THE NATURE AND SCOPE OF DEFAMATION UNDER NIGERIAN LAW

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ABSTRACT

This research project examines the nature and scope of defamation under Nigerian law, with particular focus on defamation as a tort, its essential elements, available remedies and defences, and the legal tension between the protection of reputation and the constitutional guarantee of freedom of expression. The study adopts a doctrinal research methodology by relying on primary legal materials such as the Constitution of the Federal Republic of Nigeria 1999 (as amended), statutory provisions, and judicial authorities, as well as secondary materials including textbooks, journal articles and other scholarly commentaries. The study finds that Nigerian defamation law is largely rooted in received English common law principles, especially the distinction between libel and slander, but that these traditional classifications now face practical difficulty in the context of modern communication, mass media, social media and online publication. It further finds that although the law recognises important defences such as justification, fair comment, privilege, innocent dissemination, apology and retraction, the present legal framework does not always provide a clear and consistent method for balancing reputational protection with freedom of expression. The research recommends legislative reform, clearer judicial standards, improved public awareness, responsible media practice and more effective regulation of digital platforms to ensure that defamation law remains relevant, fair and capable of addressing contemporary reputational harm in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Defamation is in the Nigerian law of torts, a remedial process instituted to shield the reputation of a person or a corporate body from false or disparaging attacks. Reputation is known to be a part of personal dignity and social status and violation of it can lead to severe social, economic and psychological consequences. This is a tortious defamation law that stemmed from the principles of common law in England, and was reinforced with statutory provisions.

Defamation, at common law, is the publication of a false statement concerning another, which tends to lower him in the estimation of right-thinking members of society, expose him to hatred, contempt, or ridicule, or injure him in his office, profession, trade, or business. The definition has been consistently adopted by Nigerian courts and places emphasis on the tendency of the statement to injure the reputation in the eyes of society; the key element in defamation is not just that the statement is false, but that it has a tendency to damage the reputation of the person being defamed.[1] Hence, the protection of reputation is not an abstract concept but associated with the perception of the person concerned in the society.

The Nigerian law of defamation has developed out of the English common law tradition in the colonial era. These principles were incorporated into Nigerian law and subsequently interpreted and embodied in legislation. Nigerian courts generally adopt the

[1] Sketch v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678 SC.

decisions of the English courts, but with adaptations for local circumstances.[2] The continued role of English cases and doctrines in the Nigerian defamation law can be explained with the aid of this short historical background in some respects including libel, slander, justification, fair comment and privilege.

In Nigeria, defamation is generally considered as libel or slander. “The difference between libel and slander is that a libel is a statement in one of the transmissible forms: writing, print, pictures, or broadcasting, whereas a slander is a statement delivered orally, or in one of the other temporary forms. Although the distinction is one inherited from English law, it is important in Nigeria particularly in terms of proof and remedies. For example, libel is almost always recognised as an actionable per se, whilst slander requires proof of particular damage (with certain exceptions in place). Nigerian courts have recognised this distinction, and have also recognised that "modern methods of communication" such as broadcasting and electronic media create problems with the traditional categories.

The law of defamation is still a subject of discussion especially with regard to the constitutionally protected freedom of expression guaranteed under the Federal Republic of Nigeria 1999 (as amended) Constitution of the Federal Republic of Nigeria.

Judicial interpretation has been a huge factor in the development of defamation law in Nigeria. In Nigeria, appellate courts have confirmed the ingredients required to establish a case for defamation, they are: *Defamatory statement, Identification of the claimant and Publication to third persons*. Courts have also discussed defences like justification, fair comment and qualified privilege – these balances the rights of reputation against other

[2] Duyile v. Ogunbayo & Sons Ltd. (1988) 1 NWLR (Pt.72) 601 SC.

rights and freedoms, including freedom of expression and public interest.[3] These judicial rulings reinforce the current defamation law in Nigeria.

With the advent of the mass media, social media and digital communication in modern Nigeria, the relevance of defamation law has now become even more significant. The right to free expression is integral to the freedom of press, blogging, activism, or any other form of communication, but defamatory speech has the potential to inflict harm, which is why the law of defamation is essential to ensure that the right to freedom of expression is exercised responsibly.[4]

In this context, this study is timely and necessary to the study of the nature and extent of defamation in Nigerian law. To understand the historical basis, conceptual approach, and legal framework of defamation, it is necessary to have an understanding of the fundamental rights of freedom of expression guaranteed in the constitution of Nigeria.It is important to consider the historical background, conceptual approach and legal principles that underlie the defamation for a better understanding of how the Nigerian law seeks to balance the protection of reputation and the guarantee of freedom of expression in the Nigerian constitution. The following sections of this study build on this background.

1.2 Statement of the Problem

While defamation, as a legal wrong, is recognised under the Nigerian legal system, this recognition is not without some confusion and uncertainties in regard to its nature and scope. The law is meant to safeguard the dignity of individuals, but it also needs to respect other interests, like freedom of expression, public interest, and the contribution of the media to a democratic society. It is often difficult to strike an appropriate balance

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[3] Utih v. Egor (1990) 5 NWLR (Pt.153) 771 CA.
[4] Ikechukwu Unegbe, “Defamation as Tort and Crime in Nigeria – Legal Review” (2023).

between these competing interests, which has resulted in ongoing legal and practical challenges.

A major issue is the ongoing use of fundamental concepts and principles of common law that were adopted from English law in a very different social and technological environment. While Nigerian courts have interpreted these rules through judicial decisions, the foundations of the defamation law, such as the distinction between libel and slander, the extent of the defences and the applicability of criminal liability are built on pre-digital assumptions. This has brought confusion about the application of traditional defamation rules to such new methods of communication as electronic media and electronic publications.[5]

In addition, the judicially decided cases show that there are gaps in the interpretation and application of some of the elements of defamation. There is some confusion in the courts concerning the meaning of a defamatory statement, the standard for proving reference to the plaintiff, and when defences (e.g., justification, fair comment and qualified privilege) are likely to prevail. These inconsistencies result in uncertainty for litigants, lawyers, journalists and citizens alike and make it hard to foresee the outcome of defamation litigations.

The constitutional aspect of defamation law only exacerbates the issue further. Part 39 of the constitution of the federal republic of Nigeria 1999 (as amended) ensures freedom of expression which encompasses the freedom to impart ideas and information. This right is however not unfettered and can be limited in the interest of protecting the rights and reputations of others. The Nigerian defamation law has been accused of putting undue burden on the right to reputation compared to the right to expression, especially in the

[5] Concord Press of Nig. Ltd. v. Obijiofor (1990) 7 NWLR (Pt.162) 303 CA.

cases involving public figures and matters of public concern, because the law fails to have a clearly articulated framework for balancing the two rights guaranteed in the constitution.

Furthermore, the quick expansion of mass media and digital platforms has grown the potential harm to reputation, and made it more difficult to enforce. Current statutory rules and doctrine have failed to keep up with these changes and regulation and enforcement loopholes have become apparent. This raises questions on the appropriateness of the current legal framework in reflecting the current realities. The aim of this study is to address the lingering doubt on defamation in Nigeria in terms of its definition and usage. This study aims to clarify the present doctrinal confusion by examining the relationship between the rights of reputation and the freedoms enshrined in the Constitution.

1.3 Research Questions

The following research questions are designed to determine the exact legal requirements for a defamation claim in Nigeria. By exploring the balance between reputational rights and competing societal values, this study aims to clarify an often-confusing area of the law. Each question is intended to produce a detailed analysis that contributes to a more clear understanding of how these laws should be applied today. Accordingly, the research seeks to provide answers to the following questions:

1. What is the nature and scope of defamation under Nigerian law?
2. To what extent does Nigerian law recognise and regulate the scope of defamation as a tortious act?

3. How adequate is the existing Nigerian legal framework on defamation in addressing contemporary challenges arising from media practice and modern forms of publication?

1.4 Aim and Objectives of the Study

The aim of this study is to examine the nature, scope and adequacy of the law of defamation under Nigerian law, particularly in relation to its application as a tort and its effectiveness in addressing contemporary challenges arising from modern forms of communication and media practice. In order to achieve this aim, the study is guided by the following specific objectives:

1. Examine and define the nature and scope of defamation under Nigerian law, with a view to clarifying its essential elements and legal boundaries.
2. Analyse the extent to which Nigerian law recognises and regulates defamation as a tortious act, including the principles governing liability and the role of the courts in its enforcement.
3. Evaluate the adequacy of the existing legal framework on defamation in Nigeria in addressing contemporary challenges, particularly those arising from media practice and modern forms of publication such as social media and online communication.

1.5 Scope and Limitations of the Study

The focus of this study is narrowed, consistent, and with analytical depth, so that it is within a definite boundary. Geographically, the study focuses on Nigeria. This prohibition is not just a coincidence because the research wants to examine the nature and extent of defamation according to Nigerian Laws, Nigerian judicial pronouncements and also the applicable provisions of the constitution in the Nigerian legal system. Foreign jurisdictions are therefore not used as a point of analysis, except insofar as they may be alluded to for purposes of illustration or comparison.

The study looks at defamation as a tort under Nigerian law, meaning of defamation; classification of defamation into Libel and Slander; essential elements of defamation; remedies available for defamation and recognized defences. The research does not, however, run to an exhaustive treatment of media law or cybercrime or other miscellaneous torts incidental to defamation, except to the extent necessary to explain and/or illuminate defamation. This delimitation is essential because the area of defamation is broad and complex and it would be impractical to examine all related areas in an undergraduate research project.

The study is therefore limited to the following aspects of defamation which has a bearing on the nature and scope of defamation as it exists in Nigeria as contained in statutes, case law, journals, articles and the authoritative textbooks. This selective research approach helps the research to be contained within reasonable limits while meeting the research problem and objectives identified.

In terms of constraints, some limitations were observed which affected the conduct of the study. One such constraint was the time limitations for undergraduate academic research, which meant that the detailed examination of recent judicial developments and the new contemporary issues, especially in the field of online and digital defamation, was more limited. Furthermore, there were some access restrictions to the law reports, journals and specialised databases, which reduced the scope of the materials available to consult. This limitation might have influenced the depth of analysis in some parts of the study. However, the researchers have relied on textbooks, reported cases, statutes, and scholarly journal articles that are available to them in order to make the research credible, relevant, and academically sound under the constraints.

1.6 Significance of the Study

The relevance of this study to Nigeria is that the findings could be of immense importance to legal practice, legal policy and legal scholarship in Nigeria. As far as legal theory and academics is concerned, the study has a well-organized and detailed analysis of the nature and scope of defamation in Nigeria's law. The research has helped to clarify the concept of defamation, the element of the tort, remedies and defences available in defamation, thereby enhancing the understanding of the tort and its position in the Nigerian law. In this way, it can contribute to the harmonisation of the various interpretations of doctrine provided by the legislation, judiciary and academia, by developing a coherent structure from them.

With practical applications, the study is relevant to legal practitioners, judges, and law students. The study provides a legal analysis of the elements for proving defamation and the possible defences and remedies at law for legal practitioners, which can help in litigation strategy and legal advice. The study would also be helpful to judicial officers as a reference in defamation cases, where freedom of expression is balanced against the right to reputation. The study will be valuable to law students and researchers, as a dependable academic source which renders complicated legal concepts accessible and improves comprehension of defamation law.

