 (as yet unreported)** – the issue of an interim order should only take place in the most clear circumstances. **Schering Chemicals Ltd v. Falkman Ltd and others (1981) 2 All ER 321** cited, and adopted and test laid down in **C.T. Tobacco Ltd v. Arktinos Publications Ltd, et al. (2003)**, *ibidum*, reiterated and reaffirmed.

⁴⁵ per Pikis J., p. 48.

Limitation period

Contrary to the majority of causes of action under Cypriot law, the right to a cause of action against a tortfeasor is not limited under the provisions of the **Limitation of Actions Law, Cap. 15**, as amended.

Instead, **s. 68 (a)** of the **Civil Wrongs Law** expressly provides that the limitation period for all civil wrongs / torts, including but not limited to such torts as defamation or injurious falsehood, is three (3) years.

Recent Developments

In **Arktinos Publications Ltd v. Nicos Papaefstathiou, Civil Appeal No. 12139, issued 12.7.2007** the Supreme Court of Cyprus gave one of its most important and authoritative judgments to-date concerning defamation. At first instance, the plaintiff, who was at the time of the alleged libel the President of the Pan-Cyprian Bar Association was awarded CYP£25.000 plus interest, expenses and an interim order against the defendants who were held to have had published allegedly defamatory materials on the plaintiff through three (3) articles published in June 2001 in their newspaper. In the articles, the defendants stated the opinion that certain fat-cat lawyers (implying the plaintiff - who had expressed the view that non-lawyers lack the scientific ability to opine on such issues) do not, in fact, wish to see the current Cypriot defamation legislation modernized because their monetary interests would be affected.

The Supreme Court, in quashing the lower court's decision on appeal, held that, in such instances, the two human rights that require balancing are the right to the freedom of speech and expression, protected under **Article 19** of the Constitution and **Article 10** of the **Convention for the Protection of Human Rights and Fundamental Freedoms** (hereinafter "**the Convention**") and the right to dignity and fame, as safeguarded by **Article 2** of the said Convention, which is, in turn, generally protected by the right to private life, as safeguarded under **Article 15** of the Constitution and **Article 8** of the Convention.

Following an extensive reference and analysis to the recent trends and case law of the European Court of Human Rights, the Supreme Court held that the modern trend of the ECHR is to restrict the right of an individual to fame in favour of the right to freedom of expression, to which the ECHR attributes a very high value⁴⁶. Moreover, in accordance to the case law of the ECHR, political or other public figures or personae should be obliged to be more acceptable to public criticism because of their self-imposed public position in the political or public arena⁴⁷.

Therefore, the Cypriot Supreme Court, following the modern trend set by the ECHR, held that the comments in the published articles were not defamatory and even in the case these were, the defence of fair comment would definitely apply on a matter of public interest. The Court held that the freedom of expression and speech should be afforded to information and ideas that are insulting, surprising, annoying even: "*Such are the demands of pluralism, tolerance and the wideness of spirit, without which no democratic society may survive*"[sic].

This case was recently followed in **Nikos Koutsou v. Yiagkou Mikellide, et al., Civil Appeal No. 33/2005, issued 10.12.2007** (as yet unreported) where it was held that in the case of a public figure, even extreme criticism through satire would be acceptable in modern times and societies.

⁴⁶ Cited: **Lingens v. Austria, App. No. 9815/82, Ser. A, Vol. 103 (1986) 8 EHRR 407 at para. 41**

⁴⁷ Cited: **Krone Verlag GmbH & Co. Kg v. Austria, App. No. 34315/96, Decision of 26.2.2002**

Privacy law: Overview

The Republic of Cyprus is a signatory to the **Convention for the Protection of Human Rights and Fundamental Freedoms** since 16 December, 1961. The ratification of the Convention took place by the enactment of **Laws 39/1962** and **118/1968** which, respectively, commenced the adoption of the main corpus and the Protocols to the Convention. Additional ratifying statutes have since followed aiming at the Republic of Cyprus' comprehensive compliance with the Convention's subsequent amendments.

