UK DEFAMATION ACT 2013

Key Changes

The much awaited new legislation affecting English defamation law received Royal Assent in April 2013, ushering in changes substantive as well as cosmetic. Some of the substantive changes are radical and reflect the increasing emphasis on the right of freedom of expression. This comment deals with the key changes brought about by the new Defamation Act 2013.

LOW Kee Yang*
LLB (National University of Singapore),
LLM, PhD (King's College London);
Associate Professor of Law, Singapore Management University.

I. Background

1 The UK Defamation Act 2013,[1] like its predecessor Acts of 1952[2] and 1996,[3] reforms aspects of the law of defamation in England.[4] The draft Bill[5] was presented to the UK Parliament in March 2011, and a Consultation Paper[6] was also issued. The responses from this public consultation were collated in a summary of responses.[7] A joint committee of the House of Lords and the House of Commons ("Joint Committee") scrutinised the Bill and gave its report[8] ("Joint Committee Report") in October 2011. Four months later, the Government's

* The research assistance of Gabriel Lee is gratefully acknowledged. The author is also grateful for the comments made by an anonymous reviewer.

1 c 26.
2 c 66.
3 c 31.
4 Strictly speaking, the UK Defamation Act 2013 (c 26) applies to England and Wales only, although a few provisions apply to Scotland as well: see s 17 of the Act.
5 The draft Bill took into account a Private Member's Bill introduced by Lord Lester of Herne Hill.
6 United Kingdom, Ministry of Justice, *Draft Defamation Bill: Consultation* (CP 3/11, March 2011).
7 United Kingdom, Ministry of Justice, *Draft Defamation Bill: Summary of Responses to Consultation* (CP(R) 3/11, 24 November 2011).
8 United Kingdom, Joint Committee on the Draft Defamation Bill, *Draft Defamation Bill: Report* (HL Paper 203; HC 930-I, 19 October 2011).

response[9] to the Joint Committee Report was presented to Parliament. On 25 April 2013, the Defamation Act 2013 received Royal Assent.[10]

This note explains and comments on the key[11] aspects of the Act, namely:

(a) the requirement of "serious harm" to reputation in order for a statement to be defamatory;

(b) replacement of the defence of justification with the defence of "truth";

(c) replacement of the defence of fair comment with the defence of "honest opinion";

(d) replacement of the *Reynolds* privilege with the defence of "public interest";

(e) responsibility of website operators;

(f) defence of privilege for statements in scientific and academic journals;

(g) protection of "secondary" publishers; and

(h) publishing of summary of court judgments (in claimant's favour).

2 Before we look at the provisions, a few preliminary points should be noted. First, whilst some of the provisions affirm (and merely codify) the common law position, others bring about a change in the law.[12] Secondly, in the process of the Bill becoming an Act, there has been significant change in the wording of some of the provisions, in response to the public consultation and the Joint Committee Report. Thirdly, the last four aspects mentioned above are new matters which

9 United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012).

10 At the time of writing, it was anticipated that the UK Defamation Act 2013 (c 26) would come into force by the end of 2013.

11 Apart from these key provisions, there were provisions relating to: (a) single publication rule and limitation period (s 8); (b) requirement of "most appropriate place" for actions brought by non-domiciliaries (s 9); (c) clarifications on privilege in respect of various types of reports (s 7); (d) trial without jury (s 11); and (e) special damage (in relation to slander of women, and also imputation of disease) (s 14).

12 United Kingdom, Joint Committee on the Draft Defamation Bill, *Draft Defamation Bill: Report* (HL Paper 203; HC 930-I, 19 October 2011) at p 6 stressed that it was essential that the Government, when passing law, makes clear whether it was making changes to the law or simply codifying existing common law. In the United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012) at para 7, the Ministry of Justice accepted the point and assured that it would do so.

were not in the Bill but which surfaced in the process. Finally, it should be noted that both the Joint Committee and the Ministry of Justice were fully aware of the challenge of striking a fair balance between freedom of speech and the protection of reputation.

3 The changes should be borne in mind by lawyers and judges in common law jurisdictions as they read or refer to future English judgments. These developments are also indicators of possible legislative change in other jurisdictions.

