

DEFAMATION ORDINANCE 1951.⁽¹⁾

No. 63 of 1951.

An Ordinance relating to the Law of Defamation.

BE it ordained by the Administrator of the Government of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1950*, as follows:—

Short title. 1. This Ordinance may be cited as the *Defamation Ordinance 1951*.⁽¹⁾

Repeal and amendment. 2.—(1.) The *Defamation Ordinance, 1911*⁽²⁾ of the Territory of Papua is repealed.

(2.) The *Laws Repeal and Adopting Ordinance 1921-1939*⁽³⁾ of the Territory of New Guinea is amended by omitting from the Third Schedule the words “*Defamation Ordinance 1911*”.

Definitions. 3. In this Ordinance, unless the contrary intention appears—
“periodical” includes a newspaper, review, magazine or other writing or print published periodically;

“the Criminal Code” means—

(a) in relation to the Territory of Papua, the First Schedule to *The Criminal Code Act, 1899*⁽⁴⁾ of the State of Queensland as adopted for that Territory by *The Criminal Code Amendment Ordinance of 1902*⁽⁵⁾ of that Territory, and as amended in relation to that Territory; and

(1) Particulars of this Ordinance are as follows:—

Date on which made by Cwlth. Administrator in Council.	Date on which notified in <i>Cwlth. Gaz.</i>	Date on which took effect.
13.11.1951	13.11.1951	13.11.1951 (<i>Cwlth. Gaz.</i> of 13.11.1951)

(2) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. II., on pp. 1767-1770.

(3) Now the *Laws Repeal and Adopting Ordinance 1921-1951*. The *Laws Repeal and Adopting Ordinance 1921-1939* is printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. III., on pp. 3003-3012; as to subsequent amendments see the Supplementary Table printed in Part C of Volume II.

(4) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. II., on pp. 1031-1235; as to subsequent amendments see the Supplementary Table printed in Part B of Volume II.

(5) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. II., on pp. 1287-1299.

(b) in relation to the Territory of New Guinea, the First Schedule to *The Criminal Code Act, 1899*⁽⁶⁾ of the State of Queensland as adopted for that Territory by the *Laws Repeal and Adopting Ordinance 1921-1939*⁽³⁾ of that Territory, and as amended in relation to that Territory.

4. The unlawful publication of defamatory matter as defined in section three hundred and sixty-six of the Criminal Code is an actionable wrong.

Defamation actionable.
Q. 53 Vic.
No. 12, s. 9.

5. Except in the case of words intended to be read, it is a good defence to an action for defamation to prove that the publication was made on an occasion and in circumstances when the person defamed was not likely to be injured by the publication.

Trivial matters not in writing.
Q. 7b. s. 20.

6. In an action for defamation the defendant may plead and prove in mitigation of damages that he made or offered an apology to the plaintiff for the defamation before the commencement of the action or, if the action was commenced before there was an opportunity of making or offering the apology, as soon afterwards as he had an opportunity of doing so.

Offer of apology admissible in evidence in mitigation of damages.
Q. 7b. s. 21.

7.—(1.) In an action for the publication of defamatory matter in a periodical, the defendant may plead that the matter was published without actual illwill to the person defamed or other improper motive and without gross negligence and that before the commencement of the action or at the earliest opportunity afterwards he inserted in the periodical a full apology for the defamation or if the periodical in which the defamatory matter appeared was ordinarily published at intervals exceeding one week offered to publish the apology in a periodical selected by the plaintiff.

In action against a periodical absence of malice and neglect may be pleaded and money paid into court.
Q. 7b. s. 22.

(2.) The defendant shall upon pleading the defence pay into court a sum of money by way of amends for the injury sustained by the publication of the defamatory matter and the payment into court shall be of the same effect in all respects as in other cases of payment into court.

8.—(1.) The Court or a Judge upon an application by or on behalf of two or more defendants in actions in respect of the publication of the same or substantially the same defamatory matter brought by one and the same person may make an order for the consolidation of the actions so that they shall be tried together.

Consolidation of actions.
Q. 7b. s. 23.
51 & 52 Vict.
c. 64, s. 5.
N.S.W.
No. 32, 1912,
s. 11.

(3) See footnote (3) printed in this Volume on p. 474.

(6) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. II., on pp. 1211-1466; as to subsequent amendments see the Supplementary Table printed in Part C of Volume II.

PART A : DEFAMATION—

(2.) After an order referred to in the last preceding sub-section has been made and before the trial of the actions, the defendant in a new action instituted in respect of the publication of the same or substantially the same defamatory matter shall also be entitled to be joined in a common action upon a joint application being made by the new defendant and the defendants in the actions already consolidated.

Damages in consolidated actions.

9.—(1.) In an action consolidated in pursuance of the last preceding section the Judge shall assess the whole amount of the damages (if any) in one sum but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2.) If a verdict is given against the defendant or defendants in more than one of the actions consolidated in pursuance of the last preceding sub-section, the Judge shall proceed to apportion the amount of damages so found between and against those defendants.