Overall, the study is useful to the public, particularly journalists, media organisations and communicators in general, so as to enhance awareness of the law of freedom of expression and the implications of publishing libellious content. This contribution helps to encourage responsible communication and to consolidate the legal protection of reputation of individuals in Nigeria's law.

1.7 Research Methodology

The study used the method of doctrinal research. The research approach is library research and qualitative research, which is done by studying the concept of legal principles obtained from authoritative sources of law. The doctrinal approach is deemed to be the most suitable since it entails the systematic analysis of statutory provisions, judicial decisions and legal rules concerning defamation under Nigerian law.

Primary and secondary sources were used as data sources. The main sources of data consulted are statutory sources like the Constitution of the Federal Republic of Nigeria, 1999 (as amended), relevant provisions of Criminal Code and reported cases in law reports of the Nigerian courts. Secondary sources used have been textbooks on the law of torts, law reports, scholarly journal articles and any other relevant academic resources found in libraries or trustworthy online sources.

The information obtained from such sources was analyzed using Content Analysis. This included a detailed analysis, decoding and synthesis of the laws, judicial rulings and opinions of experts in order to determine the meaning and extent of defamation as it relates to Nigerian law. The approach used in this study, called the doctrinal method, offered the researcher a structured analysis for legal concepts and principles to ensure that the aims of the research could be achieved.

1.8 Literature Review

Nigeria courts, legal scholars, and commentators have accorded a special place to the law of defamation in the wake of its very delicate nature, which lies at the intersection of the protection of individual's reputation and freedom of expression guaranteed by the Constitution. In Nigeria, the defamation law has been a subject of continuous debate by the existing literature in an attempt to define it, elaborate its elements, validate its continued existence and question its compatibility with modern democratic values.

Ese Malemi's Law of Tort is one of the most authoritative works in Nigeria on defamation. Malemi considers defamation to be ‘civil wrong and crime' and looks to the protection of reputation as its main purpose, which he considers a valuable personal interest worthy of legal protection.[6] Malemi defines defamation as the publication of a false statement, which lowers another person in the estimation of right-thinking people of society or exposes him to hatred, ridicule, or contempt. He also clarifies the difference between libel and slander, explaining that libel is actionable per se, whereas slander would only be actionable in the recognized circumstances. Malemi's work is especially useful in the area of remedies, such as damages, injunctions and apology, the exposition of criminal defamation under the Criminal Code and the detailed discussion of remedies. While Malemi offers a good doctrinal base, his work is not that’s complete in its attempt to address the new challenges of social media and electronic publications.

In a similar vein, Kodilinye and Aluko explore the concept of defamation in the context of tortious liability in The Nigerian Law of Torts. They take a traditional common law approach and engage in the critical elements of defamation: Defamatory words, reference to the plaintiff, and publication. They are much influenced by the tenets of the common

[6] Ese Malemi, Law of Tort (latest ed.)

law of England and the judicial decisions of the Nigerian courts, including those of the Nigerian Weekly Law Reports (NWLR). Useful explanations of defences, including justification, fair comment and privilege, are offered by the authors. Their analysis, however, is largely classical common law and fails to sufficiently consider the conflict between defamation law and freedom of expression as enshrined in section 39 of the Constitution of 1999.

Judicial decisions are an integral facet of defamation literature in Nigeria. The Supreme Court's ruling in *Sketch v. Ajagbemokeferi* was a detailed pronouncement of defamation law, defining the standard for assessing when words are defamatory, and the burden on the plaintiff.[7] The Court found that the words have to be interpreted in their literal and natural sense, and according to the common understanding of reasonable people. All subsequent cases cited in Nigeria as authorities on defamation have referenced this case. Likewise, in *Dina v. New Nigerian Newspapers Ltd.*, the court of appeal considered the question of defamatory meaning and reminded the court that context ought to be taken into account when ascertaining whether a publication is defamatory. As the cases show, the courts have always been guided by the common law, adapting it to the Nigerian context.

Academic journal articles have also played a great role in the knowledge of the defamation law in Nigeria. In his capacity as defamation and press freedom expert, Agbakoba contends that the Nigerian defamation law has many times been used to unduly limit freedom of expression, particularly when it comes to journalists and media organisations.[8] He argues that the survival of criminal defamation laws is a danger to

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[7] Sketch v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678 SC
[8]

democratic discourse and that they should be changed to conform to international human rights laws.

There are constitutional considerations of defamation that others scholars have explored. Dahiru examined the interplay between defamation law and section 39 of the 1999 Constitution which provides for freedom of expression. In general, these writers recognize that the right to freedom of expression is not unlimited, but that restrictions on expression – such as those created by defamation legislation – should be "reasonable and justifiable" in a democratic state. They say that Nigerian courts have not consistently and distinctly outlined the balancing test, which sometimes gives rise to uncertainty and inconsistencies in judicial decisions.

There has been a recent focus on cyber defamation and online publications in recent literature. The lack of the traditional defamation rules to address online communication, where publications are instant, pervasive and anonymous, have been pointed out by scholars like Dahiru Muhammad Sani and Umenweke. These writers highlight that the Cybercrimes (Prohibition, Prevention, etc.) Act 2015 addresses some cybercrimes, but not a clear defamation in the digital space. This disparity has caused confusion in practice and inconsistencies in the application of the law.

Comparative studies also are prevalent in the literature. Some writers make comparison between the Nigerian defamation law and other laws in other countries, like the United Kingdom and the U.S. The UK Defamation Act 2013 is often mentioned in the context of more speech-protective approaches, as is the "actual malice" standard in *New York Times Co. v. Sullivan in the United States*. The above comparative works indicate that the Nigerian defamation law has not been particularly liberal and reformist and that the question of public figures and media defendants is particularly stubborn.

While there is extensive literature available, there are some gaps. Most of the Nigerian literature is doctrinal exposition or isolated parts of the issues like the liability of the media or criminal defamation. There has been limited integrated consideration of the nature and scope of defamation under Nigerian law with particular reference to the judicial pronouncements, statutory statutes or decisions and constitutional principles and today's issues like digital publication. The study also aims to contribute to the existing literature by offering a comprehensive analysis of defamation in Nigerian law and an evaluation of the existing regime's ability to strike a balance between the right to freedom of expression and the protection of reputation in the contemporary Nigerian society.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1.1 Defamation

The law of defamation is primarily about the protection of reputation, defined in law as the estimation in which a person is held or seen by others in the society. It is not the person's own judgment of himself that is being protected, it is what the "right-thinking public" thinks. If the word tends to lower the estimation in which a person is held, to expose the person to hatred, ridicule or contempt, or to cause the person to be shunned or avoided, then the word is considered defamatory in the law. The stance of the Nigerian courts is always that. The Supreme Court in *Sketch Publishing Co. Ltd. v. Ajagbemokeferi*, described a defamatory statement as one that tends to harm the reputation of a person in the estimation of reasonable members of the society.[9] In a similar vein, in the case of *Dina v. New Nigerian Newspapers Ltd*, the Court of Appeal emphasized that the test was not subjective but based on the claimant's feelings.

For a statement to be actionable, there must be established, three essential elements. First of all, the words complained about must be defamatory in nature. Second, the words should relate to the claimant. Thirdly, the words need to have been published to a third party. These elements are reiterated hereunder in various decisions such as the case of *Omisade v. Akande*, which it was held that the claimant does not have to be specifically named, but is sufficient if he can be identified from the words.[10]

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[9] Sketch Publishing Co. Ltd. v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678 (SC).
[10] Omisade v. Akande (1987) 2 NWLR (Pt.55) 158 (SC).

Another requirement in determining defamatory liability is publication which is particularly significant. In law, the term publication is merely that the defamatory words have been passed on to at least one person other than the claimant. As in *Byrne v. Deane*, the posting of a defamatory notice on a wall was deemed to be "published" when it was read by others. In recent times this has been extended to a broader philosophy. When you post on social media like WhatsApp, Facebook or blog, it is considered published when it can be made available to third parties. This can result in more than one publication of a single post it makes on the Internet, expanding the potential scope of liability.

The Court of Appeal in *Complete Communications Ltd v Onoh* acknowledged the breadth of media publications and the potential harm it can cause to reputation.[11] Similarly, in the case of *Concord Press of Nigeria Ltd. v. Obijiofor*, the court also allowed that the injury to the claimant gets aggravated by the publication of it in mass. Though made for traditional print media, these decisions are easily transferable to digital communication with its even more quick and far-reaching dissemination.

Words can be defamatory in their natural and ordinary meaning and through innuendo. In *Youssoupoff v. Metro-Goldwyn-Mayer Pictures Ltd.*, the court ruled that an implied imputation that would hurt a person's moral character may be considered defamation.[12] The principle of law is applicable primarily to our day to day communication; such as, indirect expressions, sarcasm, coded language, etc., that carry damaging meanings.

Furthermore, it is stressed that not all offensive or bad statements are considered defamatory. The law is not interested in the insults or vulgar abuse unless they include a defamatory imputation. This distinction was highlighted in *Egbe v. Adefarasin* where the

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[11] Complete Communications Ltd. v. Onoh (1998) 5 NWLR (Pt.549) 197 (CA).
[12] Concord Press of Nig. Ltd. v. Obijiofor (1990) 7 NWLR (Pt.162) 303 (CA).

court stated that the words must go beyond being just abusive and have the tendency to cause a hurt in a legal sense.[13] The ultimate aim in defamation is to safeguard reputation from an unwarranted assault, as stated by Malemi. The law also aims to balance the right to reputation with the freedom of expression of the general populace, write Kodilinye and Aluko. In the midst of all these, the balance is becoming more difficult to achieve with the evolution of digital communication. The rapidity, anonymity and permanency of online publications has given rise to new issues for the law of defamation. In traditional publishing, a defamatory statement may spread as far as the recipient of the paper, whereas the harmful impact of a similar statement made on a social media platform can be far-reaching and affect a large number of people within seconds. That is why it is crucial to review the current body of law to guarantee its relevance and effectiveness in the face of modern realities. The existing laws could be modified to address the new types of crimes and how to resolve them.

2.1.2 Classification of Defamation

The source of the Nigerian defamation law was well known to be common law. It distinguished defamatory statements into two main categories – libel and slander. This classification is based essentially on the form in which the defamatory matter is expressed, that is, whether it is in a permanent form or a transient form.[14]

This classification as 'as of yet' social has been considered to be an antiquated concept; however, it continues to have relevance in Nigerian law. This is primarily observed in the determination of issues like proof of damage, type of remedies available to a claimant, etc. Kodilinye and Aluko remarked that one of the most basic of the subject is the

[13] Egbe v. Adefarasin (1987) 1 NWLR (Pt.47) 1 (SC).
[14] Olusegun Yerokun, Casebook on Law of Tort (Ch. 17, p. 608).

distinction between defamation (libel) and slander, which impacts on liability and procedure.

Defamation in a permanent manner is libel and defamation in a temporary or spoken manner is slander. However, differentiating the two goes beyond its definition. It has real-world applications including whether there is to be any actual damage proven, and the gravity of the defamatory publication. In *Sketch Publishing Co. Ltd v Ajagbemokeferi*, the defamatory publication was a newspaper article, which was easily accepted as a libel because of its permanence. Also, in *Dina v. New Nigerian Newspapers Ltd*, the Court of Appeal considered defamatory statements in a newspaper, and again held that written publications are the category of libel.

