



SAMOA

DEFAMATION ACT 1993

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DEFAMATION ACT 1993

1993

No.33

AN ACT to amend the law relating to libel and slander and other malicious falsehoods.

[Assent and commencement date: 4 March 1993]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Defamation Act 1993.

2. Interpretation – In this Act, unless the context otherwise requires:

“broadcasting station” has the same meaning as “broadcasting facility” in the Broadcasting Act 2010 and any private broadcasting station within the meaning of “broadcasting facility” in that Act;

“newspaper” means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale or distribution and is published, in Samoa or elsewhere, periodically at intervals not exceeding 3 months: References to words shall be construed as including references to pictures, visual images, gestures, and other methods of signifying meaning.

(2) Part 3 of Schedule 1 has effect for the purposes of the interpretation of that Schedule.

3. Application – Except as otherwise provided in sections 4 and 5, this Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose or the offence was committed, but does not affect any proceedings begun before the commencement of this Act.

**PART 2
CIVIL PROCEEDINGS**

4. Libel and slander actionable without proof of special damage – (1) In any action for defamation (whether libel or slander), it is not necessary to allege or prove special damage.

(2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

5. Slander of title, etc. – (1) In an action for slander of title, slander of goods, or other malicious falsehood, it shall not be necessary to allege or prove special damage if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff.

(2) This section applies for the purposes of any proceedings where the cause of action has arisen after the commencement of this Act, but does not affect any proceedings where the cause of action arose before the commencement of this Act, whenever the proceedings were commenced.

6. Repeating statements made in the course of judicial proceedings etc. – (1) Despite any rule of law or equity to the contrary, and despite the provisions of the Schedule any statement made in the course of judicial or quasi-judicial proceedings, which if made otherwise than in the course of those proceedings would be defamatory of any person other than a person who is a party to those proceedings, shall, if quoted, repeated or published otherwise than in the course of those proceedings, be taken to be a defamatory statement made or published by the person so quoting repeating or publishing the same and is actionable at the suit of the person defamed.

(2) Subsection (1) applies even if the person quoting, repeating or publishing the statement attributes that statement to any other person.

(3) A Judge or other person presiding over any proceedings in Samoa during the course of which there is made a statement to which subsection (1) applies may, if he or she is satisfied that it is in the public interest so to do, make an order permitting the publication of that statement and may attach conditions to that order.

(4) Subsection (1) does not apply in any case where the statement is quoted, repeated or published under and in conformity with the conditions of an order made under subsection (3).

(5) For the purposes of this section:

“statement” includes sworn and unsworn testimony, and also includes any part of a statement, but excludes a judgment, ruling or decision of any Judge, Magistrate or other person or other person acting judicially in respect of any judicial or quasi-judicial proceedings;

“party” in relation to any proceedings includes every person who is entitled as of right:

- (a) to be present and to be heard; and
- (b) to call evidence; and
- (c) to examine or cross examine all persons testifying, at those proceedings.

7. Defamation by association – (1) This section applies to a publication of words which refer to an unidentified member of a class of persons, where a member of that class (in this section referred to as an aggrieved member) has reasonable grounds for believing and does believe that (whether by reason of the smallness of the class or otherwise) a person or persons may suppose that the words are intended to apply to him or her.

(2) An aggrieved member may give written notice to the person who published the words complained of, to any person who authorised their publication, and to any person to whom those words were in the publication attributed, calling upon that person to supply to that member a denial in writing that those words were intended to apply to that member.

(3) If any person to whom subsection (2) applies does not within 7 days of service of notice upon him or her, supply to the aggrieved member the written denial requested in the notice (or as the case may be a written denial that he published or used those words) the person is taken to have intended those words to apply to the aggrieved member.

(4) If an aggrieved member elects to publish any denial received by him or her under subsection (3) the costs of publication are recoverable by the aggrieved member as a debt due to him or her from each person who published or authorised the publication of the words complained of:

PROVIDED THAT the amount recoverable shall not exceed the minimum costs necessary to bring the denial to the attention of those persons who might reasonably be supposed to have been aware of the words complained of.

(5) For the purpose of this section “class of persons” includes (without limiting the generality of that expression) 2 or more persons, whether incorporated or unincorporated who are associated together either for a common purpose, or by reason of a common interest.