It is fair, therefore, to say that modern Cypriot Privacy Law is principally founded on **Articles 7 and 15**⁴⁸ of the Cypriot Constitution⁴⁹, which are in turn very closely worded – almost verbatim - and based on, the corresponding **Articles 2 and 8** of the aforementioned Convention, protecting an individual's right to life, dignity and fame and the right to respect of his or her private and family life, respectively.

It would further be fair to say that, because of this and also due to the Republic of Cyprus' relatively small population and still very much closed Mediterranean society, few important cases have been reported over the years concerning the area of Privacy Law.

Pertinent Cases

In a road accident case, the Supreme Court of Cyprus, held that if the plaintiff were to be required to submit to as many medical examinations - by a doctor of the defendants' choice - as the latter in a given suit may have deemed appropriate, without sufficient proof brought forward by the defendants justifying to the Court that the new examination was essential and in the interests of justice, that would constitute an unacceptable intrusion into the personal liberty and privacy of the plaintiff⁵⁰.

In the course of another case, the perjury trial of a psychologist, the first instance court ruled as admissible a conversation between the accused and a client of his, during the course of a medical examination. The said conversation was overheard by the Police through the use of an electronic listening and recording device, preceded by the installation of a transmitter – carefully hidden in the examination room – which was unknown to both the client and the accused. The Supreme Court of Cyprus held in this case that the evidence was inadmissible in light, amongst others, of the provisions of **Article 15** of the Constitution and **Article 8** of the Convention⁵¹ and also went on to say in its ratio decidendi that the tape-recording or wire-tapping of a private conversation, unknown to a participant, constitutes in principle an interference with and an invasion of privacy, prohibited under **Article 8** of the Convention and incompatible with **Article 15** of the Cypriot Constitution⁵².

⁴⁸ See **Appendix B**

⁴⁹ As amended by **Laws 95/1989, 106(I)/1996, 115(I)/1996, 104(I)/2002** and **127(I)/2006**.

⁵⁰ per Pikis J., **Andreas Kyriacou & Another v. Georgios Stylianou (1982) 1 CLR 524**. Cf **Andreas Markantonis v. The Republic, through the Minister of Interior (1993) 3 CLR 518**, where it was held that the request by the Police for a person in the possession of a fire gun - whose fire gun possessing and carrying licence was revoked due to doubts risen over his mental capabilities - to undergo further medical examinations in order for his mental state to be examined thoroughly, was not an intrusion or a restriction of that individual's private life. Nor did the constitutional right to private life, afforded to a person under **Article 15**, encompass the right to carry a gun, held the Court.

⁵¹ Per Triantafyllides P. in **The Police v. Andreas Georghiadis (1983) 2 CLR 33**. The Court cited the Commission's decision in **Scheichelbauer v. Austria** (Application No. 2645/65 ECHR, Yearbook of ECHR, p. 156) but distinguished that case from the one before it on the facts.

⁵² In **Ioanna Christodoulou v. Police (1998) 2 CLR 449**, the Court held that the contents of a telephone conversation overheard by two (2) undercover police officers, who eavesdropped by picking up the hand-set of a

s. 33 of the Births and Deaths Registration Law, L. 85/73, which stated that a correction of the Births Register could only be made in case of a clerical error or an error as regards the facts or substance but not whenever an individual wished so, was not held to contravene or to be invidious to the right of privacy, under **Article 15.1** of the Constitution⁵³.

By its judgment in a recourse by a man who had changed his name, against the refusal of the Minister of Interior to amend the Births Register so as to reflect this change, the Supreme Court affirmed its previous decision on the same point by stating that although **Article 15** “encompasses the use and change of a surname to reflect the true state of affairs of a person’s identity in society”⁵⁴ in this particular case no violation of the right of private life had been established, as the right surname of the applicant in all respects and in all other official documents issued to him by the Republic reflected his correct, new identity.