The concept of defamation has been expanded by the developments of modern life. In the age of electronic media, courts have expanded the definition of libel to include radio and television programs, and publications on the internet. The court found that this was the case in *Complete Communications Ltd. v. Onoh*, where it was found that media publications can be widely circulated and have a lasting impact, hence their classification as a libel. Additionally, anything written on a website, blog, or social media is considered to be "published," and thus is subject to the defamation of libel laws, as it can be viewed again and again by many people. Slander, on the other hand, is defined as verbal defamation, and tends to be less serious in terms of legal liability, primarily because it's fleeting. In anger or in a conversation, words can just disappear and, for this reason, the law generally requires that there be actual damage caused to establish liability, unless in a few well-known circumstances.

Whether or not libel is distinguished from slander, there is a basis for both. This translates to their care and concern for the protection of reputation from unwarranted attacks. The difference is only a matter of seriousness, and the legal consequences of that.

But today, the distinction between libel and slander is becoming more and more indistinct. For example, a statement uttered during a broadcast or recorded and posted online may end up having a "permanent or indelible stamp" of the character against which such imputation is made, and fall under the rubric of libel. The development indicates that there is a need to reform and amend defamation law to understand the nature of defamation in a way that is in keeping with the realities of today, rather than with the forms of yesterday.

2.1.2.1 Libel

As mentioned earlier Libel is defamation in a permanent or enduring form. It usually includes statements that are made in writing, in print, in a picture or in any other medium that would have a long life beyond the time of publication. The nature of libel is that the defamatory matter is capable of being preserved, duplicated and re-accessed so that the reputation can be damaged to a greater degree and more often.[15]

Libel is considered a more serious offense than slander partly because of its persistence, as legally it is regarded more seriously. When the statement of defamation is put in writing or in any other permanent form, it can be widely circulated and continually referred to. This position has been accepted in the case of *Guardian Newspapers Ltd v*

[15] Ifeoma P. Enemo, The Law of Tort (Ch. 7, p. 237).

Ajeh where the court stated that written publications are of a more permanent nature and therefore the damage suffered by the claimant is increased.[16]

Libel is actionable per se which makes its feature a significant one. This is because when the claimant has proved the words are defamatory, and he was identified, and they were published, the law assumes that there has been damage. Actual financial loss is not required. This has been adhered in the Nigerian courts as evidenced in the case of '*Unipetrol (Nig.)'. In Plc v. Prima Tankers Ltd.,* it was held that damage to reputation is presumed from the nature of a libel if such damage occurred.

Libel is not just limited to the written word, but includes any other permanent expression of an idea, including a picture, caricature or even a gesture captured on a permanent medium. In *Duyile v Ogunbayo & Sons Ltd*, the Supreme Court confirmed that it is not only words that can be used to defame a person, but visual representations that can also cause damage to a person's reputation.

In today's world, the definition of libel has broadened substantially, thanks to the advent of digital technology. Blog posts, tweets, WhatsApp messages and other social media messages are now considered libel if they are recorded and can be viewed multiple times online. The potential harm is increased when digital content can be available for an unlimited period, and spoken words are easily forgotten.

This new dimension has introduced fresh problems into the defamation law. However, damage can be much greater than traditional print publications, for example, a defamatory tweet or post can be shared, reposted and sent to thousands of users within a matter of

[16] Guardian Newspapers Ltd. v. Ajeh (2011) 10 NWLR (Pt.1256) 574 (CA).

moments. This is increasingly recognised by courts, who see digital publications as being squarely in the zone of libel because they are permanent and available widely.

Another important aspect of libel is the possibility of multiple publications. Every use or republication of a defamatory material can create a new cause of action. This is especially important in relation to cyber defamation where the material can be accessed over and over by various persons in various locations. This appears to be a statement that the original publisher is not the only one liable in cases of libel, but that secondly disseminators of the defamatory material may also be held liable.

2.1.2.2 Slander

Slander is considered defamation in a fleeting or impermanent manner, primarily in verbal speech or gestures. Slander differs from libel in that it is only for the moment in time that it is spoken, and is therefore, traditionally, considered less serious in terms of the legal penalties.

Slander is a transitory form of defamation in that it is not readily preserved or disseminated as would be a written or recorded statement. Changing your mind, what you say in the course of conversation can easily be forgotten, and that has always affected how the law has been looked upon. Consequently, in most instances slander is not actionable in its own right and requires the claimant to establish that they have suffered damage due to the defamatory statement for a claim to be successful.[17] But there are exceptions to this idea. In some cases, there are situations where the law identifies situations where damage is so inherently commonplace that it is not necessary to prove the damage. If so, slander would be actionable per se. The following are recognised

[17] Okolo v. Midwest Newspapers Corporation (1977) 5 SC 33

exceptions: where the statement imputes that a person suffers from a contagious or loathsome disease. Where the words imply unchastity or adultery especially as regards a woman. While recent attitudes toward society may be changing, the law still recognizes the damage to reputation that can occur because of such accusations.

Thirdly, where the words bring discredit to a person in his office, profession, trade or business. In such cases, the law assumes that the statement is likely to be a significant and substantial loss of money or professional standing. In *Okolo v. Midwest Newspapers Corporation*, the court agreed that allegations of harm to a person's professional reputation may be the basis for an action even when there is no specification of damage.[18] In the majority of instances of slander, there is still the requirement of proof of damage, which is quite a different matter from libel. The claimant has to prove that the defamatory statement caused actual damage, such as loss of business, employment opportunities or other type of damage that is measurable. The line between slander and libel is not as clear as it was at one time. Nowadays, there is much emphasis on the preservation of spoken words, whether by recording, broadcasting, or electronic transmission. For instance, someone's comments in a live interview or broadcast can be taped and played back, thus making a permanent record. In these kinds of cases, something that is normally considered slander could be classified as libel because it lasts for a longer period of time. The realities of today's society have been shaped by civilization; today's society is a place where the distinction between oral and written language is becoming more and more indistinct. The legally binding consequences of a statement made orally during a live social media session and recorded and published could be the same as a statement published in a publication. This civilization's impact, as much as it must be, has made judges' job difficult to draw a murky line. In that, although slander is still considered a

[18] Okolo v. Midwest Newspapers Corporation (1977) 5 SC 33

type of defamation in its "transient form," it seems to be losing its practical meaning in today's day and age where most communication can be recorded and stored.

2.1.3 Distinction between Libel and Slander

The most widely known difference between the two is the nature of the defamatory claim. Libel is communicated in a permanent medium - writing, print, pictures or any medium that will endure beyond the moment of its communication. Slander is transmitted in a fleeting fashion, typically by verbal or nonverbal communication.[19] The difference in form has direct consequences on the treatment of the two categories by the law.

The other difference lies with the proof of damage. Libel is actionable per se, which means that, if the essential ingredients which render a statement defamatory, that is, the nature of the statement, reference to the claimant and publication are satisfied, then the claimant is presumed to be damaged. The claimant doesn't have to establish actual loss. Slander, on the other hand, is not generally actionable without proof of special damage, except in the known cases where the law presumes damage in accordance with the degree of the imputation as already explained.

Additionally, the coverage and longevity of the publications may be taken as another difference. Libel can be widely and repeatedly circulated. A defamatory statement that is printed in a newspaper or on a website can be viewed by many people and can be available for a long time. This is recognised in *Guardian Newspapers Ltd. v. Ajeh* where the court considered the wide ramifications of written publication. When spoken, slander can only be heard by those around the speaker at the time the statement is made, but with the advent of modern recording devices there have been some exceptions. Besides, the

[19] Olusegun Yerokun, Casebook on Law of Tort (Ch. 17, p. 608).

seriousness of the offences, as perceived by the law, varies. It is considered to be more serious as it is permanent and more likely to damage the reputation.

This explains why the law is more stringent in imposing liability in cases of libel. Whereas, slander is dealt with somewhat gingerly, especially when the words are spoken informally or at the spur of the moment. The differences between libel and slander are significant, but relevant, it is worth noting that in modern times the communication revolution has narrowed the practical differences between these types of cases. Spoken words are frequently recorded, stored and shared broadly with the advent of electronic media. What is said during a live broadcast or online session can be repeated many times and thus gain the permanence that is traditionally given to libel. The changing nature of these publications has also caused a tendency to view the distinction in terms of its impact and not its actual shape. The question isn't so much whether the words themselves were spoken or written, but the degree to which they can cause damage to reputation.

2.1.4 Defamation as a Civil Wrong.

Defamation is principally considered a civil wrong (tort) in our Nigerian law with a corresponding private cause of action for the person whose reputation has been sullied. The "crux" of the action is the reputation, and the "satisfaction" is typically in damages, or other civil relief measures, not punishment. Defamation occurs when proof of certain elements is presented to the court and it establishes the case. Claimant has the burden of proving the words complained of are defamatory, directed at him and published to a third party. These elements have been consistently endorsed by the Nigerian courts. In the case of *Omisade v. Akande*, the Supreme Court reiterated that the absence of any of these conditions would see the claim perish. The words must be defamatory which is seen as the first requirement, relates to their tendency to lower the claimant in the estimation of right-thinking members of society. In *Atoyebi v. Odudu*, the court reiterated that ‘it is not every unpleasant or offensive statement that is actionable’. The words should include a defamatory imputation which could damage the reputation within a legal sense.[20] This way, the law is not being used to wind up in a courtroom for frivolous complaints. Secondly, the words are supposed to mean the claimant. The claimant does not have to be named, it just has to be clear to reasonable people that the words refer to him. Where the claimant can be identified from the circumstances of the publication, there may be liability, the court held in Onyeyike v. Anyasor. That is to say where indirect references, nicknames, or descriptions may be used in online publications, this principle applies. The third is publication. Claimant needs to demonstrate that the defamatory information was transmitted to someone other than the claimant. The court in *Union Bank of Nigeria Ltd. v. Oredein* stated that "Any cause of action in defamation is predicated on publication". This is readily met where the defamatory statements are posted through social media nowadays, as the nature of social media is such that it is a mode of communication to third parties.

Once these elements are established, there is a liability subject to any available defences. There are a number of defences to civil defamation recognised by the law, such as justification (truth), fair comment and privilege. The defences are based on the need to reconcile the protection of reputation with freedom of expression. For example, the law will not make a company liable simply for harming its reputation where it is found to be true.

The court can award damages, but can also issue other relief including injunctions to prevent further publication of the defamatory material, and order apologies or retraction.

[20] Onyeyike v. Anyasor (1992) 1 NWLR (Pt.218) 439 (CA).

These remedies are especially significant in contemporary times when defamatory comments can be spread after the initial publication. It is important to note that civil defamation is concerned primarily with compensation rather than punishment. This distinguishes it from criminal defamation, where the objective is to penalise conduct considered harmful to public order. In civil proceedings, the focus is on restoring the claimant's reputation and providing redress for the harm suffered.