8. Unintentional Defamation – (1) A person who has published words alleged to be defamatory of another person may, if he or she claims that the words were published by him or her innocently in relation to that other person, make an offer of amends under this section; and in any such case:

(a) if the offer is accepted by the party aggrieved and is duly performed, no action for defamation shall be commenced or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication);

(b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it is a defence, in any action by him or her for defamation against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) Subsection (1)(a) does not apply to the publication by a person of any word of which the person is not the author unless the person proves:

(a) that the author did not intend to write or publish them of and concerning the party aggrieved, and did not know of circumstances by virtue of which they might be understood to refer to him or her; or

(b) that the words were not defamatory on the face of them, and the author did not know of circumstances by virtue of which they might be understood to be defamatory of the party

aggrieved; and that in either case the author exercised all reasonable care in relation to the matter.

(3) An offer of amends under this section must be expressed to be made for the purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published innocently in relation to the party aggrieved; and for the purposes of a defence under subsection (1)(b) no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(4) An offer of amends under this section shall be understood to mean an offer:

(a) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;

(b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his or her part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(5) Where an offer of amends under this section is accepted by the party aggrieved:

(a) any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the Court whose decision thereon shall be final;

(b) the power of the Court to make orders as to costs in any action by the party aggrieved against the person making the offer in respect of the publication in question, or in any proceedings in respect of the offer under paragraph (a), shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question; and, if no such action or

proceedings as aforesaid are taken, the Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in any such action or proceedings.

(6) For the purposes of this section words shall be treated as published by 1 person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say:

(a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him or her; or

(b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person; and in either case the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(7) For the purposes of this section “Court”, in relation to the publication of any words, means the Court in which any action in respect of the publication has been taken, and, if no such action has been taken, means the Supreme Court.

9. Justification – In an action for defamation in respect of words containing 2 or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of a charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.

10. Fair Comment – In an action for defamation in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of an allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the

facts alleged or referred to in the words complained of as are proved.

11. Actions in respect of publication in different newspapers of same defamatory matter – (1) When an action has been commenced by any person in respect of the publication of defamatory matter in a newspaper, no other action shall thereafter be commenced by the same person in respect of the publication before the commencement of the first-mentioned action of the same or substantially the same defamatory matter in any other newspaper, unless that other action is commenced on or within 30 days after the date of the commencement of the first-mentioned action.

(2) When an action is commenced in breach of the provisions of this section, it is not necessary for the defendant to plead this matter by way of defence, but the same may be given in evidence as defence on the trial of the action.

(3) In determining for the purposes of this section the date of the publication of defamatory matter in a newspaper, the defamatory matter is taken to have been published on the date of issue of that newspaper, and at no subsequent time.

12. Plaintiff to give notice of such actions to each defendant – (1) When 2 or more actions have been commenced by the same person in respect of the publication of the same or substantially the same defamatory matter in different newspapers, the plaintiff shall, as soon as practicable, give to the defendant in each of the actions such notice of the existence of the other actions as is reasonably sufficient to enable each defendant to make application for the consolidation of the actions under the provisions hereinafter contained.

(2) If the plaintiff makes default in giving notice as aforesaid to a defendant, that defendant may apply to the Court to dismiss or stay the action, and the Court may, if in its discretion it thinks fit to do so, dismiss or stay the action accordingly.

13. Consolidation of actions on application of defendants – (1) The Supreme Court, upon the application of the defendants in 2 or more actions brought in that Court or in a District Court by 1 and the same person in respect of the publication of the same or substantially the same defamatory matter, may make an order for

the consolidation of those actions so that they shall be tried together; and after any such order has been made, and before the trial of the actions, the defendant in any other action brought in respect of the same or substantially the same defamatory matter is also entitled to be joined in a common action upon a joint application being made by that defendant and the defendants in the actions already consolidated.

(2) An action consolidated under this section shall be heard and determined in the Supreme Court. If any of the actions consolidated was commenced in a District Court the order consolidating it shall be deemed to be also an order for its removal into the Supreme Court.

(3) In an action consolidated under the provisions of this section the Judge or jury shall assess the whole amount of the damages (if any) in 1 sum, but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately; and if a verdict is given against the defendants in more than 1 of the actions so consolidated, the Judge or jury shall proceed to apportion the amount of damages so found between and against those defendants; and the Judge at the trial, if he or she awards to the plaintiff the costs of the action, shall thereupon make such order as the court deems just for the apportionment of those costs between and against those defendants.

(4) An action consolidated under this section shall be heard at such time and place as the Supreme Court may order.