In an appeal by the defendants, who were trading in pharmaceutical products and were convicted for refusing to produce their books and records for inspection at the request of an Inspector of Health, the former argued that the statutory authority to probe into the conduct of traders and manufacturers of drugs was invidious to their right to privacy and irreconcilable with **Article 15.1**’s provisions. On dismissing the appeal, the Supreme Court held that trading and business activities are not of their nature personal matters and thus are not confidential – and thus not private. It went on to reiterate the tests laid down by itself in **The Police v. Andreas Georghiades (1983) 2 CLR 33** and further stated that: “(a) the right to privacy is confined to inherently private aspects of personal and family life, (b) an objective test is applied to determine what is a private and personal matter in the sense of Article 15.1 and (c) the need to ensure unfettered development of the personality of the individual, a universal aspiration of mankind and ethical standards at any one time, are relevant in determining whether particular aspects of conduct are private, personal matters”. The Court further held that the right to privacy under the Constitution was confined to personal and family matters, which are those immediately connected with the person, necessary for the preservation of his individuality, but if the person’s actions affect others, then that person cannot claim the protection of **Article 15.1**, unless the relationship between them is confidential⁵⁵.

In affirming and complementing the above judgment, the Supreme Court also held, a year later, in dismissing the appeal by a convicted defendant that business premises are not a private domain, a business activity is not in itself a private matter and a business diary and a telephone directory do not constitute inherently a personal - and thus private – record, in the sense of **Article 15.1**. Here, the Cypriot Police had intercepted three (3) boats to the east of Cape Pyla, sailing seemingly in a convoy, parallel to the coast of Cyprus, at a distance of 10 nautical miles from shore. Following an on-board inspection, it transpired that two (2) of these boats carried narcotics. The vessels were detained and the crews and passengers arrested - 14 persons in all. A note containing details of a position at sea seemingly identifying the point where Lebanese importers were planning to dispose of their illegal cargo, found by the Police in one of the defendants’ office and in particular in his diary telephone directory – left exposed by the defendant on his desk and within reach of the personnel of his company -

second phone, whilst in the apartment of the defendant posing as prospective clients were not used to secure her conviction for procuring prostitution and living off the earnings of prostitution. The conviction and sentence were upheld.

⁵³ **Takis S. Myriantis Alias Minis Miral v. The Republic of Cyprus (1986) 3 CLR 2567.**

⁵⁴ per Stylianides J. in **Andreas Petrou v. The Minister of Interior et al (1988) 3 CLR 2319**

⁵⁵ per Pikis J., **Haris Enotiades & Haris Enotiades M.E. & B. Ltd v. The Police (1986) 2 CLR 64.**

was not deemed to be inadmissible evidence as the police search and seizure of it was not held to be illegal nor did it breach the defendant's constitutional right to privacy. Pikiş J. held that "*the right to privacy extends to inherently private personal and family matters objectively identifiable as such, provided always that the beneficiary of the right has not by his own action exposed a private matter to public view*"⁵⁶.

Two of the most important cases ever decided on **Article 15**, are **Christodoulos A. Yiallourous v. Nicosia Sewage Board** and **Police v. Christodoulos A. Yiallourous**⁵⁷. In the first case, the General Manager of the NSB sued his employers by arguing that his suspension and removal from duty for a certain period of time so as to facilitate an on-going police investigation for the commitment of a criminal offence concerning the illegal wire-tapping and recording on magnetic tapes, by Mr. Yiallourous, of telephone conversations made by the NSB's Executive Engineer from his service phone, without the consent or the knowledge of the NSB or the Executive Engineer or the persons conversing with the latter over the telephone, was unconstitutional as it breached Mr. Yiallourous' right to privacy. Mr. Yiallourous' position was that his intention in acting as he had was to uncover anomalies, omissions and / or improprieties in the NSB's undergoing works and / or omissions and / or malpractices in the execution of these works by the NSB's contractors. The Supreme Court held in its 1990 judgment on the issue of constitutionality that Mr. Yiallourous' actions constituted first and foremost a criminal offence under **the Penal Code, Cap. 154**, as amended⁵⁸, as it amounted to an abuse of authority and that he was thus rightfully suspended and removed from his position and duties, respectively. In the 1992 case, where Mr. Yiallourous attempted to base his defence to criminal charges brought against him for the same set of circumstances, on the truth of the content of the magnetic tapes, the Supreme Court held that Mr. Yiallourous' actions constituted a gross breach of **Article 15** and the Executive Engineer's right to privacy under it and therefore the magnetic tapes, which were a by-product of such a breach, were rendered absolutely inadmissible as evidence. Evidence received or secured through the breach of fundamental rights and liberties of the person cannot be admissible for any reason whatsoever⁵⁹.