II. Requirement of serious harm

4 Section 1 of the Act provides that a statement is not defamatory unless its publication has caused or is likely to cause "serious harm" to the reputation of the claimant. The reader's instinctive reaction is to wonder if this marks a shift in the philosophy and mindset of the law towards defamation. The Explanatory Notes[13] at para 11 explain that the section is merely building on the judicial sentiment expressed in cases such as *Thornton v Telegraph Media Group Ltd*[14] and *Cammish v Hughes*[15] ("*Cammish*") that there must be a threshold of seriousness and *Jameel v Dow Jones*[16] that there needs to be a real and substantial tort. In *Cammish*, Arden LJ stressed the need, in defamation suits, for the "threshold test of seriousness" to be satisfied, adding that "[t]he law does not provide remedies for inconsequential statements, that is, of trivial content or import".[17]

5 As one reconciles oneself to this new thinking, a natural follow-up question would be: how is "serious" to be defined, and where should the line be drawn between a disparaging statement which is serious and one which is not serious?[18] The Bill in fact used the term "substantial harm". The Joint Committee recommended replacing this with "serious and substantial harm". Clearly, whatever the term used, be it "serious" or "substantial", or other alternatives such as "significant" or "material", there will be problems in definition and application, especially along the borders.

6 Practical problems aside, the real objection to the new provision is that the new paradigm appears to be that it is acceptable to defame a person so long as the harm is not serious. Is one permitted to say, for example, that another person is "slightly corrupt" or "somewhat

13 Explanatory Notes to the Defamation Act 2013 (c 26).
14 [2010] EWHC 1414.
15 [2012] EWCA Civ 1655.
16 [2005] EWCA Civ 75.
17 *Cammish v Hughes* [2012] EWCA Civ 1655 at [38].
18 What about where the harm is "not-so-serious"?

arrogant"? Also, is seriousness assessed in terms of the nature of allegation or the extensiveness of harm or both?[19] It would be interesting to see how English courts would grapple with these and other difficulties.[20]

7 Where the claimant is a corporation or an institution which trades for profit, the section provides that there is no serious harm unless the statement has caused or is likely to cause serious financial loss.[21]

III. Defence of truth

8 Section 2 abolishes the defence of justification[22] and replaces it with a defence of truth.[23] Section 2(1) says that it is a defence for the defendant to show that the imputation is "substantially true".[24] The defence apparently applies to statements with single imputation[25] as well as statements with multiple imputations. Where a statement conveys two or more distinct imputations, s 2(3) explains:[26]

> If one or more of the imputations is not shown to be substantially true, the defence … does not fail if, having regard to the implications which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.

Apart from a label change, the section basically codifies the common law position that the defendant only needs to establish the essential truth of the sting of the libel.

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19 In *Cammish v Hughes* [2012] EWCA Civ 1655, the Court of Appeal dismissed proceedings because the publication of the defamatory statements had been extremely limited and the wrong done to the defamed party had been vindicated through explanation made by him to the recipients of the statements.

20 Another question is whether "harm to the reputation" can be interpreted to cover cases where the statement causes the claimant to be "shunned or avoided": *Youssoupoff v MGM Pictures Ltd* (1934) 50 TLR 581. Presumably it can.

21 Defamation Act 2013 (c 26) (UK) s 1(2).

22 Defamation Act 2013 (c 26) (UK) s 2(4).

23 The Joint Committee on the Draft Defamation Bill suggested calling it the defence of "substantial truth".

24 As with the term "serious harm", there will be interpretational problems as to what is "substantial".

25 The Ministry of Justice considered, in United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012) at para 26, the recommendation of the Joint Committee on the Draft Defamation Bill (at para 38) of including a specific provision as to statements with single imputation but ultimately decided it was not necessary.

26 Section 8 of Singapore's Defamation Act (Cap 75, 1985 Rev Ed) provides to similar effect, although the words "materially injure" are used instead.

IV. Defence of honest opinion

9 The displacement of the defence of fair comment with honest opinion results in more than a name change. According to s 3, the defence avails if the defendant satisfies four requirements:

(a) the statement was a statement of opinion;

(b) the statement indicated, in general or specific terms, the basis of the opinion;

(c) the opinion was one which an honest person could have held on the basis of

(i) any fact which existed at the time of publication; or[27]

(ii) anything asserted to be a fact in a privileged statement; and

(d) the defendant actually held the opinion.

Requirement (d) does not apply if the publisher of the statement was not the author; in such a case, however, the defence does not avail if the publisher knew or ought to have known that the author did not hold the opinion.[28]

10 Requirement (b) codifies the position taken by the UK Supreme Court in *Joseph v Spiller*,[29] which rejected Lord Nicholls' view in *Cheng v Tse Wai Chun*[30] that the comment must identify the subject matter with "sufficient particularity" to enable the reader to form his own opinion as to its validity.