2.1.5 Constitutional Context of Defamation in Nigeria

The fact that the law of defamation does not exist in Nigeria's vacuum is no secret. It is practised in a wider constitutional setting, notably with respect to the right to freedom of expression enshrined in section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This clause in the Constitution of the United States of America ensures the right to freedom of expression, which protects the freedom to hold opinions and to receive and share ideas and information without hindrances. It is important to note however that this right is not absolute. The Constitution allows restrictions to be placed on the exercise of this freedom that are reasonably justifiable in a democratic society, in the interests of, among other things, public order, morality and the protection of the rights and reputation of others. Defamation and freedom of expression have a relationship which is therefore one of tension and balance. The law aims to safeguard persons against false and derogatory claims which could damage their reputation. On the other hand, it has to make sure that such protection does not unnecessarily curtail free speech, not least in a democratic society in which open discussion and criticism are not only essential but encouraged for the sake of a good government.

The Nigerian courts, in a bid to have uniformity, recognised this delicate balance in the case of *Arthur Nwankwo v. The State.* Even though the State faced sedition charges, the

Court of Appeal reiterated the fact that in a democratic society freedom of expression is important and laws that unnecessarily limit public discussion of public matters should be avoided. That logic has been used to inform the constitutional analysis of all kinds of speech restrictions, such as defamation. *Director of SSS v. Olisa Agbakba*, too, rendered a similar opinion, emphasizing the values of fundamental rights such as freedom of expression in Nigeria's constitutional order. Although this case was not about defamation, it does stand for the premise that all limitations on expression shall be within constitutional bounds.

Meanwhile, the courts have upheld and ruled on such a limitation, determining that the freedom of expression is not an unlimited right, and that no one is entitled to publish lies that damage the reputation of another. In the *Guardian Newspapers Ltd. v Ajeh*, the court stated that the media has to be responsible in its dissemination of information, that is, the right to publish is not a license to defame. The constitutional aspect of defamation has increasingly taken center stage with the advent of digital communication today. Social media have given people a platform to voice opinions and disseminate information, often defamatory in nature, that have never been possible before. The rapidity and extent of Internet dissemination, sometimes without adequate verification, has led to the potential for widespread damage to reputation, leading to questions about the effectiveness of current defamation laws.

The Nigerian legal system is cautious and sensitive, balancing these conflicting interests. The court aims to balance the interests of those who want protection from unwarranted attacks on their reputation with the need to maintain an acceptable area for free and open expression and discussion of the public's affairs. Finally, the constitutional setting of defamation in Nigeria is an on-going struggle to balance between two key values: protection of reputation and freedom of expression.

2.2.1 Historical Development of Defamation under Nigerian Law.

The Nigerian law of defamation is one of the sources, and rooted in the English common law, which was introduced into the Nigerian legal system during the colonial era. English law had been received into Nigeria and therefore defamation principles such as the difference between libel and slander, the remedies and defences available to victims of defamation grew with time through judicial pronouncements and statutory rules. Defamation was created many years ago to shield the reputation of an individual in an honor-oriented society. Action for defamation was part of the English common law to provide remedy for a false statement which might damage a person's reputation in society. Nigeria has adopted this base, but also considers balancing and incorporating the influence of common law in the interpretation and application of the defamation law in Nigeria.

The colonial administration gave rise to English legal principles which were formally introduced into Nigeria through various statutes and ordinances. These included the use of common law and doctrines of equity, which helped to shape the development of tort law, including defamation. The principles were then adopted by Nigerian courts in the settlement of disputes on reputation over the years. Nigeria's defamation law slowly evolved over time, through judicial pronouncements, in the post-independence period. The principles of defamation were explained and applied in the courts. In *Chief T.A. Odutola v. West African Pilot Ltd*, the court touched on aspects of defamation law concerning the publication of newspapers and reputational damage, which played a significant role in the development of the defamation law in Nigeria. In addition, the court in the action of *Chief Anthony Enahoro v. Associated Newspapers of Nigeria Ltd*, considered defamatory publications in the media, reflecting the growing importance of journalism in defamation cases. In recent times, the constitutional issues have played a role in shaping the defamation law, particularly in the context of the right to freedom of expression. In adjudicating defamation cases the courts have had to strike a balance between these two rights, and have treated defamation cases with greater detail. This has created a large body of case law, incorporating traditional common law values and values of the modern constitution. With the advent of the internet and social media, the way information is created, shared and consumed has changed. Defamatory statements are now immediately and easily accessible to many people, creating several questions of jurisdiction, liability and enforcement. While the underlying principles of defamation law have not changed much, how it is applied in the digital world is still developing. To sum up, the history of defamation under the Nigerian law depicts a journey from its English common law foundations to an evolving system influenced by judicial precedents, legislation, and constitutional implications.

2.2.2 Jurisprudential Background of Defamation

Defamation is not simply a set of rules made by the courts, it is based on a core set of philosophical understandings on reputation, freedom and the function of law in the regulation of human relationships. The "jurisprudential basis of defamation" is the effort of legal scholars to establish boundaries around permissible limits of protections for reputation and freedom of expression.

William Blackstone is considered to be one of the very first and most prominent writers on defamation law. Blackstone regarded reputation as a key part of personal security, a security the law would be expected to safeguard. Words which incriminate a person's reputation, he says, are a legal wrong, because they have a negative effect on a person's standing in society. His position emphasises that reputation is not merely a social value but a legal interest deserving protection. This view was the basis of formulating the concept of defamation as a civil action.

John Stuart Mill took the opposite view however, that of liberty. Mill was a strong believer in the importance of freedom of expression, and he believed that it was essential for the discovery of truth and the advancement of society. He believes that even the false or offensive can't be easily squelched because such statements can help in the public debate and intellectual growth. But Mill recognized that this liberty is not without its limits, especially when speech inflicts harm on others. His philosophy adds another principle to defamation law: that it must be used judiciously to prevent it from harming free speech.

A.V. Dicey is another important judge in terms of his work on constitutional law, which stresses the value of individual rights in a law-based system of justice. Dicey understood that people do have freedom of expression but it is not unlimited and must be kept within the bounds of the law. He believes in defamation law is a legitimate limitation on speech, helping to prevent abuse and safeguard the rights of others. The different understandings of these concepts reflect the main conflict in defamation law. There is a need to protect reputation, as Blackstone has pointed out. On the other hand is the need to preserve freedom of expression, as advocated by Mill. The value of Dicey's work is that he is able to harmonise these positions within a constitutional structure that enables both rights to remain viable under the law.

In the Nigerian context, these jurisprudential notions are seen in judicial rulings and statutes. Balancing rights to reputation as against the right to freedom of expression is a common feature of judicial considerations, especially in the context of media publications and public discussion. This balance is not always simple to make, particularly in a society which places a large emphasis on both values.

These philosophical principles are even more significant these days. In today's digital world, the clash of reputation and freedom of expression has been intensified. These people are now more free to express themselves but there is also a much greater potential for damage to their reputation. This has sparked renewed discussion on the definition and meaning of defamation law. As a result, the jurisprudence of defamation can be looked at and understood to explain the law and why it exists and how it should be applied. The law incorporates the thinking of Blackstone, Mill, and Dicey, and aims to achieve a balance between competing interests that does not unnecessarily contravene the reputation of the complainant nor the right to freedom of expression.

2.2.3 Defamation as Injury to Reputation

The protection of reputation is at the core of the law of defamation. Reputation in law is more than a personal feeling or self-esteem, it is a person's estimation in the eyes of others in society. The law steps in to prevent that unjustified degradation of that estimation through false statements, which are also valuable social assets that impact on a person's personal, professional and social life.[21] In the legal theory and judicial rulings, defamation has always been considered to be an injury to reputation. In *Sketch Publishing Co. Ltd. v. Ajagbemokeferi*, the Supreme Court reiterated that the essence of defamation is "lowering of a person in the estimation of right-thinking members of the community. This position is in keeping with the general attitude which is shared that reputation is the view others have of a person, not of himself.

[21] Ese Malemi, Law of Tort (Ch. 16, p. 608).

In theory, reputation is considered as a type of social currency. It affects the way people are treated in society, what opportunities they have and their overall status in their community. When a defamatory allegation is made, this social standing is upset and more often than not has consequences that extend beyond just embarrassment. An impaired reputation can result in job loss, loss of relationship and social or professional isolation. The courts have always taken the seriousness of such injury seriously. The court in *Union Bank of Nigeria Ltd. v. Oredein*, agreed that reputational injury can have far-reaching effects, especially if the claimant is a person of trust or responsibility. Likewise in *Atoyebi v. Odudu*, it was noted that damage to reputation can impact on the person not only in terms of their dignity but also their standing in his profession or trade. This theory is used to justify the focus in the law of defamation on the meaning attributed to the words by other people. The test used is objective, whether the statement would go to defame the claimant in the minds of reasonable members of society. The claimant does not need to demonstrate that he was actually the target of hatred or ridicule; it is enough that the words could have caused this effect.

The meaning of reputational harm in the modern society has expanded. The reputation of a person can be hurt in a much wider and shorter period than ever before with the ease of the social media and digital communication. One piece of defamatory content can be disseminated to many people, much further than the claimant. This exacerbates the injury and can make it more difficult to heal the wound.

An imperative to uphold the reputation as a legal interest has also been highlighted in scholarly work. If it were not for the law, it has been said that people would be open to the possibility of false charges and malicious attacks that could have a negative impact on their position in society. Meanwhile, academics acknowledge that such safeguards must be regulated by the demands of freedom of expression, especially in relation to issues of public concern.

Defamation is an injury to the reputation and thus the moral and legal ground for the existence of defamation law. It provides reasons for the imposition of liability for false statements that harm reputation and why damages and apologies are seen as appropriate remedies. To sum up, from a theoretical and practical perspective, defamation as an injury to reputation still plays a pivotal role. It highlights the value of reputation as a protected legal interest and forms the basis of the whole defamation legislation.

2.2.4 Freedom of Expression Theory

The doctrine of freedom of expression is of central importance to the law of defamation, especially in a democratic society where the free flow of ideas and information are thought to be essential. This theory rests on the principle that people have the right to freely voice their thoughts, opinions and criticisms without unreasonable interference, since the freedom to express this allows for the discovery of the truth, accountability and development of society. The theory of freedom of expression is essentially that open discussion, including of criticism and ideas that are not popular, is essential to the progress of knowledge and the working of democracy. This opinion is strongly supported by John Stuart Mill who held that the suppression of opinion, true or otherwise, is the penalty suffered by the community for its failure to test and discover the truth. He said anything said, even if it is wrong, can have a positive effect because it may trigger a rethinking of accepted concepts.

The Nigerian context gives support to this theory, as it is established under section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that every person has the right to freedom of expression, including the freedom to impart information and ideas. This constitutional provision highlights the significance of freedom of speech in the Nigerian legal system.

This right has also been confirmed by the courts. In *Arthur Nwankwo v. The State*, The Court of Appeal emphasised that in a democratic society, freedom of expression is essential and cannot be limited unless it is absolutely necessary to do so. The rationale of the case, however, is more relevant to defamation law, as it seeks to balance restrictions on lawful expression with their reasonable exercise.

The freedom of expression theory does not, however, hold that there is absolute freedom of expression. It acknowledges the need for free expression to be protected while still honoring the rights of others, such as the right to reputation. This restriction is explicitly stated in the Constitution (section 39(3)) that enables restrictions on expression to secure the rights and reputation of others.[22] Therefore defamation law is one of the means by which it is implemented.