⁵⁶ **Charalambos Tilemachou Psaras & Ramez Metanos Licha v. The Republic (1987) 2 CLR 132.**

⁵⁷ **(1990) 3 CLR 3532** and **(1992) 2 CLR 147**, respectively.

⁵⁸ Since 1996 and the enactment of the **Protection of Confidentiality in Private Communication (Filching of Conversations) Law of 1996, L. 92(I)/96**, as amended, the filching of any private communication constitutes a criminal offence.

⁵⁹ per Artemides J. in **(1992) 2 CLR 147**, p. 156; [**Kruslin Case** - Publications of the ECHR Vol. 176, p. 6 decided on 24.4.1990; **Malone Case** - Publications of the ECHR Vol. 82, p. 7 decided on 2.8.1984; **Klass and Others Case** - Publications of the ECHR Vol. 28, p. 5 decided on 6.9.1978, cited.] It was also held that the exercise of the right safeguarded under **Article 15.1** is not subject to any restriction other than the ones laid out in the law and then only for the purposes provided for under **Article 15.2**. In May 2000, the President of the Republic referred a proposed bill, concerning the declaration and control of the estate and property of state officials, to the Full Bench of the Supreme Court for their opinion on its constitutionality following its rejection by the House of Representatives. Following a detailed decision, it was held unanimously by the Court – albeit with a majority of 8 to 5 as to the specific reasoning – that the said bill was in contravention of **Article 15** ("Once a statute which restricts a human right, that of private life in this instance, does not have its foundations in an existing, direct and pressurizing necessity, this ends to a breach of the human right, which is damaging to the individual and the social space in which he operates. Human rights mark the state's operating frame, and there can be no diversion from them, unless there exist exceptional reasons laid down by the Constitution itself [under **Article 15.2**]") (**President of the Republic v. House of Parliament (No. 2) Report No. 2/9, 12 May 2000, p. 238**); See also **Markitani v. Moutzouri (2000) 1 CLR 923** and **Pantelis Yioryallas v. Soulla Chadjichristodoulou (2000) 3 CLR 2060** for a mention in passing of the object, interpretation and scope of applicability of **Article 15.1** concerning the presumption of fatherhood and the citation, acknowledgment and adoption of more ECHR judgments, such as **Marckx Case A 31, Para 36 (1979)**, **Case of R v. The United Kingdom, Series A, Vol. 121, 105** and **Rasmussen, Judgment of 18 November 1984, Series A: Judgment and Decisions, Vol. 87**.

And then in **Takis Yiallourous v. Evgeniou Nicolaou (2001) 1 CLR 558**, Evgenios Nicolaou, the aforementioned Executive Engineer sued the General Manager of the NSB for damages for breach of his right to private life under **Article 15.1**. Mr. Yiallourous appealed the decision to award CYP£5.000 to the Executive Engineer in general damages for non-pecuniary damage or moral damage suffered by Mr. Nicolaou, but the former's appeal was dismissed. It was, thus, held for the first time by the Supreme Court that a plaintiff would be allowed to an award of general monetary damages, wherever there is a breach of a human right causing damage but where that breach does not also constitute a tort / civil wrong. Such a breach of a human right, will give an innocent party the right of legal protection through court and access to legal remedies and equitable compensation / damages (the principle of restitution in integrum where there is a wrong committed against a person, was referred to and reaffirmed). The heads under which one may claim damages in such cases include, amongst others, distress, injured feelings, loss of employment opportunities, personal hardship and pain and suffering⁶⁰.