11 The section, however, departs from the pre-existing law in several respects. First, there is now no requirement that the comment is one which a fair man[31] would have made; the re-labelling from fair comment[32] as honest opinion suggests as much. Secondly, malice (*ie*, spite or bad motive) now does not negate the defence; an honest

27 Although the section actually omits the conjunctions "and" and "or", the intention is that the two parts are alternatives: see Explanatory Notes to the Defamation Act 2013 (c 26) at para 23.

28 Defamation Act 2013 (c 26) (UK) s 3(6).

29 [2010] UKSC 53; [2011] 1 AC 852.

30 [2000] 3 HKLRD 418 at [41].

31 See, *eg*, *Merivale v Carson* (1888) 20 QBD 275 at 281, *per* Lord Esher.

32 After *Joseph v Spiller* [2010] UKSC 53; [2011] 1 AC 852, the defence became known as honest comment.

opinion is protected even if it is maliciously made.[33] Thirdly, there is no longer a requirement that the comment must refer to matters of public interest.[34] Clearly, the new defence departs significantly from the defence of fair comment and has considerably enlarged the ambit and applicability of the defence. Perhaps in so doing the law has moved too far in favour of defendants.

V. *Reynolds* privilege replaced

12 The Explanatory Notes, after stating that s 4 creates a new defence of public interest, add that:[35]

> … it is based on the existing common law established in *Reynolds v Times Newspapers* and is intended to reflect principles established in that case and in subsequent case law.

A quick account of the case law development in this area would be helpful here.

13 In *Reynolds v Times Newspapers*[36] ("*Reynolds*"), the House of Lords considered the issue of whether the common law defence of qualified privilege on account of reciprocal duty and interest extended to journalists writing on allegations against political figures (in the case itself, it was alleged that the former Prime Minister had misled Parliament). In approaching the subject, the court emphasised the importance of freedom of expression. The words of Lord Steyn were particularly emphatic:[37]

> The starting point is now the right of freedom of expression … In other words, freedom of expression is the rule and regulation of free speech is the exception requiring justification.

14 Lord Nicholls, whose speech received the full agreement of Lord Cook and Lord Hobhouse, provided a list of ten non-exhaustive

33 At common law, it was possible for a defendant to be malicious and yet have honest belief. As Collins MR explained in *Thomas v Bradbury, Agnew & Co Ltd* [1906] 2 KB 627 at 642:

> … [i]t is of course possible for a person to have a spite against another and yet to bring a perfectly dispassionate judgment to bear upon his literary merits, but, given the existence of malice, it must be for the [court] to say whether it has warped his judgment.

34 Public interest was a requirement under the Bill: see United Kingdom, Ministry of Justice, *Draft Defamation Bill: Consultation* (CP 3/11, March 2011) Annex A at cl 4(3).

35 Explanatory Notes to the Defamation Act 2013 (c 26) at paras 29 and 35.

36 [2001] 2 AC 127.

37 *Reynolds v Times Newspapers* [2001] 2 AC 127 at 208. Note also the words of Lord Nicholls (at 205) that "[a]ny lingering doubts should be resolved in favour of publication".

factors ("the Nicholls factors") in determining whether the duty-interest test is satisfied. The factors include: the seriousness of the allegation, nature of the information and the extent to which the subject matter is a matter of public concern, source of the information, steps taken to verify, and whether comment was sought from the plaintiff. These factors help to determine the standard of conduct the journalist has to satisfy in order to claim the defence of qualified privilege.

15 *Reynolds* was applied and elaborated upon in subsequent cases, in particular *Jameel v Wall Street Europe*[38] ("*Jameel*") and *Flood v Times Newspapers Ltd*[39] ("*Flood*"). In *Jameel*, the House of Lords stressed that the Nicholls factors were not tests or hurdles, but only relevant considerations or factors. In particular, it held, reversing the decision of the trial judge and the Court of Appeal, that on the facts the failure to include the claimant's side of the story was not fatal to the defence;[40] allowance must be made for editorial judgment.[41] In similar vein, in *Flood*, the Supreme Court allowed an appeal even though the Court of Appeal had, on the ground that the defendants had done little or nothing to verify the truth of the allegations, denied the application of the *Reynolds* privilege. Clearly, there has been in England a trend to treat "genuine journalistic endeavours more generously".[42]

16 English courts have in recent years tended to ascribe greater importance to free speech than to protection of reputation. Article 10 of the European Convention of Human Rights[43] states:

> Everyone has the right of freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

Section 12(1) of the English Human Rights Act 1998[44] requires that a court when considering whether to grant any relief which might affect the Convention right to freedom of expression (as would potentially be the case in a defamation suit) "must have particular regard to the

38 [2007] 1 AC 359.

