

# VCE Legal Studies: An outline

## Area of Civil Law: Defamation

The law of defamation is intended to protect reputation – both the reputation of individuals and the reputation of corporations. The test for determining whether a matter is defamatory is whether the words used by the defendant tend to lower the reputation of the plaintiff in the estimation of the ordinary citizen of fair average intelligence.

### Issues

The matters to be determined: Was the matter defamatory? Was the matter published? Was the plaintiff identified in the published defamatory matter?

### Defences

There are three possible defences to an action in defamation: Justification (truth); Fair comment (honest opinion); and absolute or qualified privilege.

### Remedies

There are essentially two kinds of remedies: injunction and damages. An injunction is a court order requiring an act to be done or to be stopped. Damages are a monetary payment and may be compensatory, aggravated, exemplary, or contemptuous.

### Impact

Publication of defamatory material may cause such damage to the plaintiff's reputation that it may never be repaired, even if there is successful litigation. There will be considerable legal costs to both parties if matters proceed and damages may be payable to successful party. There may be economic loss to the plaintiff if damage to reputation prevents employment and there may be economic loss (aside from damages) to the defendant if the defamatory material is a book or other item which must be destroyed in accordance with an injunction.

### Role of Statute and Common Law

Defamation is a common law civil wrong although there has been some intervention by statute (Act of Parliament) in recent years. The *Victorian Defamation Act 2005* removed the distinction between libel and slander and required that legal action must be undertaken within one year of the alleged defamatory material being published (s 5(1AAA) *Limitation of Actions Act 1958* (Vic)).

### Limitation of Actions

To successfully plead a defamation action, the plaintiff must file their claim within a certain timeframe. As mentioned above, legal action must be undertaken within one year of the publication of alleged defamation. However, s 23B of the *Limitation of Actions Act 1958* (Vic) allows a plaintiff to apply for an extension of **up to 3 years** from the date of publication, subject to the court's discretion. In order to succeed with an application, the plaintiff must show the court that it was **not reasonable in the circumstances** for the plaintiff to commence an action within the initial period.