Where a child's parents refused to consent to the provision of a specific type of medical treatment to their child, viz, a blood by-products' transfusion, because of their religious beliefs as Jehova's witnesses, thus placing the child, who was suffering from leukemia, at risk, the Head of the Welfare and Social Services Department of the Republic sought a court order to allow him to make the child a ward of the State and thence provide the child with the said treatment, without the parents' consent and then to take and continue to exercise the parental rights concerning that child, under ss. 3 and 4 of the Children Law, Cap. 352. The Supreme Court held that the court order was properly granted by the lower court as the pertinent provisions of the aforementioned statute did not breach or contravene **Article 15** of the Constitution, since their aim was to secure child's rights to life and welfare⁶¹.

In **Andreas Ph. Gregoriou v. Republic through the Minister of Justice and Public Order et al. (1996) 3 CLR 1100**, the Supreme Court quashed the decision issued by the first instance court and held that an individual's right to privacy had been violated by the Police. On 26.3.1995, the hotel manager of Ledra Hotel in Nicosia, called a police captain and reported to him that in one of the hotel rooms was the plaintiff, Andreas Gregoriou, a fireman, with an unidentified woman. This report worried the Police and caused worries and suspicions as to the safety of the Minister of Defence of Greece, who was also staying at the same hotel. A police sergeant was ordered to go to the hotel room where the fireman and the woman were in to gather information. Following this, the sergeant reported that in the hotel room there was Andreas Gregoriou, a fireman and his "*girlfriend*". The Police Chief, as the Constitutional supervisor of the Cyprus Fire Department, ordered an investigation for inappropriate behavior by the fireman and the suspension of the fireman was contemplated and then ordered due to the "*seriousness of the case*", since Gregoriou was legally married with another woman, different to the one discovered staying with him in his hotel room that day. The Supreme Court in its decision held that such harassment to Mr. Gregoriou by the Police was a gross invasion of his private life. Mr. Gregoriou had every right, it was held, to be wherever he so wished to be and to meet any person he so wished to meet and communicate with. The decision to suspend Mr. Gregoriou was overturned and quashed by the Court.

In **Savvas Savvides v. Republic, through the Immigration Officer (1997) 3 CLR 981**, a Cypriot man petitioned for the quashing of the decision by the Republic's Immigration Officer to refuse his alien wife to enter the Republic, based on its alleged unconstitutionality. The Supreme Court, in its upholding

⁶⁰ **R v. Governor of Brockhill Prison (No. 2) (1998) 4 All ER 993** and **R v. Governor of Brockhill Prison (No. 2) (2000) 4 All ER 15** were cited and adopted on the equitability of damages.

⁶¹ **Re Titos Charalambous v. the Director of the Welfare and Social Services Department (1994) 1 CLR 396**.

decision, referred to the fact that no argument was made before it putting forth the argument that the petitioner's family life could not be maintained and continued abroad nor were the legality, authenticity and validity of his marriage to the alien individual confirmed at that stage and it was thus held that there was no breach of **Article 15**⁶².

In **Melpomeni Katzouraki v. Marinou Epaminonta (2005) 1 CLR 219**, it was held on appeal that the decision of a first instance court, on a petition of an estranged spouse to arrest, imprison, fine or confiscate the property of her male spouse for non-compliance of a court order prohibiting the husband from harassing, stalking, following or in any way intervening with the person of the plaintiff, to cancel the said court order due to lack of jurisdiction, was quashed as it was decided that it breached the applicant's constitutional right to private life under **Article 15.1** and that the first instance court did, indeed, have jurisdiction to grant the order sought by the female applicant.

In **Philakti Aristodemou v. Attorney – General (2005) 1 CLR 728** it was held that the right to respect of an individual's private life encompasses his love life. This was a case where a police lieutenant was found guilty of a police disciplinary offence and was ordered to pay a fine because he maintained extra-marital relationships between the years 1993 to 1995. The disciplinary conviction and sentence were quashed on appeal by the Police Appeals Board. The plaintiff then proceeded with suing the Attorney – General for damages for alleged malice and for the - without reasonable cause - filing of a disciplinary charge against him by the Cyprus Police Force. The Supreme Court upheld the decision of the lower court to reject the claim but also stated that a person's love life is protected under **Article 15.1**⁶³.