39 [2012] UKSC 11.

40 Even though delaying the publication by 24 hours would have given the claimant the opportunity to respond. On the facts of the case, the House of Lords was of the view that the newspaper had taken adequate steps to verify the story.

41 The idea of editorial judgment is reminiscent of the *Bolam* test and the argument that judges should not play at being doctors; but it is much less compelling to argue that judges should not play at being journalists or publishers.

42 Simon Deakin, Angus Johnston & Sir Basil Markesinis QC, *Markesinis & Deakin's Tort Law* (Oxford University Press, 7th Ed, 2012) at p 686.

43 Convention for the Protection of Human Rights and Fundamental Freedoms (Eur TS No 5, 213 UNTS 221, 1953 UKTS No 71) (4 November 1950; entry into force 3 September 1953).

44 c 42.

importance" of the Convention right. Effectively, the provision enjoins courts not to unnecessarily interfere with the Convention right. In several recent landmark decisions, notably *Reynolds*, *Jameel* and *Flood*, an increasing number of judges in UK's highest court have emphasised the primacy of the importance of free speech.

17 It would be fair to say that the concept of responsible journalism as propounded in *Reynolds* and elaborated upon in *Jameel* and *Flood* was quite faithfully reflected in cl 2(1) of the Bill,[45] which provided:

> It is a defence to an action for defamation for the defendant to show that—
>
> (a) the statement complained of is, or forms part of, a statement on a matter of public interest; and
>
> (b) the defendant acted responsibly in publishing the statement complained of.

Clause 2(2) then gave a list of eight non-exhaustive matters (modelled upon the Nicholls factors) a court may have regard to in determining whether the defendant acted responsibly.

18 The Act marks a radical departure from the position under the Bill. Section 4 of the Act provides:

> It is a defence to an action for defamation for the defendant to show that—
>
> (a) the statement[46] complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant *reasonably believed that publishing the statement* complained of *was in the public interest*.
>
> [emphasis added]

The change is significant. Instead of requiring the defendant to act responsibly, the section (only) requires the defendant to have reasonably believed that publishing the statement was in the public interest. The suggestion appears to be that the defendant's reasonable belief (that publication was in the public interest, for instance, because of the importance and urgency of the issue) may justify his acting less than responsibly, for example, in not taking further steps to verify the story or allegation.

45 United Kingdom, Ministry of Justice, *Draft Defamation Bill: Consultation* (CP 3/11, March 2011).

46 Section 4(5) clarifies that the defence applies whether the statement is one of fact or one of opinion.

19 In keeping with the new paradigm, s 4 omits the Nicholls factors and instead provides in s 4(2) that in deciding whether the defendant has shown the matters mentioned in s 4(1), the court must have regard to all the circumstances of the case. Section 4(4) adds that in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest, the court must "make such allowance for editorial judgment as it considers appropriate". It appears that public interest and the defendant's belief (for which allowance must be made for editorial judgment) that publication is in the public interest now overshadow, perhaps excessively, the need for veracity and the protection of the claimant's reputation.

20 The change is a surprising one. The Joint Committee Report and the Explanatory Notes did not specifically address the switch from requiring from the defendant responsible conduct to requiring reasonable belief that publishing the statement was in the public interest and the deletion of the Nicholls factors. Instead, the Explanatory Notes give the impression that s 4 reflects the common law position.[47]

21 It should also be noted that the new public interest defence is not restricted to journalists and media reporters;[48] the section refers simply to "the defendant". The ambit of defendants who may plead this defence is now very wide.

22 Sandwiched within s 4 is a provision relating to a defence known at common law as reportage or neutral reportage. This species of the *Reynolds* privilege was confirmed by the Court of Appeal in *Roberts v Gable*[49] ("*Roberts*"). As Ward LJ explained:[50]

> To qualify as reportage the report … must have the effect of reporting, not the truth of the statements, but the fact that they were made. … If upon a proper construction of the thrust of the article the defamatory material is attributed to another and is not being put forward as true, then *a responsible journalist would not need to take steps to verify its accuracy*. He is absolved from that responsibility because he is simply reporting in a neutral fashion the fact that it has been said without adopting the truth. [emphasis added]

Section 4(3) of the Act provides:

> If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party,

47 Explanatory Notes to the Defamation Act 2013 (c 26) at para 29.

48 Hitherto, there was doubt as to whether the *Reynolds* privilege extended to non-journalists: see *Kearns v General Council of the Bar* [2003] 1 WLR 1357; *cf Grant v Torstar Corp* [2009] SCC 61 and *Seaga v Harper* [2009] 1 AC 1 at 11.

