As aspiring public relations practitioners, understanding the legal aspects that impacts one’s job is essential to being successful. One of the most important and influential laws to understand is defamation, where the Defamation Act of 2013 explains it as “a publication that has caused or is likely to [or has a tendency to] cause serious harm to the reputation of the claimant” (*Defamation Guidance* Notes, 2018). This reputation is presumed to be good, and has value. In order to understand the different principles of the defamation laws, one must look at the perspectives of both claimant and defendant. In doing so, a public relations practitioner will not only better understand defamation, but understand why it is important know.

Before explaining defamation from the claimant’s perspective, it is pertinent to establish that there are different ways a defamatory statement can take place. Quinn explains that there are multiple types of platforms a defamatory statement can be published, such as: printed; broadcast on television or radio[[1]](#footnote-1); film or video; internet; public performances of a play[[2]](#footnote-2) (2018, p. 206). It is important to understand that when dealing with defamation lawsuits, there are many grey areas since the claimant does not need to be directly named, but still needs to be identifiable. Understanding this will be important as it will help prevent the publication of any potentially defamatory statement, and will aid when deciding whether to file a defamatory lawsuit.

For any defamation lawsuits, there are two sides that must be analyzed in order to even begin understanding this complex law. First will be the point of view of the claimant. Before one claims (or files) a defamation lawsuit, one must understand what the implications of harm and serious harm. The 2017 Court of Appeal explains the ‘serious harm’ should be a statement that causes substantial reputational damage, and crosses the ‘threshold of seriousness’ (*Guidance* Notes 2018). Bloy explains that the Court of Appeal has identified two different approaches, with the first being “that the words used are in themselves enough for claimants to conclude that serious harm has been caused” (*Guidance Notes*, 2018). Bloy continues that Mr Justice Bean suggested in 2014 that words such as ‘terrorist’ and ‘pedophile’ (as well rapists [*lecture notes*, 2018]) would cause people to shun and avoid the claimant and thus reputational damage has been caused (*guidance notes*, 2018). The second approach identified was the claimant needing to bring forward evidence proving the statement caused or is likely to cause serious reputational harm (2018). This evidence can be linked to financial loss (such as losing a job) or physical harm (such as being attacked) (*Guidance Notes* 2018).

Serious harm can be explained using the three Chase levels[[3]](#footnote-3). The first Chase level is where facts are conveyed and there is no ambiguity in who is being named. This should be avoided unless what is being said can be proven. The second Chase level is where there are reasonable grounds to believe what is being claimed. In other words, one is not claiming someone did something, but rather states he or she has reason to believe someone did it—this is the most commonly used (*lecture notes*, 2018). The third Chase level is where there is suspicion something has occurred, yet and has no value (*lecture notes*, 2018).

The claimant must also understand that, as the one who has filed the lawsuit, they must be the one who supplies the evidence proving the harm caused by the statement. Most often this evidence will reflect financial loss—such as losing a job, or in the case of an organization, the loss of business—or physical harm—such as being physically attacked due to the statement. It is important to understand this burden of proof, as providing evidence of harm can be a grey area and there are no clear guidelines for what constitutes serious harm. Quinn explains this as evidence is not proving how the statement made the claimant feel, but rather the impression it is likely to make on those reading it and the harm it causes (2018, p. 210). In other words, defamation cases are very fact specific. With this, it is important to note the usage of words such as *likely* and *could cause*, as it shows how complex defamation lawsuits can be. Evidence does not have to reflect what has occurred, but rather show what could happen.

The other side to any defamation lawsuit is the point of view of the defendant. As the one who published the defamatory statement, the defendant must understand the difficulty in providing strong evidence that proves truth. However, the claimant must be easily identifiable by the “reasonable” person—Bloy explains the reasonable person as someone who: is not naïve; not avid for scandal; can spot an innuendo or read between the lines; does not read material like a lawyer; gives words their ordinary or natural meaning (*lecture notes*, 2018).

The defendant also needs to understand the importance of being able to prove the truth of their statement. For this reason, hearsay should not be used (the defendant should not use the justification of someone else saying something as grounds to make the statement true). While proving the truth of the statement, caution must be taken with photographs and voice recordings, as they could have been manipulated or changed (*lecture notes*, 2018). The defendant must also be able to prove that at the time the defamatory statement was made, there were reasonable grounds to believe it. Therefore, if the jury decides that no one could have honestly held the opinion—even if the defendant did—and the facts that lead the defendant to make the claim are not clear to the reader, the defense will fail (Quinn, 247).