Bibliography

Cap. 148, Civil Wrongs, Law and Judgments, Volumes 1 and 2, Artemis and Erotokritou, ed. 2003.

⁶² **Balalas & Another v. Republic (1988) 3 CLR 2127** (held that there is no violation of the right to private life by the expulsion of the alien spouse of a Cypriot citizen, if the family unit can be preserved by establishing a family residence in the country where the expelled spouse resides) and **Yiannis Constantinou v. Republic (1992) 4 CLR 2089**, affirmed; **X. and Y. v. UK, Application No. 5269/71, YBXV, p. 564 (572-574), Coll. 39, p. 104** and **Abdulamiz Cabales and Balkandali, ECHR, 25.5.1985, Series A No.94, p. 32, paras 62 and 68**, cited.

⁶³ **Gregoriou v. Republic (No. 2) (1996) 4 CLR 1100** affirmed anew.



APPENDIX A

EXCERPT FROM THE LAW OF CIVIL WRONGS AND DEFENCES TO CERTAIN ACTIONS THEREFOR

(Cap. 148, as subsequently amended by and consoliissued with Laws 87/1973, 54/1978, 156/1985, 41/1989, 73(I)/1992, 101(I)/1996, 49(I)/1997, 29(I)/2000, 154(I)/20002, 129(I)/2006 and 171(I)/2006)

“17. Defamation

- (1) Defamation consists of the publication by any person by means of print, writing, painting, effigy, gestures, spoken words or other sounds, or by any other means whatsoever, including broadcasting by wireless telegraphy, of any matter which-
 - (a) imputes to any other person a crime; or
 - (b) imputes to any other person misconduct in any public office; or
 - (c) naturally tends to injure or prejudice the reputation of any other person in the way of his profession, trade, business, calling or office; or
 - (d) is likely to expose any other person to general hatred, contempt or ridicule; or
 - (e) is likely to cause any other person to be shunned or avoided by other persons.

For the purposes of this subsection, “crime” means any offence or other act punishable under any enactment in force in the Colony and any act wheresoever committed, which, if committed in the Colony, would be punishable therein.

- (2) A person is not less answerable for a defamatory statement by reason only that he-
 - (a) makes it by way of repetition or hearsay; or
 - (b) gives at the time or afterwards the authority on which he makes the statement; or
 - (c) subject to the provisions of sections 19, 20 and 21, believes the statement to be true; or

- (d) did not intend in fact to make or publish it of and concerning the plaintiff; or
- (e) subject to the provision of section 22, was unaware of the existence of the plaintiff.

Provided that the Court may take such or like circumstances into account in awarding compensation.

- (3) An action for defamation by gestures, spoken words or other sounds, other than broadcasting by wireless telegraphy, shall not lie without proof of special damage except where the gestures, spoken words or other sounds-
 - (a) impute a crime for which the plaintiff may be made to suffer corporal punishment or imprisonment in the first instance;
 - (b) are calculated to injure or prejudice the reputation of the plaintiff in the way of his profession, trade, business, calling or office;
 - (c) impute to the plaintiff a contagious or infectious disease;
 - (d) impute adultery or unchastity to a woman or girl.
- (4) It is not necessary for defamation that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning, and its application to the person alleged to be defamed, can be collected either from the alleged defamatory statement itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

18. Publication of defamatory matter

- (1) A person publishes defamatory matter if he causes the print, writing, painting, effigy, gestures, spoken words, or other sounds or other means by which the defamatory matter is conveyed to be dealt with, either by exhibition, reading, recitation, description, delivery, communication, distribution, demonstration, expression or utterance, or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to any person other than-
 - (a) the person defamed thereby; or
 - (b) the husband or wife of the person publishing the defamatory statement so long as the marriage is subsisting.
- (2) For the purposes of this section, communication by open letter or postcard, whether sent to the person defamed or to any other person, constitutes publication.