49 [2007] EWCA Civ 721.

50 *Roberts v Gable* [2007] EWCA Civ 721 at [61].

> *the court must* in determining whether it was reasonable for the defendant to believe that the publishing of the statement was in the public interest *disregard* any omission of the defendant to take steps to verify the truth of the imputation conveyed by it. [emphasis added]

Although the wording is by no means identical to Ward LJ's formulation, the provision is a satisfactory encapsulation of the *Roberts* principle. It is observed that the defence is limited to statements relating to disputes; the suggestion of Ward LJ and Sedley LJ in *Charman v Orion Publishing Group Ltd*[51] that the defence could extend beyond disputes to unilateral allegations has not been adopted.

23 In effect, then, s 4 of the Act does two things. First, in what is surely a radical move, it replaces[52] the *Reynolds* privilege with a public defence privilege which is not restricted to journalists and which focuses the inquiry away from responsible journalism to reasonable belief that, in the public interest, the statement should be published. Second, it statutorily confirms the reportage defence.

VI. Responsibility of website operators

24 Section 5 of the Act deals with the challenging issue of the responsibility for publication on the internet. It provides a new defence for operators of websites where a defamation suit is brought against them for a statement posted on the website. Section 5(2) says that it is a defence for the operator to show that he was not the one who posted the statement. Section 5(3) provides that the defence is defeated if the claimant shows that:

> (a) it was not possible for the claimant to identify the person who posted the statement;
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> (b) the claimant gave the operator a notice of complaint; and
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> (c) the operator failed to respond in accordance with regulatory provisions.

The moderating by the operator of a statement posted on the website does not amount to a posting by him (or her); neither does it affect his liability.[53] The section envisages that regulations will be made to deal

51 [2007] EWCA Civ 972; [2008] 1 All ER 750 at [54] and [91] respectively.

52 Section 4(6) of the UK Defamation Act 2013 (c 26) states categorically that the *Reynolds* defence is abolished.

53 Section 5(12) puts it more obliquely: "The defence under this section is not defeated by reason only of the fact that the operator of the website moderates the statements posted on it by others." One objective of this provision is to encourage site owners to moderate contents written by its users: see United Kingdom, Joint

(*cont'd on the next page*)

with the administrative procedures and details. Note that the defence is defeated if the claimant shows that the website operator had acted with malice.[54]

25 The Joint Committee Report had recommended that in respect of publications by identifiable authors, where a complaint has been received about the defamatory material, the operator must publish a notice of complaint alongside the material.[55] (The objective of such publication is to reduce the sting of the libel while protecting free speech.) The complainant could also apply to the court for a "take-down order". The recommendation was not adopted as it involved "significant practical and technical difficulties".[56]

26 The regime contemplated by s 5 appears to be a good effort in dealing with the difficult issue of balancing free speech and protecting reputation in the Internet era. Further refinements and developments can be expected in due course.

VII. Statements in scientific and academic journals

27 One objective of the Bill was to make amendments to provisions of the 1996 Act in relation to the defence of privilege. To this end, cl 5(7) of the Bill proposed to add a provision giving protection to reports of proceedings of scientific and academic conferences and the publications by such conferences. The Joint Committee Report recommended extending privilege to publications of peer-reviewed statements in scientific and academic journals.[57] This recommendation was welcomed by the Government.[58]

28 Consequently, the Act now affords the defence of privilege to such journal publications. Section 6 provides that the publication of a statement is privileged if the statement relates to a scientific or academic

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Committee on the Draft Defamation Bill, *Draft Defamation Bill: Report* (HL Paper 203; HC 930-I, 19 October 2011) at para 100 and the United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012) at para 77.

54 Defamation Act 2013 (c 26) (UK) s 5(11).

55 United Kingdom, Joint Committee on the Draft Defamation Bill, *Draft Defamation Bill: Report* (HL Paper 203; HC 930-I, 19 October 2011) at para 104.

56 See United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012) at para 78.

57 United Kingdom, Joint Committee on the Draft Defamation Bill, *Draft Defamation Bill: Report* (HL Paper 203; HC 930-I, 19 October 2011) at paras 48 and 70.

