

PUBLIC AND PRIVATE INTERESTS IN ENGLISH LIBEL LAW

ABSTRACT

Three decades after the *Sullivan* decision, the English courts finally turned their attention to the value of free speech and its relationship to the law of defamation. The results have appeared in three stages.

First, the courts limited the size of awards of damages in *Rantzen v MGN*. Then they developed an absolute immunity against actions by local governmental bodies, most notably in a case called *Derbyshire County Council v Times Newspapers*. The extent to which this immunity can be extended into other political contexts is uncertain, but the judges seem reluctant to develop the law much further along these lines. Third, a more far-reaching development occurred in *Reynolds v Times Newspapers* when the courts accepted a form of qualified privilege for speech about public and political affairs. As a more recent innovation, its boundaries are likewise fuzzy, but it is certainly being cited and applied on a regular basis.

In the light of these developments, this paper will seek to explain and assess:

- What has motivated the courts at this time to undertake these developments? It will be suggested that the answer lies in the growing dominance of rights discourse, which is now exemplified by a new Bill of Rights, the Human Rights Act 1998. The Act requires account to be taken of the European Convention on Human Rights and Fundamental Freedoms 1950. Perhaps three further reasons for raising the bar against litigation concern (i) the rules relating to legal costs (ii) the attractiveness of forum shopping in Britain and (iii) the availability of a non-legal dispute resolution service, the Press Complaints Commission.
- How do the doctrines compare with US doctrine? The conceptual avoidance of 'public figure' doctrine has advantages, but the uncertain elasticity of qualified privilege doctrine also imports disadvantages.

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KEY TEXTS

Reading:


Cases


Goldsmith and Referendum Party v. Bhoynul, *The Times*, June 20, 1997
Derbyshire County Council v Times Newspapers [1993] AC 534
Reynolds v Times Newspapers [2001] 2 AC 127
Armstrong v Times Newspapers Ltd [2004] EWHC 2928 (QB)
Bachchan v India Abroad Publications (1989) 585 NYS 2d 661; 20 Media L. Rep. 1051
Barendt, E., "Libel and freedom of speech in English law." [1993] *Public Law* 449
Berezovsky v Forbes [2000] 1 WLR 1004
Bognor Regis UDC v Champion [1972] 2 All ER 61
Castells v Spain App. no.11798/85, Ser.A vol.236, (1992) 14 EHRR 445
Campbell v MGN (no.2) (2005) *The Times* 21 October
Derbyshire County Council v Times Newspapers [1993] AC 534
Galloway v Telegraph Group Ltd (2004) [2004] EWHC 2786 (QB)
Goldsmith and Referendum Party v Bhoynul (1997) *The Times* 20 June
King v Telegraph Group Ltd [2004] EWCA CIV 613
Lingens v Austria App. no.9815/82, Ser.A vol.103, (1986) 8 EHRR 407
Ian Loveland, *Political Libels* (Hart Publishing, Oxford, 2000)
Milmo, P., and Rogers, W.V.H., *Gatley on Libel and Slander* (10th ed. Sweet & Maxwell, London, 2003)
Rank Film v. Video Information Centre [1980] 2 All E.R. 273
Rantzen v. M.G.N [1994] Q.B. 670
Reynolds v Times Newspapers Ltd and others [1998] 3 WLR 862 (Court of Appeal), [1999] 3 WLR 1010 (House of Lords)
Supreme Court Procedure Committee (Neill LJ), *Report on Practice and Procedure in Defamation* (London, 1991)
Telnikoff v. Matusevitch (1996) 702 A.2d 230; 25 Media L. Rep. 2473
Thorgeirson v Iceland App. no.13778/88, Ser.A vol.239, (1992) 14 EHRR 843
Tolstoy Miloslavsky v UK. App. no.18139/91, Ser.A vol.316, 323, (1995) 20 EHRR 442, (1995) *The Times* 19 July
Von Hannover v Germany, App.no.59320/00, Judgment 24 June 2004
Weaver, R., Kenyon, A., Partlett, D., and Walker, C., *The Right to Speak III: A Comparative Survey of Libel Law* (Carolina Academic Press, 2006)

Web pages:


European Court of Human Rights <http://www.dhcour.coe.fr/>
Press Complaints Commission <http://www.pcc.org.uk/>

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