19. Special defences to action for defamation

In an action for defamation it shall be a defence –

- (a) that the matter of which complaint was made was true:

Provided that where the defamatory matter contains two or more distinct charges against the plaintiff, a defence under this paragraph shall not fail by reason only that the truth of every charge is not proved, if the defamatory matter not proved to be true does not materially injure the plaintiff's reputation having regard to the truth of the remaining charges;

- (b) that the matter of which complaint was made was a fair comment on some matter of public interest:

Provided that where the defamatory matter consists 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 a fair comment having regard to such of the facts alleged or referred to in the defamatory matter complained of as are proved:

Provided further that a defence under this paragraph shall not succeed if the plaintiff proves that the publication was not made in good faith within the meaning of subsection (2) of section 21 of this Law;

- (c) that the publication of the defamatory matter was privileged under sections 20 and 21 of this Law;
- (d) that the defamation was unintentional under section 22 of this Law.

20. **When publication of defamatory matter absolutely privileged**

- (1) The publication of defamatory matter is absolutely privileged in any of the following cases, that is to say:-

- (a) if the matter is published by the Governor, or by the Executive Council, or by any legislative body which may hereafter be established, in any official document or proceedings;
- (b) if the matter is published in the Executive Council or any legislative body which may hereafter be established, and is so published by the Governor or by any member of such Council or body;
- (c) if the matter is published by order of the Governor in Council;
- (d) if the matter is published concerning a person subject to military, naval or police discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct and to some person having authority over him in respect of such conduct;

- (e) if the matter is published in the course of any judicial proceedings by a person taking part therein as a Judge or Magistrate or advocate or witness or party thereto;
- (f) if the matter published is in fact a fair report of anything said, done or published in the Executive Council or any legislative body which may hereafter be established and which is published by order or with the authority of such Council or body;
- (g) if the matter published is in fact a fair, accurate and contemporaneous report of anything said, done or shown in any judicial proceedings before any Court or tribunal and the Court or tribunal has not prohibited such publication;
- (h) if the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under the provisions of this section;
- (i) if the person publishing the matter is legally bound to publish it;
- (j) if the publication is made in any military, naval or police report made for the purposes of the defence or security of the Colony:

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

- (2) Where any publication of defamatory matter is absolutely privileged under the provisions of subsection (1) of this section, it is immaterial whether the matter was true or false, and whether it was or was not known by the defendant to be false and whether it was or was not published in good faith.

21. **When publication of defamatory matter conditionally privileged**

- (1) The publication of defamatory matter is privileged, on condition that it is published in good faith, in any of the following cases, that is to say:-

- (a) if the relation between the parties by and to whom the publication is made is such that the person publishing the matter is under a legal, moral or social duty to publish it to the person to whom the publication is made and the last mentioned person has a corresponding interest in receiving it or the person publishing the matter has a legitimate personal interest to be protected and the person to whom the publication is made is under a corresponding legal, moral or social duty to protect that interest;

Provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion;

- (b) if the matter is a censure passed by a person on the conduct of another person in any matter in respect of which he has authority by contract or otherwise,

over the other person, or on the character of the other person so far as it appears in such conduct;

- (c) if the matter is a complaint or accusation made by a person against another person in respect of his conduct in any matter, or in respect of his character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter;
 - (d) if the matter is published for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested;
 - (e) if the matter published is a fair and accurate report of anything said, done or published in any legislative body hereafter to be established.
- (2) The publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of subsection (1) of this section, if it is made to appear either-
- (a) that the matter was untrue, and that he did not believe it to be true; or
 - (b) that the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or
 - (c) that, in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.
- (3) In any action brought in respect of the publication of any defamatory matter if such publication might be privileged under the provisions of subsection (1) of this section, and the defence of privilege is raised, the onus of proving that such publication was not made in good faith shall be upon the plaintiff.