The practical consequences of this are that people can say their opinion but must do so responsibly. The law does not cover statements that are false and hurt another person's reputation. The court pointed out that in the case of *Guardian Newspapers Ltd. v Ajeh*, the media has the right to publish information, but must ensure that publications do not unjustifiably damage the reputation of individuals. It was an expression of the notion that freedom of expression comes with certain responsibilities and duties. This theory has gained in significance in the digital era. Social media has given the world a much wider window of expression and has enabled people to communicate with people around the world in real-time. This improvement in free speech has made it easier to express views,

[22] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 39(3).

but it also puts an extra strain on the rules and regulations that must be followed to prevent abuse, especially the dissemination of false and defamatory statements. The difficulty, then, is to strike the right balance, which will involve ensuring that the law serves to safeguard reputation while also allowing for open communication. The issue of balance has been discussed in scholarly debates. Too much protection of speech has been suggested as a way of restricting the public from participating in discussions of which they have a legitimate interest, and insufficient protection of reputation can leave people subject to unreasonable harm.

2.2.5 Balancing Theory: Reputation versus Freedom of Expression

The principle of balancing two interests, namely the protection of reputation and the preservation of freedom of expression is the core of the law of defamation. Both are seen as important in law themselves, but can occasionally clash, particularly in the area of public criticism, media publications, or in the more recent context of online communication. The aim of the balancing theory is to balance these two interests without giving one of them greater weight than the other. First, people have the right to be protected from any false allegations of harm to their reputation. However, society can benefit from open discussion and criticism and the free exchange of ideas, including ideas about public issues. This balance is evident in the constitution of Nigeria. The right to freedom of expression in the Constitution is guaranteed under section 39(1) while section 39(3) allows restrictions on the rights of others to protect their reputation. The implication is that the law does not advocate absolute freedom of speech and the same applies to absolute protection of one's reputation. Instead it takes a middle course which satisfies both interests.

Over the years, this balancing approach has been reflected in the decisions of the Nigerian courts. In *Arthur Nwankwo v. The State,* it was noted the value of free speech in a democratic society, especially in criticizing public officials. In cases where the falsehoods are capable of causing harm to the reputation of a person without just cause, however, the court has stated that freedom of expression does not extend to such situations, as in the case of *Guardian Newspapers Ltd. v. Ajeh*. In these decisions, the judiciary has tried to balance the two conflicting values.

When it comes to the media and public discourse, the balancing theory is more pronounced. The role of journalists and media organisations in informing the public and keeping accountable those in authority is very important. This however, should be done responsibly. For this reason, the law provides for the existence of defences, such as fair comment and qualified privilege that also safeguard certain expressions without compromising the instruments by which limits to lawful speech can be redressed.

With digital communication becoming more prevalent today, it has become even more urgent to find this balance. Social media has allowed people to have their say and do so in real-time. This helps to ensure democratic engagement but also risks harm to reputation via misleading or unverified information. Online defamatory statements can have a far more significant impact as they can reach a much larger audience and spread quickly.

Scholarly arguments have focused instead not on the tension between the two values of reputation and free speech, but on the question of when one must yield to the other. For example, more tolerance of criticism of public figures and closer protection of private persons. This is an attempt to strike the balance between accountability and respect for personal dignity.

The balancing theory also emphasizes the need to look at context in defamation cases. In determining if liability should accrue, courts may consider the context in which the statement was made, the status of the speaker, and the context of publication. This doesn't give the law a precise formula to follow, but it does give it flexibility to fit the situation without rigidly choosing one interest over the other.

Finally, it is concluded that the balancing theory is the most realistic theory for understanding and application of the law of defamation. It acknowledges that there is a need for both reputations and freedom of expression in a democratic society and that they cannot be given up in their entirety in favour of one another. The role of the law, then, is to ensure a reasonable and workable balance between these interests, especially in today's society with its speedy, pervasive and sometimes unmanageable communication needs.

CHAPTER THREE

NATURE AND SCOPE OF DEFAMATION UNDER NIGERIAN LAW

3.1 Elements of Defamation under Nigerian Law

There are certain basic requirements which must be satisfied before a claim can succeed. In other words, our defamation law cannot make anyone liable for any negative or disparaging comment about an individual. The elements of defamation are the requirements which may be satisfied by any action in defamation and are often called the elements of defamation.

That is, a person who has been offended needs to reveal more than just that his feelings were hurt. The worry of the law is whether the complained-of statement has adversely affected how others view him. That's why the courts have repeatedly said there has to be proof of certain elements.

3.1.1 Defamatory Words

The first issue the court considers is whether the words complained of are actually defamatory. This is typically where it begins, since if the words do not defamatory in the law, then the case ends there.

A statement is defamatory if it is one which has the tendency to cause a person to be avoided, ridiculed, exposed to hatred and contempt of right thinking members of the society. The key is not that the claimant does not feel that way, but what others will think when reading the claim.

In the case *Punch (Nig.) Ltd v. Ajagbemokeferi*, the Supreme Court was asked to consider an issue concerning a newspaper publication which painted the claimant in a negative light. The Court said the question of whether words are defamatory should be answered from the point of view of reasonable members of society rather than the claimant.[23] In the real world, it is easy to understand. If anyone has something bad said about you and starts to question your integrity, you don't conduct business with that person, or question her character, what she said about you may be defamatory. A more recent example is internet publications. *Google Inc v Defteros* was an Australian case where search results connected a lawyer to criminal allegations – though a different case that is brought up in today's discourse on defamation. Whether indirect statements have any defamatory meaning was a question for the court. It does not accurately refer to Nigeria's situation, but it's a growing worry: Defamatory meaning can not only be meant by what is said, but by what is implied or associated with it as well.

In today's world, bringing it closer home, there have been a lot of people getting tagged as "fraudsters" or "scammers" without verification on social media. In many of those cases, the person's reputation is called into doubt, relationships in the business are broken, and the damage is done right away and sometimes the person is socially isolated. It is submitted that Nigerian courts should continue to evolve the concept of defamatory words in the light of these realities, particularly when the defamatory implication is thrown by meme, caption or indirect insinuations.

Moreover, words are to be interpreted in their every day and natural sense, including any reasonable inferences that a reasonable person might make from the words. The meaning of words is not the only consideration for a court; its meaning in context is also important.

[23] Punch (Nig.) Ltd v. Ajagbemokeferi (1999) 12 NWLR (Pt.633) 601 (SC).

It is important to bear in mind that not all insults constitute defamation. Hurt feelings, but not hurt reputations will not be enough. For example, being "annoying" to a person might not be a derogation, although it could be offensive to them, but it does not imply a decrease in the person's value to society. The law is distinguishing between the abuse and real defamation.

This distinction is important for me, particularly in this day and age when people are apt to do things impulsively due to the social media that they are having to deal with. The law would be unnecessarily curbed if all casual or emotional remarks were deemed defamatory, and courts inundated with cases.

3.1.2 Reference to the Plaintiff

Once it is established that the words are capable of being defamatory, the next question is whether the words are directed at the claimant or not. At a first glance, this element might seem simple, but in reality, it poses some of the most thought-provoking questions in defamation law. There is no requirement in the law that the claimant be named. What is needed is that the words are read or heard by reasonable persons that they apply to the claimant. That is, it is not whether the defendant meant to refer to the claimant but whether the statement would have been understood to refer to the claimant.

It has been well stated in *Newbreed Organisation Ltd v Erhomosele* that liability can be imposed as soon as the claimant is "known from the wording" even though he is not specifically mentioned.[24] If so, there was no reference to the claimant personally in the publication but it was possible for those who knew him to link the statement to the claimant. This was enough to prove the element of reference, the court determined.

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[24] Newbreed Organisation Ltd v. Erhomosele (2006) 5 NWLR (Pt.974) 499 (CA).

It occurs more in regular life that people are aware of. For example, a social media post might read: “The accountant at that office who plays with the numbers. Although it may not be explicitly stated, those in such an environment may clearly understand who is being referred to. In this case, it would be impossible for the defendant to avoid liability because of the omission of the name.

Another scenario in which this element is relevant is when there is group defamation. As to a group of people, if a statement is made concerning the group, an individual member of the group can only sue if the language reasonably could be construed to refer specifically to him. Its claim will be defeated if the group is too big or too indefinite. This is because the law stipulates there must be a line of sight between the statement and the claimant.

A more contemporary aspect of this question is linked with internet publications. Today, people refer to others by nicknames, indirect references, coded language or even emojis. In some cases, hashtags or trending phrases are sufficient to enable the targeted individual to be identified by those within a specific circle. It is submitted that Nigerian courts need to continue to read “reference” in a wide manner to prevent these new modes of communication from being excluded from the definition.

Examples of such things can be found in the modern discourse when bloggers write “a popular businessman from Abuja who is involved in fraud.” This is not specific enough but may be easy for some to guess the name of the person who is being referred. If the identification can be made, the requirement of reference is met.

It has also been clear from the courts that the defendant's intention is not conclusive. If the defendant did not intend to refer to the claimant, the liability may still exist if there is a reasonable basis for the claimant to understand that it was referring to him. This role will guarantee that people are not exposed to careless or reckless publications which might harm their reputation.

Meanwhile, the law is not too broad. It does not allow claims where the connection between the statement and the claimant is too remote or speculative. There needs to be a genuine risk that those who are familiar with the claimant will read the statement as a reference to him.

To me this is a fair balance. It will stop the use of ambiguous wording to enable detrimental statements and also ensure not to impose liability when the reference is not clear or is overstated. This balance is even more critical in today's society of communication, particularly among social media, where individuals tend to communicate indirectly and informally.

3.1.3 Publication

The third element necessary to prove defamation is publication. The meaning of the term 'publication' in law would not be considered to be the printing of a newspaper article alone, it would be when the defamatory statement is communicated to one person other than the claimant. There is no actionable defamation without publication, no offense, no matter how offensive it is.[25]

On the surface, this requirement looks easy. In practice, however, it has important questions, especially when it comes to communication via modern methods. The statement can never form the basis of a suit for defamation against the maker, when the statement was made to him alone. Defamation law contemplates injury to reputation; and

[25] Ese Malemi, Law of Tort (Ch. 16, p. 608).

by definition it is in the minds of others. It is therefore to be expected that, if no other person hears or reads the statement, there is no injury in the legal sense.

This has been reinforced in *Akinsanya v. African Newspapers of Nigeria Ltd* where it was stated that the publication is complete if the defamatory material is communicated to anyone other than the claimant.[26] If so, then the publication of a newspaper carrying the defamatory statement was enough to prove publication.

In the real world, there are a variety of forms of publication. It can happen in a talk at a meeting, in newspapers and magazines, or in correspondence like letters or e-mail. In today's world, however, the dimension of publication has greatly expanded and digital platforms have grown.

For example, if a person states something defamatory on WhatsApp, X (Twitter), Instagram or Facebook, it is immediately sent to several individuals. A message (even a group chat message) can meet the criteria of publication if it is read by someone else in the group. The urgency of this is heightened by the pace and reach of the information. One helpful modern example is with the use of platforms online.