Despite all of this, the most important factor a defendant must consider is the ability to prove public interest. The Economou versus de Freitas case of 2018[[4]](#footnote-4) is a great example of the importance public interest can play, and one of the first cases in which the section four of the defense (public interest) has been closely examined. Economou failed to appeal the court’s decision to dismiss his defamation lawsuit because of the relevance to public interest. Mr Justice Warby explained that, because of section 4 (2), de Freitas had reasonably believed the published statement was in the interest of the public, and, as de Freiats was not a journalist, should not be held to the same standards as one—de Freitas’ role was closer to that of a contributor or source. This case provides insight to understanding the complexity of defamation cases and the importance of public interest.

Once one has understood the principles of defamation lawsuits from the claimants and defendants’ perspective, it is important to understand why, as public relations practitioners, one must avoid making any defamatory statement and should think seriously before filing a lawsuit. Defamation lawsuits are often long drawn out and costly, and although the no-win, no-fee Conditional Fee Agreements (CFAs) ban[[5]](#footnote-5) is going into effect April 6, 2019, there are still little financial value of winning a defamation case. Take the Clifford v Trump case[[6]](#footnote-6) for example. Had this case taken place in the UK after April 6 2018, Trumps lawyers would not have been able to request Clifford to pay $800,000 for lawyer expenses and fees after Clifford had lost her defamation lawsuit. Although this has potential to provide a benefit to the losing party, this case example shows how costly a defamation lawsuit can be.

By being knowledgeable in it, PR practitioners will be able to avoid lawsuits against something they published, and know when to file a lawsuit if something was published defaming them or their company. It is not what the claimant says or feels that makes a statement defamatory, it is what the audience makes of it, therefore, as media practitioners, one must always be cautious with what is published. While one should not be afraid of publishing anything, careful attention to the wording of statements will help prevent any unwanted crisis, and help any public relations practitioner become successful.

# Bibliography

# *Media Lawyer* [online]. Available at: <http://medialawyer.press.net/article.jsp?id=19756901>

[Accessed 5 December 2018]

Bloy, D. 2018. *Defamation Guidance Notes*. Cardiff: Cardiff University, School of Journalism, Media and Culture

Bloy, D. 2018. *Lecture Notes*. Cardiff: Cardiff University, School of Journalism, Media and Culture

Bloy, D. & Hadwin, S. 2011. *Law and Media; for print, broadcast and online journalism*. 2 ed. London: Sweet & Maxwell.

*Broadcasting Act* (1990).

*Clifford v Trump* (2018)

*Economou v de Freita* (2018).

Quinn, F. 2018. *Law for Journalists; A guide to media law*. 6 ed. Harlow: Pearson.

*Theaters Act* (1968)

1. Broadcasting Act, 1990: Part VII prohibits any defamatory material from being broadcasted [↑](#footnote-ref-1)
2. Theaters Act, 1968: Article 4 states that “publication of words in the course of a performance of a play shall, subject to section 7 of this Act, be treated as publication in permanent form . . . [and] includes pictures, visual images, gestures and other methods of signifying meaning.” Per section 7 of this article, there will be no exceptions for section 4. [↑](#footnote-ref-2)
3. Chase v News Group: Miss Elaine Chase sued News Group Newspapers Ltd, for publishing articles accusing her in a way that did not directly naming her, but readers could easily identify her. This case lead to the Chase levels, which have since been used in defamation cases. [↑](#footnote-ref-3)
4. Economou v de Freitas (2018): Economou filed defamation lawsuit against de Frieta after de Freitas spoke to multiple publications regarding the allegations being made of Economou raping de Freitas’ daughter. Economou’s defamation lawsuit was dismissed, and failed to have the dismissal appealed. [↑](#footnote-ref-4)
5. No-fee Conditional Fee Agreements (CFAs) will no longer be able to claim success fees from the loosing parties in defamation and privacy cases. This ban prevents claimants from having to pay their lawyers double the amount, yet the claimant can still recover the costs of after-the-events (ATE) insurance premiums intended to protect them from having to pay the winning side’s costs.” (Media Lawyer, Dec. 4, 2018) [↑](#footnote-ref-5)
6. Clifford v Trump (2018): Stephanie Clifford (Stormy Daniels) sued Donald Trump for defamation after Trump tweeted about Clifford’s allegation. Due to the 1st amendment for freedom of speech, the defamation lawsuit was rejected. [↑](#footnote-ref-6)