22. **Unintentional defamation**

- (1) A person who has published any matter alleged to be defamatory of another person may, if he claims that the matter was 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 defamation 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 defamation against the person making the offer in respect of the publication in question, to prove that the matter complained of was 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 it was 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 fact relied upon by the person making it to show that the matter in question was 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, shall be admissible on behalf of that person to prove that the matter was 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 matter complained of, and a sufficient apology to the party aggrieved in respect of that matter;
 - (b) where copies of a document or record containing the said matter have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable in his part for notifying persons to whom copies have been so distributed that the matter is 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 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 as aforesaid are taken, the Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section matter 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 it of and concerning that other person, and did not know of circumstances by virtue of which it might be understood to refer to him; or
- (b) that the matter was not defamatory on the face of it, and the publisher did not know of circumstances by virtue of which it might be understood to be defamatory of that other person,

and in either case that the publisher exercises 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 shall not apply in relation to the publication by any person of matter of which he is not the author unless he proves that the matter was written by the author without malice.

23. Mitigation of compensation for defamation

The defendant in any action for defamation may, after reasonable notice to the plaintiff of his intention so to do, prove in mitigation of any compensation that may be awarded-

- (a) that he made or offered an apology to the plaintiff before the commencement of the action or as soon afterwards as he had an opportunity, if the action was commenced before he had an opportunity of so doing;
- (b) that the defamatory matter was contained in a newspaper, a subsisting permit to publish which has been issued under the provisions of the Press Law, and that the plaintiff has already recovered, or brought an action for, compensation, or received or agreed to receive some recompense in respect of defamatory matter to the same purpose or effect as the defamatory matter in respect of the publication of which such action has been brought;

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- (c) that prior to the publication of the defamatory matter the plaintiff was of general bad reputation in connection with the particular trait of his character which is assailed by the defamation;
- (d) that the defendant received provocation from the plaintiff,

and the Court may, having regard to the circumstances of the case, take all or any of such matters into consideration in assessing compensation.

24. **Special defence in case of defamatory matter published in newspaper**

In any action brought against the proprietor of any newspaper, a subsisting permit to publish which has been issued to him under the provisions of the Press Law, in respect of any defamatory matter contained in such newspaper, the proprietor of such newspaper may, if he pays into Court a sum of money which in the opinion of the Court is sufficient amends, and pleads no other defence, prove by way of defence-

- (a) that the defamatory matter was inserted without actual malice; and
- (b) that there was no gross lack of reasonable care for which he was liable in connection with the insertion of such defamatory matter; and
- (c) that before the commencement of the action or so soon afterwards as he had an opportunity, if the action was begun before he had an opportunity of so doing, he inserted in such newspaper a full apology, or if the newspaper is published at intervals exceeding one week, that he offered to publish the apology in any newspaper selected by the plaintiff.

25. **Injurious falsehood**

(1) Injurious falsehood consists of the publication maliciously by any person of a false statement, whether oral or otherwise, concerning-

- (a) the profession, trade, business, calling or office; or
- (b) the goods; or
- (c) the title to property,

of any other person:

Provided that, subject to subsection (2) of this section, no person shall recover compensation in respect thereof unless he has suffered special damage thereby.

(2) In an action under subsection (1) of this section, 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 loss to the plaintiff and are published in writing or other permanent form; or
- (b) if the said words are calculated to cause pecuniary loss 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.

(3) For the purposes of this section, "publication" has the same meaning as it has in section 18 in relation to defamatory matter."

APPENDIX B

EXCERPT FROM APPENDIX D, PART II OF THE CONSTITUTION OF THE REPUBLIC OF CYPRUS, as amended

“ARTICLE 7

1. Every person has the right to life and corporal integrity.
2. No person shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law.
3. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary
 - (a) in defence of person or property against the infliction of a proportionate and otherwise unavoidable and irreparable evil;
 - (b) in order to effect an arrest or to prevent the escape of a person lawfully detained;
 - (c) in action taken for the purpose of quelling a riot or insurrection when and as provided by law.

[...]

ARTICLE 15

1. Every person has the right to respect for his private and family life.
2. There shall be no interference with the exercise of this right except such as is in accordance with the law and is necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.”