The High Court of Australia in *Dow Jones & Co Inc v Gutnick* decided that publication was at the place where the material was downloaded and read and not just the place or space where it was uploaded. It was not a Nigerian case but it has been frequently referred to in discussions about internet defamation and the changing notion of ‘publication' in the digital world. Closer to the Nigerian context, it is not uncommon to see posts that are reposted in several platforms. Multiple publication, another important issue, is raised. A new cause of action can be asserted against a person who republishes

[26] Akinsanya v. African Newspapers of Nigeria Ltd (1982) 5 SC 1.

one of the defamatory statements. This is especially true when bloggers and/or media outlets repost without verification. Another crucial requirement of publication is that the defendant is responsible for the communication of the defamatory matter. But there are situations where a person can be held liable for negligently permitting a defamatory statement to be published".

For instance, when a document with defamatory material is left behind in a location where it is likely to be read by others, it may be considered published. Then there's the question of "unintentional publication," which occurs when the defamatory material is accidentally communicated. For example, a defamatory e-mail to an unintended recipient might still constitute "publication".

Not always, in the sense of the law, is such a failure excused, particularly when it leads to harm to reputation. I think that the idea of "publish" is much more complicated now than in the days of the old common law. With the ease of information sharing, people have to be more careful in their communications.

Something said offhand, online can spread like wildfire and result in severe consequences. It is suggested, therefore, that Nigerian courts should continue putting an interpretation into effect that is in line with these realities. In particular, there is a need to make individuals responsible for their careless online actions, but also to make sure that the liability is not imposed unfairly where the defendant did not have any control over the dissemination of the material.

3.2 Proof of Defamation

So far as defamation is concerned, the next question is, can the claimant establish a case without being able to demonstrate any actual loss or damage?

The law makes a distinction between libel and slander at this juncture, not in terms of definition (as already mentioned), but in terms of the ease with which an action can be supported. The difference in the real world is that it either needs to be proven or not proven.

It is because of the seriousness of written words compared to spoken words that this distinction is made. The written statement is believed to be more permanent and can be more widely circulated, as can the spoken statement, though this view is becoming questionable in modern times.

3.2.1 Libel as Actionable Per Se

Libel is "actionable per se", meaning that if it is found that the statement is defamatory, it implies the claimant and has been published, there is presumed damage. Claimant does not have to establish that he suffered any actual loss.

The principle was confirmed in *Sketch Publishing Co. Ltd v Ajagbemokeferi*, which the Supreme Court indicated that when it is established that the publication was defamatory, there is a presumption of damage to the reputation of the person concerned.[27] The court acknowledged that written statements, especially those in newspapers, carry a permanency and have a potential audience. In practice, if a newspaper writes a false article that says someone is corrupt, the person has no need to call witnesses to say that his reputation has been hurt. The law already presumes that such a publication is detrimental.

[27] Sketch Publishing Co. Ltd v. Ajagbemokeferi (1989) 1 NWLR (Pt.100) 678 (SC).

This applies much more strongly in today's times to online publications. A defamatory blog post or social media post can be disseminated in a matter of minutes. Therefore it is fair to continue assuming that there is damage in those circumstances.

There is, however, a need for the courts to be aware of the practicalities of online communication, it is submitted. Not all posts are equal to a newspaper article. A few statements may be made in an informal setting or in a small group of people. The difficulty, then, is to differentiate between serious publications and casual expressions which may not be deserving of the same legal remedy.

3.2.2 Slander and the Requirement of Proof of Damage

Slander is not a tort in itself, as opposed to libel. This means that the claimant must prove that he suffered actual damage as a result of the statement. This damage is usually in the form of financial loss or some material disadvantage.

The reason for this is that it is easier to change the words and the possibility of harm from speaking them is less. For this reason, it is essential that the statement had a real impact on the claimant. For instance, when someone is accused orally of dishonesty in a private conversation, he/she would have to establish that the oral statement caused a loss, such as a loss of job, business opportunity or contract. This action will not work without this proof. In *Iloabachie v Iloabachie*, the court highlighted that where slander is alleged, the claimant has the burden of establishing specific damage in order to succeed in a claim, unless it is possible to rely on any of the exceptions.[28]

This in practice can be challenging in daily life. A defamatory statement can be made and it may be heard and a person's perception of the claimant changed without being obvious

[28] Iloabachie v. Iloabachie (2005) 13 NWLR (Pt.943) 695 (CA).

or measurable. Some scholars doubt that the concept of libel/slander is still relevant in societies where recording and dissemination of spoken words is commonplace.

3.2.3 Categories of Slander Actionable Per Se

There are some exceptions to this rule; where the slander is so grave that it is presumed to be damaging. Under this circumstance, the claimant is not required to show any actual loss. The categories are traditionally:

Whereas the statement attributes the commission of a crime subject to imprisonment.

Secondly, if it states that the claimant has a contagious or infectious disease.

Thirdly, when it introduces unchastity or adultery, especially with regard to women.

Fourthly, in which it is likely to cause the claimant injury in his profession, trade or business.[29]

In *Unilorin Teaching Hospital v. Abegunde*, an illustration of this is that statements which had adverse effects on the professional competence of the claimants were found to be actionable without proof of damages, since they affected the claimants' professional practice.[30]

The aspect of profession/business is especially important today. For example, if a businessperson is called a fraudster even verbally, it can immediately have an impact on customer trust and patronage. Indeed, given the speed at which these statements can be

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[29] A.O.N Ezeani & R.U Ezeani, Law of Torts (Ch. 18, p. 497).
[30] University of Ilorin Teaching Hospital v. Abegunde (2013) 3 NWLR (Pt.1342) 1 (CA).

repeated by word of mouth or recordings, the rationale for considering them "actionable" per se is compelling. Lastly, it is important to note that in the modern age, the distinction between libel and slander is getting blurred. A spoken statement can be put into writing and posted online, giving it the permanence that traditionally belongs to libel. This leads to a number of questions concerning the continuance of this distinction in its present form.

I believe that the traditional definition of libel/slander still has its use, but that Nigerian law should re-think the sharp divide between them, particularly in the age of the internet. It should be more about the effect of the statement, rather than how it was delivered.

3.3 Proof of Damage in Defamation

After a claimant has been able to prove that a defamatory statement was made about him, referred to him, and published, the next question which frequently arises is whether there are any damages. The aim of the defamation statute is to prevent injury to reputation, but not the injury itself can easily be quantified in tangible terms.

Under some circumstances, the law presumes an injury has been sustained. In others, the claimant is required to prove it. There is a difference between these and it will make a difference in determining whether an action is successful or not and the amount of any compensation that may be awarded. At this juncture, it is important to review the various types of damages as provided for under the Nigerian law.

3.3.1 General Damage

General damages are damages that are presumed to arise from the defamatory statement by the law. They do not have to be specifically established, as it is presumed that injury to reputation, emotional distress and loss of social standing are the inevitable results of defamation.[31]

General damages are almost always awarded when liability is established in cases of libel. The rationale for this is that a written or published statement can perpetuate itself and remain with people who are exposed to it over time. As to damages in defamation, the Court of Appeal held in *Guardian Newspapers Ltd v Ajeh* that damages were not only to be awarded to compensate the claimant, but to serve to vindicate his reputation.[32] A court acknowledged that the damage suffered as a result of defamatory declaration may go beyond financial damages, and may involve dignity and personal integrity. For all practical purposes, this is equivalent to the person whose reputation is damaged not having to establish the exact amount of money he lost. The court has the authority to fix damages depending on the following:

“And the gravity of the allegation…”

2. the extent of publication

3. Claimant's status

4. and the way the defendant acted

An example of this is that if someone falsely accuses a professional or public person of fraud, the damages that can be had are larger than if someone made a less specific or less substantial allegation. General damages are of even greater importance in today's digital world. A defamatory post may be shared, reposted and saved forever. Screenshots can spread even after they have been deleted. It is therefore submitted that the potential

[31] Olusegun Yerokun, Casebook on Law of Tort (Ch. 17, p. 608).
[32] Guardian Newspapers Ltd v. Ajeh (2011) 10 NWLR (Pt.1255) 574 (CA).

damage in such a situation should be taken into account by courts considering damages as the effect of the publication online is far more virulent than in traditional publications.

3.3.2 Special Damage

Special damages are damages that are special and quantifiable that have been suffered by the claimant as a result of the defamatory statement. These must be specifically evidenced and are not considered to be general damages.[33]

This is especially important in cases of slander where the claimant is required to prove that the statement caused actual loss (subject to the recognized exceptions, as outlined above). Examples of special damage include; loss of employment, loss of business opportunities, termination of contracts, financial loss directly linked to the defamatory statement. The court stressed that special damages are to be specifically pleaded and strictly proved in the case of *Omoregbe v. Lawani*.[34] The claimant cannot simply make allegations of loss, but there needs to be specific evidence linking the defamatory allegation to the loss.

Determining special damages in real-world cases can be a difficult task. For instance, a person can be losing customers as a result of a defamatory statement about him, but it can be hard to prove that all of his customers are going away because of that statement. Individuals do not usually acknowledge that their choices have been swayed by slanderous comments.

This is even more pronounced when it comes to social media. A negative post about the business could result in fewer patrons, but to prove a direct cause and effect relationship

[33] Ifeoma P. Enemo, The Law of Tort (Ch. 7, p. 237).
[34] Omoregbe v. Lawani (1980) 3–4 SC 108.

requires good evidence. Therefore many claimants are more interested in general damages than special damages. It also is important to point out that the courts are not going to hand out special damages payments unless they are certain of the facts, or until they can be sure of the facts without speculation. The claimant needs to present credible evidence like financial records, contracts, or witness statements to substantiate the claim.

In my opinion, courts should be more flexible in relation to digital defamation but the need for strict proof to avoid abuse should not be overlooked. Where the damage is real and substantial it may be impossible to provide direct evidence of financial loss even in the case of an online interaction.

It is evident from the above that there are presumed and actual damages in the law of defamation. The difference between general damages and special damages is that general damages are for reputation, while special damages are for quantifiable loss.

The difference between the two is an effort to strike a balance between equity and efficiency in the law. But with the evolution of communication – especially via digital channels, it is submitted that the concept of proof of damage may need even more refinement to make sure that true claims are not lost to technicalities of proof.

3.4 Defamation Liability in Nigeria: Scope of Liability

Now we need to think about the responsibility issue. To prove a statement is defamatory is one thing, to establish who is liable for it is another. In many circumstances, there can be more than one person involved in the creation or the dissemination of a defamatory statement – particularly today in the digital world.

The law traditionally allows for the defendant to be a third party whose actions did not cause the publication of the statement in question.The law traditionally accepts that liability does not end with the author of a statement and can extend to a third party. Published parties can be held responsible, depending on the their engagement, to the defamatory content.

3.4.1 Primary Publisher

Primary publishers are publishers who make or originate the defamatory statement. This means authors, editors, journalists and media houses that are responsible for the content of a publication. When this happens, there will typically be little doubt of liability as the defendant is directly involved in the production and spreading of the defamatory content.

This Day Newspapers Ltd v Abubakar – The court found the newspaper guilty of publishing false allegations against the claimant. The court put emphasis on the obligation of the media to verify information before publishing, especially if it is capable of damaging a person's reputation.[35]

From a practical point of view, that means that a journalist writing a slanderous story – or a blogger who makes a statement about a person that is not true – will be considered the primary publisher and be liable for the consequences. I think that's even more critical in an era of online journalism where the rush to get the story out first can leave us with poorly verified information. It is argued that courts should maintain the rigorous responsibility standards on the part of the primary publishers as a means of discouraging reckless reporting.