58 See United Kingdom, Ministry of Justice, *The Government's Response to the Report of the Joint Committee on the Draft Defamation Bill* (Cm 8295, February 2012) at para 43.

matter and an independent review of the statement's scientific or academic merit was carried out by the editor of the journal and one or more persons with the relevant expertise.[59] However, the defence does not avail if it is shown that the publication was made with malice.[60] Also, the defence does not avail if the publication of the matter is prohibited by law.[61]

29 This new defence is a useful one. As usual, one can expect interpretational problems on the terms "scientific", "academic" and "journal". It is observed that the provision proceeds on the highly questionable assumption that independent review is a sufficient safeguard or filter. For one thing, the objective of the review is to assess scientific/academic merit, accuracy, contribution and the like. Whether or not the statements may be defamatory does not form part of the enquiry; indeed, the great majority of reviewers would lack the expertise to make such ascertainment.

VIII. Protection of secondary publishers

30 Section 10 gives limited protection to defendants who may be categorised as secondary publishers. It provides that a court does not have jurisdiction to hear a defamation action brought against a person who is not the author, editor or publisher[62] of a statement unless it is not reasonably practicable for an action to be brought against these "primary" publishers. Much then turns on the interpretation of "reasonably practicable".

31 The common law position was that a line is drawn between republication and mere dissemination. According to Romer LJ in *Vizetelly v Mudie's Select Library*,[63] a mere disseminator who is innocent of any knowledge of the libel contained, who has no reason to be aware of the libellous content and who is not negligent in failing to know that the work was libellous will not be held responsible. Section 10 would protect a secondary publisher even if he was at fault, for example, for

59 Privilege also extends to the assessment of that statement's scientific or academic merit if the assessment was carried out by the person(s) who carried out the independent review and the assessment was written in the course of that review: Defamation Act 2013 (c 26) (UK) s 6(4). The publication of a fair and accurate copy of the statement or assessment (including summaries or extracts thereof) are also protected: Defamation Act 2013 (c 26) (UK) s 6(5).

60 Defamation Act 2013 (c 26) (UK) s 6(6).

61 Defamation Act 2013 (c 26) (UK) s 6(7)(a).

62 The meanings of these three terms are as defined in the UK Defamation Act 1996 (c 31): Defamation Act 2013 (c 26) (UK) s 10(2).

63 [1900] 2 QB 170. See further Simon Deakin, Angus Johnston & Sir Basil Markesinis QC, *Markesinis & Deakin's Tort Law* (Oxford University Press, 7th Ed, 2012) at pp 655–657.

failing to know of the libellous content. Note, however, that the protection is conditioned upon it being reasonably practicable for the claimant to sue the primary publishers.

IX. Publication of summary of court judgment

32 Section 12 provides an interesting facility to successful claimants in defamation suits.[64] It allows the court, presumably upon the claimant's request, to order the defendant to publish a summary of the judgment. The wording of the summary and the time, manner, form and place of its publication are to be agreed upon by the parties.[65]

X. Concluding remarks

33 The UK Defamation Act 2013 has introduced some radical changes to the English law of defamation. Perhaps the most significant of these is the replacement of the *Reynolds* privilege with a statutory defence of public interest, a defence which avails journalists and laymen alike, and where responsible journalism is displaced by a less rigorous concept of reasonable belief that publication is in the public interest. The relabeling of fair comment with honest opinion is also significant, especially since the requirement of public interest has been dropped. The new regime of protection for website operators is also noteworthy and probably needs refining. The extension of privilege to statements in scientific and academic journals is good in principle but there will be challenges, especially when defamatory materials masquerade as academic writing. Finally, the limited protection given to secondary publishers and the publishing of summaries of judgments are welcome additions.

34 The balancing of freedom of expression against the protection of reputation is always an intricate exercise. The dynamics are further complicated by calls for greater media protection and the accentuation of the public's right to be informed. The Defamation Act 2013 is clear testament that, so far as English defamation law is concerned, the balance continues to tilt in favour of freedom of expression and at the expense of protection of reputation.

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64 Hitherto, this facility was available only in summary disposal proceedings under s 8 of the UK Defamation Act 1996 (c 31).

65 Defamation Act 2013 (c 26) (UK) s 2(2). Where the parties cannot agree, the court may give directions (s 2(4)) on these aspects including, where necessary, settling the wording of the summary (s 2(3)).