(3.) The Judge if he awards to the plaintiff the costs of the action shall make such order as he deems just for the apportionment of the costs between and against the defendants referred to in the last preceding sub-section.

Evidence in mitigation of damages.
Q. 53 Vic.
No. 12, s. 24.

10. At the trial of an action for the publication of defamatory matter in a periodical the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought actions for damages or has received or agreed to receive compensation in respect of other publications of defamatory matter to the same purport or effect as the matter for the publication of which the action is brought.

Protection of innocent sellers of periodicals.
Q. *Ib.* s. 34.

11. A person does not incur any liability as for defamation by selling a number or part of a periodical unless he knows that the number or part contains defamatory matter or that defamatory matter is habitually or frequently contained in that periodical.

Protection of innocent sellers of books, &c.
Q. *Ib.* s. 35.

12. A person does not incur any liability as for defamation by selling a book pamphlet print or writing or other thing not forming part of a periodical although it contains defamatory matter if at the time of the sale he does not know that the defamatory matter is contained in it.

Protection of employers.
Q. *Ib.* s. 36.

13. The sale by a servant of a book pamphlet print or writing or other thing whether a periodical or not does not make his employer responsible in respect of defamatory matter contained therein unless it is proved that the employer authorized the sale

knowing that the book pamphlet print or other thing contained defamatory matter or in the case of a number or part of a periodical that defamatory matter was habitually or frequently published in that periodical.

14. Upon the trial of an action for unlawfully publishing defamatory matter contained in a book or periodical the production of the book or of a number or part of the periodical containing a printed statement that it is printed or published by or for the defendant is *prima facie* evidence of the publication of the book or of the number or part of the periodical by the defendant.

Imprint to be *prima facie* proof of publication of book or periodical.
Q. 53 Vic. No. 12, s. 38.

15.—(1.) The defendant in an action commenced or prosecuted in respect of the publication of a paper published by the defendant or by his servant by order or under the authority of the Legislative Council may bring before the Court in which the proceeding is pending or before a Judge, first giving twenty-four hours' notice of his intention so to do to the plaintiff, a certificate under the hand of the Clerk of the Legislative Council stating that the paper was published by the defendant or by his servant by order or under the authority of the Legislative Council together with an affidavit verifying the certificate, and the Court or Judge shall thereupon immediately stay the action and may order the plaintiff to pay the defendant his costs of defence.

Staying proceedings in certain cases.
Q. 1b. s. 40.

(2.) In an action commenced or prosecuted in respect of the publication of a copy of or an extract from or abstract of a paper referred to in the last preceding sub-section the defendant may at any stage of the proceedings lay before the Court or a Judge an original of the paper with an affidavit verifying it and the Court or Judge may thereupon stay the action and may order the plaintiff to pay the defendant his costs of defence.

Q. 1b. s. 41.

16.—(1.) When a person is convicted in an action of publishing defamatory matter by means of printing, the plaintiff in whose favour judgment is given may under his writ of execution levy the damages, penalty and costs out of—

Levy of damages, &c. by plaintiff obtaining judgment.
Q. 21 Geo. V. No. 10, s. 2.

- (a) any property of the defendant in like manner as in ordinary civil actions; and
- (b) the whole of the types, presses or printing materials in which any person who by himself, his servants or agents had a beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, to whomsoever the types, presses or printing materials may belong at the time of the levy.

PART A : DEFAMATION—

(2.) The plaintiff shall be required under his writ of execution to levy the damages, penalty and costs out of the property of the defendant in the first instance.

(3.) If the property of the defendant is found insufficient to satisfy the damages, penalty and costs, the plaintiff in the next instance shall levy the remainder of the damages, penalty and costs out of the whole of the types, presses or printing materials in which the defendant had a beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, to whomsoever the types, presses or printing materials may belong at the time of the levy.

(4.) If after the levy referred to in the last preceding subsection the judgment is not fully satisfied, the plaintiff, in the final instance, shall levy the remainder of the damages, penalty and costs out of the whole of the types, presses or printing materials in which any person who by himself, his servants or agents printed the defamatory matter had a beneficial use or interest at or subsequent to the time of the printing of the defamatory matter, to whomsoever the types, presses or printing materials may belong at the time of the levy.

17. The rules of law declared and enacted—

(a) by this Ordinance; and

(b) by the Criminal Code as to defamation and which are not in the Criminal Code expressly made to relate only to criminal responsibility or prosecutions,

shall be applied in all actions for defamation begun after the commencement of this Ordinance.

18. Nothing in this Ordinance relates to the actionable wrong commonly called "Slander of Title."

Application of rules of law declared by this Ordinance and the Criminal Code.
Q. 53 Vic. No. 12, s. 44, altered.

"Slander of Title."
Q. *ib.*, s. 45.