[35] This Day Newspapers Ltd v. Abubakar (2016) 5 NWLR (Pt.1506) 456 (CA).

3.4.2 Secondary Publishers

Secondary publishers are publishers who did not make the statement, but were involved in its dissemination. “This can encompass printers, distributors, vendors and nowadays, administrators of online platforms or forums. The law imposes secondary liability on publishers in general, when they knew, or should have known, that the material they were publishing was defamatory. In cases where they are simply passive pipes, however, there may be no liability.

One good example is with online platforms. For instance, if a website host hosts defamatory material and is notified of its presence, may there be any liability issues? This is an illustration of the changing character of a defamation law in the light of technological advances.

There is no body of case law in Nigeria addressing specifically the issue of liability for those who facilitate publication but international courts and literature indicate that courts are ready to hold the facilitators liable especially in the event of negligence.[36]

Put simply, bloggers, WhatsApp group creators or forum thread creators need to be careful about the content they post on their websites.

3.4.3 Liability for Repetition of Defamatory Statements

If a defamatory statement is repeated, the person who causes the repetition is deemed to be the person who originally made the statement. An important general rule in defamation law is that the repetition of a defamatory statement is a ‘new publication'. So if someone repeats or republishes another defamatory statement then he could be liable, even if he

[36] MN Umenweke, ‘An Examination of the Impact of Social Media on Defamation Law’ (Journal Article).

wasn't the first to write it. The court in *Akinsanya v. African Newspapers of Nigeria Ltd*. has stated that each publication constitutes a separate cause of action.[37]

This notion has implications that reach far in today's society. Content sharing and reposting is a common use of social media. A WhatsApp forwarder or retweeter of an offensive message could find himself liable without his knowledge. For example, if a false allegation is made against a business owner and then spread by numerous people on another platform, each re-publishing the content is responsible for the damage. I think this is something that could use to be made more known to the public. A lot of people think that they are not accountable for other people's content. The law says otherwise, though. Therefore, it is essential to sensitize the public on the legal implications of loose sharing of information.

3.5 Defamation in the Context of Modern Communication

Technology has been a great influence in the way people communicate. Now information flows in real time via different platforms to audiences way beyond traditional media reaches. This has left a lasting effect on the defamation law.

3.5.1 Defamation through Social Media

Social media like the WhatsApp, Facebook, Instagram and X (formerly Twitter) have emerged as the primary means of communication. These platforms provide freedom of expression, but also opportunities to use defamatory statements.

People frequently post words without checking if they're correct, and they sometimes do it based on what they've heard or got from bits of the information. After these statements

[37] Akinsanya v. African Newspapers of Nigeria Ltd (1982) 5 SC 1.

have been published, they can be disseminated quickly and easily in many places over a short period of time, making them hard to regulate.

For instance, when people get publicly accused of fraud or wrongdoing on social media, a practical example would be that situation. Provided that such allegations turn out to be untrue at some point after the incident, the damage to reputation may have already been done. The current legal structures of Nigeria are not adequate to address the challenges of online defamation, especially as regards jurisdiction, anonymity and enforcement as highlighted by scholarly works. It is suggested that there is a lack of clarity in the law regarding online publication and a lack of awareness amongst the social media users.

3.5.2 Online Publication and Emerging Issues

In addition to social media, online publication presents some new issues to defamation law. These include issues such as; anonymity of authors, cross-border publication, liability of internet service providers, permanence of online content. Content online can be kept available, even after it is removed, unlike traditional publications. This can lead to greater potential for long-term damage to the reputation.

It is suggested that Nigeria should review its laws to tackle the challenges that could be faced, after comparative analysis of the laws of some jurisdictions like the United Kingdom, as a result of Defamation Act 2013 in that country.

One possible answer I see is that the rules of takedown and the responsibility of platform operators should be made more clear. This would ensure the quick removal of defamatory material at any time it is found and would safeguard users' rights.

3.6 Limitation of Actions in Defamation Cases

The law also gives a time limit for bringing action for defamation. This is known as the limitation period. The intent of this rule is to ensure claims are filed within a reasonable time, when evidence is fresh and present.

In Nigeria, Defamation cases are normally required to be filed within a defined time frame which is often 1 year from the date the offending material was published in accordance with the limitation rules.

This will result in a loss of right to seek redress, even if a claim is merit worthy, unless acted upon before the set time period. Internet publications can be accessed over time and there are questions as to whether each use is a new publication.

CHAPTER FOUR

DEFENCES TO DEFAMATION IN NIGERIA

4.1 Fair Comment

Defence of a good faith opinion protects a person from liability for defamation when he or she is telling the truth about an issue of public interest. This is just a statement that everyone is going to say what they want to say, criticise what they criticise and respond to what they respond to, in particular when it is towards public figures or society.

But not all of this can be preserved. The statement should be a comment and NOT a fact statement. This implies that the person is delivering an opinion based on fact already known. This was expressly stated in *Duyile v Ogunbayo & Sons Ltd* where it concluded that any comment must be based on true or provable facts.[38]

For instance, when you say, "this government policy is bad," then it is an opinion. A comment on the minister stealing money is not an allegation of fact – it is a statement of fact which can result in the minister being held liable for defamation".

Another requirement is that the comment must be on a matter of public interest. So many of these conversations are now taking place online. Things go viral on social media – particularly platforms such as X (formerly Twitter) and Instagram – in a matter of moments, and people voice their views right away.

One scenario that can be adapted to a real life situation is that of Nigerians reacting to political debates or public scandals on social media. Conversations involving public

[38] *Duyile v. Ogunbayo & Sons Ltd* (1988) 1 NWLR (Pt.72) 601 (SC).

figures or public personalities may, for example, be visible on X, with users freely airing their opinions, sometimes ending in defamatory statements.

Now the issue is many people don't know the distinction between an opinion and a fact. A person can say “in my opinion” and make a serious statement that hurts someone's reputation. That sort of expression will not be covered by the law.

Also the defense of fair comment is not available in the presence of malice. That is, when the person made the statement with hatred, revenge or any bad intent. In *Atoyebi v. Odudu*, the court emphasized that the defence can only fail after establishing malice.

It's also been pointed out that social media allows for defamation to be more common because people post so fast they don't fact check. The Centre for Intellectual Property and Information Technology Law (CIPIT) study illustrates how unregulated online speech can easily turn into defamatory speech which is not even recognized by users.

Even news outlets have written about people who have been held accountable for their online comments. In one instance, BBC reported on social media defamation cases as they became so common and so widely circulated.

Given what is unfolding today, it is apparent fair comment is not being understood. They believe they have the right to say anything and to indulge “opinion”, but that is not the law. Fair comment remains significant as I believe everyone has a right to speak, particularly on public affairs. But, there should be a certain degree of caution. It is now easy to ruin a person's reputation in just a few minutes, and social media has given us the means to do it.

The law permits the statement to be made as a fair comment but it does require individuals to exercise their freedom responsibly.

4.2 Privilege

Defamation also has the defense of privilege. Covers statements made in certain circumstances, even if defamatory. The law acknowledges there are instances in which people should be able to speak without fear of liability.

There are two types of privilege: absolute and qualified.

4.2.1 Absolute Privilege

Absolute privilege allows for absolute protection. If someone does make the statement, he or she will not be liable for defamation, regardless of the fact that it is actually untrue or it is made with a bad purpose.

This defense generally comes into play in very specific circumstances like; court statements and statements made during legislative proceedings. The reason being that, these are serious institutions where people must be free to speak openly. For instance, a lawyer or witness could make a disparaging comment about someone during a court hearing. It is protected as long as it is said in the course of the case. In *Okafor v. Ikeanyi*, held that statements made during court proceedings are absolutely privileged.

In the real world, this means that things said in court are kept confidential even if it may hurt their reputation.

4.2.2 Qualified Privilege

Qualified privilege is not as strong as absolute privilege. It only covers the defendant if the statement was not made maliciously. It is used when: The person who is stating has a duty to make the statement and the person who is receiving has an interest in receiving the statement. The defense will never succeed if malice is shown.

4.2.2.1 Common Interest Privilege

It is applicable when there is an interest of both parties to the subject matter. Perhaps the simplest example is within an organisation. Communication among members of a group about the conduct of one of the group members may be protected. *Adam v. Ward* held that, if people have a common interest, they can be protected by qualified privilege in communicating with each other.

This can be applied in the workplace, in associations or even in the school body in today's context.

4.2.2.2 Duty–Interest Privilege

This is the case when one person is obligated to speak and the other is interested in hearing what he/she has to say. One such example is a job reference. An employer can be requested to provide details of an employee they have previously employed. The statement can be protected even if it is negative, as long it is made in an honest manner. In business and professional relationships, the Nigerian courts have upheld this principle particularly in the case of communication. But once there is proof the employer did so spitefully or provided false information on purpose, the defense will fall apart.

4.2.2.3 Statements Made in the Discharge of Moral or Social Duty

This is similar to duty–interest privilege but more on the basis of moral or social obligation to say something.

For instance: warning somebody about an individual that is trying to be a fraudster, reporting the misconduct of a community, telling authorities about suspicious behaviour

This type of situation occurs frequently as a part of daily life. This communication is legally permitted because otherwise harm would be likely to occur in such situations.

The same applies, however, that the statement be made in good faith and with no ill will.

But privilege is getting more complex in today's digital age. These days folks exchange information in WhatsApp groups, online forums and social media rooms, saying that they're “informing others”. Alleged scammers are, for example, warned on WhatsApp and Instagram. There may be some that are morally binding and others that carry falsehood and harm innocent people. Misfortunes have been reported about the speed of spread of fake news on internet, which makes it difficult to manage the harm that can be caused. Online sharing has accelerated the spread of unverifiable information, according to a report by the Reuters Institute for the Study of Journalism on digital news. Likewise, BBC reporting has noted that people have been targeted for remarks they made in “informal communications” that it was thought were private.

In certain situations, it is important for the society to allow individuals to communicate freely, which requires privilege. If they don't, they might not want to speak, even when it's required. However, from what is going on presently, particularly online, there are many people who take advantage of this protection. They believe that any remark made in a group, or for “warning purposes” is automatically protected. That is not the law this is because as soon as there is malice, exaggeration or lack of honesty, the protection is gone. Although privilege is still significant, awareness of privilege, particularly in the way it is discussed, needs to increase, particularly in informal settings and the virtual realm.

4.3 Innocent Dissemination

The 'innocent dissemination' defence is available to a person who was involved in passing on a defamatory statement but had no part in its creation and was unaware that it was defamatory. In the simplest of terms, the law can say that a person may not have known that the information he or she shared or distributed was harmful, and therefore, is excused from liability under the law.

In the past, this defense was used by such individuals as: printers, book sellers, and newspaper vendors.

These were not the original writers, and the law had to acknowledge that it would be inequitable to take 100% responsibility on them in every case. But, in today's social media world this defense has come into its own. These days, many people share messages on WhatsApp, post photos on Instagram and retweet on X without considering what repercussions the action will have. To prove the defense, the individual claims that: they were not the one who wrote the statement, they had no knowledge that the statement was defamatory and they were not negligent in making the statement public. The defense will be defeated if the person knew, or should have known, that the statement was untrue or hurtful. Everyday situations are an excellent way to get an understanding of this. For instance, a message is sent in a WhatsApp group that casts an individual as a fraudster. If that message is inaccurate, the person who forwarded the message could possibly rely on the theory of innocent dissemination.

The court will be asking, however, is whether the person had a cause to question the message before sharing it? If it is yes, then the defense will fall.

This is becoming very prevalent. No checking on messages are being forwarded. Many of these messages spread like wildfire and hurt reputations – long before the facts are known. One example of this is with the spread of misinformation on the internet. The BBC reports that misinformation can outpace accurate news, particularly via social media. In addition, the Reuters Institute reports that many users are sharing content without verifying its veracity, which poses a risk of harm.[39] Even the platforms like WhatsApp have recognized this issue. They also added forwarding limits to minimise the sharing of malicious or misleading messages.

What you can see from today is that many people think they are not responsible for what they share, especially if it's not their creation. However, not all the law agrees with this. I think this defence is to be used sparingly. It ought to preserve such unaware persons; it should be no justification for careless behaviour. It's important that people realize that sharing and retweeting information isn't a harmless thing to do. After the statement is made, it's a new publication and can still tarnish a reputation.

Although innocent dissemination is still important, particularly in the digital era, it is important for individuals to act in a responsible manner in disseminating information.

[39] Reuters Institute, *Digital News Report*, < https://www.digitalnewsreport.org> accessed 21 April 2026.

4.4 Apology and Retraction

Apology and retraction is not a defense to defamation such as fair comment or privilege, but it remains a very significant defense in defamation suits. Generally, it is not used to shift the burden or liability but rather to limit the damages to be recovered should the defendant be found liable for the claim.

An apology, a declaration that the person understands that something said was not right and that they are sorry. A retraction is when a person takes back the statement and publicly rectifies it. Apologize is taken seriously in practice. An apology early and sincere may help to lessen damage compensation. However, if no apology is made or the apology is not genuine the court may award more damages. In *Guardian Newspapers Ltd v Ajeh*, for instance, the court took into account the actions of the defendant, such as whether the defendant made any attempt to rectify the wrong. This indicates that apology can impact on the court's impression of the case.

We know, in the real world, particularly in the context of social media, that apology and retraction have become a frequent occurrence. Numerous public individuals who post controversial items on the Internet subsequently retract them or offer apologies. A good example of this is the public apologies on X (Twitter) and Instagram. When a post gets slammed for some reason, people tend to say “I'm sorry for my previous post.”[40]

One drawback to this is that by the time the apology is made, damage is often already done. After a defamatory post goes viral, it's no longer deleted, it's removed.

[40] X (Twitter), “Search: apology”, available at: https://twitter.com/search?q=apology&src=typed_query (accessed 21 April 2026).

Furthermore, there are some excuses that are not sincere. These can be pressured by the public or legal action. In these cases, they may not be valued by the court to a great extent.

Apology is more effective if it is: immediate, clear, and to the same audience as the original apology. Many people post first and apologize later, as they see from what is happening today. This is dangerous because the law doesn't consider apology to be a full defense.[41]

Apologize and retract important because it demonstrates responsibility. They should not be a license to be careless. It is important that people check that information is accurate before posting it, and not apologize only after damage is done.

4.5 Defamation and the Public Officers Protection Act

The Public Officers Protection Act (POPA) is not a defence in the same way that fair comment and privilege are defences; however, POPA does impact defamation cases, particularly in situations involving a public officer as the defendant.

The principle of POPA is that actions against public officers should be taken within a short time period, typically 3 months after the act. Once that time passes, the case could be dismissed, even if it's a strong case. This is under section 2(a) of the Act.[42] If a public

[41] UK Supreme Court Blog, 'Defamation and the role of apology'<https://ukscblog.com/case-comment-defamation-and-apology> accessed 22 April 2026.
[42] Public Officers Protection Act, Cap P41 Laws of the Federation of Nigeria 2004, s.2(a).

officer has defamed someone, it is in basic terms, the person needs to move fast. They cannot be delayed without risking a failure of the law to allow the case.

The courts, however, have stated that POPA does not apply in all situations. For example, where the public officer acted: outside their official duty, maliciously or in abuse of office then the protection may not apply. This position has been made clear in *Offoboche v Ogoja Local Government* where the Supreme Court held that POPA does not shield from liability acts predicated on the basis of bad faith or outside the scope of official duties.[43]

This is really applicable in the real world. Public officers make statements regularly in the context of their work, such as in a press briefing, in an official report or when making a public announcement. The question arises whether the officer was exercising his duty if such statements are damaging to the reputation. An example of the use of a practical example can be seen in government press statements. If officials speak about matters such as corruption investigations or public misconduct, their comments could have an impact on people. Wherever these statements are untrue, a defamation action can be filed. The affected person, however, has to move quickly due to POPA. This presents a problem, particularly when damage is ongoing, like online publications.

Further, it has been seen that POPA has been criticized for its rigidity, given that it can exclude valid claims due to the passage of time.

In practice, POPA can sometimes be against justice, particularly as regards defamation, where the harm may be less evident.[44] In my opinion, although this Act certainly has a purpose of afford protection to public officers from endless litigations, it should not be

[43] *Offoboche v. Ogoja Local Government* (2001) 16 NWLR (Pt.739) 458 (SC).
[44] LawPavilion, 'Public Officers Protection Act and its Application in Nigeria', <https://lawpavilion.com/blog/public-officers-protection-act-and-its-application-in-nigeria >accessed 21 April 2026.

used to provide cover to any wrongful act. A balance must be maintained so that those whose reputation is violated will not be without remedy.

4.6 Death of a Party and the Maxim Actio Personalis Moritur

In other words, this maxim states that any personal action ends with the person. It is the principle of defamation law that an action for defamation cannot be instituted on the death of the claimant or the defendant.

In simple terms, defamation is regarded as a personal wrong, because it affects a person's reputation. Because reputation is the product of a person, it is generally regarded as not being a part of that person's estate.

This position was recognised in common law principles and has been adopted in Nigerian courts such that the action for defamation is personal and would not be continued against a person who is deceased.[45] If, for instance, someone writes a defamatory statement about a person, then when that person dies before filing a lawsuit, the suit is typically not filed by the estate of the deceased. Likewise, if the defendant is dead, so is the action.

But in contemporary practice, particularly for online publications, there are practical concerns raised by this principle. Defamatory material can persist on the Internet, and continue to tarnish the reputation of the deceased or possibly the public. If, for example, there is a false claim about someone on social media which has been posted years ago and they are deceased, it can still be seen for years. This is a divide between the old law and today's world of digital technology.

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[45] *Finnih v. Imade* (1992) 7 NWLR (Pt. 251) 400 (SC).

Online defamation can continue to cause harm after death, as some legal experts have pointed out, particularly when the content is reposted or stored, but this issue can be a problem with personal claims, as they tend to die with the person.

However, Nigeria's law has not been substantially updated to reflect the traditional doctrine which holds that defamation is personal and not the property of the parties to the action.[46] This is an area that may need re-thinking in the future, particularly in light of the fact that the digital publications are not going away. Spoken words can be revoked, but speech cannot be used online; potential damage to reputation could be ongoing after death.

[46] M.N. Umenweke, *Social Media and Defamation Law in Nigeria: Emerging Challenges*, available at: https://www.researchgate.net/publication/309203123 (accessed 21 April 2026).

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 Summary

The study focused on the nature and scope of defamation in Nigeria. The study explained the concept of defamation and the difference between libel and slander. It also discussed defamation in a civil wrong, as well as the constitutional issues on freedom of expression and protection of reputation in Nigeria.

The theoretical basis of defamation, including the concept that reputation is one of the elements of human dignity that should be legally protected was also taken into account. In doing this, the study examined different scholarly views and judicial opinions relating to defamation.

The study also analyzed the elements that are critical for establishing defamation liability in Nigeria. These consist of defamatory words, reference to the claimant and publication. The research laid out the following elements that must be established before the court for a claimant to succeed in an action for defamation:

A difference between libel and slander was also elaborated. The study noted that libel is actionable per se while slander requires proof of special damage, unless in any of the recognised exceptions in the law.

The study also analyzed the area of liability in defamation, particularly with regard to the publication via social media and online platforms. It was noted that technological progress has transformed the means of dissemination of defamatory material. The information spread and reach on X (formerly Twitter), Instagram, WhatsApp, blogs and online news platforms is now greater than in the traditional uses of publication.

The study also explored some of the accepted defences to defamation as provided for in Nigerian law such as fair comment, privilege, innocent dissemination, apology and retraction. It was found that these defenses are still relevant but, online communication today is fast and the nature of the communication makes it more difficult to apply these defenses.

The effect of Public Officers Protection Act in defamation actions against public officers was also taken into account in the study, as was also the common law maxim actio personalis moritur cum persona in defamation actions involving public officers.

In general, the study revealed that while Nigerian legislations provides remedy for defamation, it is still a challenge to deal with modern online defamation in practice. The law was created mostly when only newspapers, radio and oral communication were available for publication. The Internet has brought new difficulties that current laws are not entirely able to resolve.

5.2 Conclusion

It is seen from the above that defamation law is an important part of the Nigerian law since it can be used to defend the honour and dignity of man. In both personal and work life, one's reputation is a valuable asset and once lost it may not be easily recovered. On the other hand, there is freedom of expression too in a democratic state. People have the right to express their opinions, discuss public issues and criticise government actions as needed. Freedom of expression, however, should be balanced and not maliciously attack the reputation of others.

The study has revealed that the advent of social media and online communications has complicated defamation. In the present day, a defamatory statement can spread in different platforms within minutes and can be permanently available online. This has increased the impact of reputation damage and its inability to be managed.

It is also clear that not everyone who uses online social media platforms understands the extent of the legal ramifications of their online publications. A lot of disparaging remarks are uttered without thought, forwarded without proof or even posted in anger without thinking of the hurt it may cause.

While Nigerian courts have adopted traditional principles of defamation law to the modern context, there remains a need for more explicit legal and institutional responses to defamation in the online context. Some issues in anonymous publication, cross-border communication and viral dissemination of defamatory information are not sufficiently dealt with by the present legal framework.

In this regard, defamation law in Nigeria is still applicable, but there is a need to reform it to reflect the realities of the digital communications and online interactions of today.

5.3 Recommendations

5.3.1 Legislative Reforms

Legislative changes are needed at the national level in Nigeria for online defamation and social media publications. Update the current laws to consider the use and development of new communication media and electronic publishing.

5.3.2 Judicial Reforms

Courts need to be more flexible in the processing of online defamation cases, especially in regard to digital evidence, online publication and identification of anonymous publishers.

5.3.3 Public Awareness

Public awareness with regard to the responsible use of social media platforms should be increased. People don't realize that there could be liability for them if they post statements online.

5.3.4 Responsible Media Practice

Media should verify information and bloggers and social media users should verify information before posting it. The habit of reposting and forwarding unverifiable information should be discouraged.

5.3.5 Regulation of Digital Platforms

Internet and social media operators need to put in place better mechanisms to report and remove defamatory content to cut down the dissemination of harmful publications.

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