(5) This section applies to actions for slander of title, slander of goods, or other malicious falsehood as it applies to actions for defamation; and references in this section to the same or substantially the same defamatory matter shall be construed accordingly.

14. Public apology in mitigation of damages – In an action for defamation, the defendant may prove in mitigation of damages that the defendant made or offered a public apology to the plaintiff for the defamation before the commencement of the action, or, if the action was commenced before there was a reasonable opportunity of making or offering such an apology, as soon afterwards as the defendant had a reasonable opportunity of doing so.

15. Other evidence in mitigation of damages – In an action for defamation the defendant may prove in mitigation of damages that the plaintiff has already recovered damages, or has brought an action for damages, or has received or agreed to receive compensation, in respect of any other publication by the same or any other person of the same or substantially the same defamatory matter.

16. Agreements for indemnity – An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe that there is a good defence to any action brought upon it.

PART 3
CRIMINAL PROCEEDINGS
(Repealed)

*17. Powers of Court in prosecutions for defamatory libel –
Repealed*

Note - (Section 84 of the Crimes Ordinance 1961 was repealed and not revived under the Crimes Act 2013).

PART 4
MISCELLANEOUS

18. Qualified privilege for certain reports – (1) Subject to subsections (2) to (4) and section 6, the publication of any such report or other matter as is mentioned in the Schedule is privileged in any civil or criminal proceeding unless the publication is proved to be made with malice.

(2) In an action for defamation in respect of the publication in a newspaper, or as part of any programme or service provided by means of a broadcasting station, of any such report or matter as is mentioned in Part 2 of the First Schedule, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the manner in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or

neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section protects the publication:

- (a) of any report or other matter the publication of which is prohibited by law, or by any lawful order;
- (b) of any such report or other matter as is mentioned in Part 2 of the First Schedule unless it is of public concern and the publication of it is for the public benefit.

(4) Nothing in this section limits or abridges any privilege subsisting immediately before the commencement of this Act.

19. Stay of proceedings for publication of reports, etc., – (1)

A person who is a defendant in any civil or criminal proceeding commenced or prosecuted in respect of the publication of any report, paper, votes, or proceedings by that person, or by his or her servant, by or under the authority of the Legislative Assembly, may bring before the Court in which the proceeding is so commenced or prosecuted (first giving 24 hours' notice or person's intention to do so to the plaintiff or prosecutor in the proceeding or to his or her solicitor) a certificate signed by the Speaker of the Legislative Assembly stating that the report, paper, votes, or proceedings in respect of which the proceeding is commenced or prosecuted were published by that person, or by the person's servant, by order or under the authority of the Legislative Assembly.

(2) The certificate is to be accompanied by an affidavit verifying the certificate.

(3) The Court shall thereupon immediately stay the proceeding, and the proceeding is taken to be finally determined by virtue of this section.

20. Publication of extract from parliamentary report, etc., in good faith and without malice – In any civil or criminal proceeding commenced or prosecuted in respect of the publication of any extract from or abstract of any such report, paper, votes, or proceedings as are referred to in section 19, the defendant may give in evidence the report, paper, votes, or proceedings, and show that the extract or abstract was published in good faith and without malice; and if that is the opinion of the Court judgment shall be entered for the defendant.

21. Evidence as to publisher or printer – Upon the trial of any civil or criminal proceeding commenced or prosecuted in respect of the publication of any defamatory matter in any book or printed document, or in any number or part of a newspaper or other periodical, any printed statement contained in the book, document, number, or part that the same is published or printed by the defendant shall, in the absence of proof to the contrary, be evidence of the truth of that statement.

22. Actions to which Government is a party – In any action for defamation to which the Government or a Minister of Cabinet acting in his or her official capacity is a party the Court seized of the matter shall take all steps as it deems practicable to hear and determine such action at the earliest opportunity.

23. Act to bind the Government – This Act binds the Government.

SCHEDULE **(Sections 2(2) and 18)**

STATEMENTS HAVING QUALIFIED PRIVILEGE

PART 1

STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of the proceedings of the Legislative Assembly or of any of its committee.

2. A fair and accurate report of the proceedings of any Court of justice in Samoa, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

2A. A statement made in the performance of the functions or exercise of the powers of the Controller and Auditor General under any Act or law.

PART 2

**STATEMENTS PRIVILEGED SUBJECT, IN THE CASE
OF A NEWSPAPER OR A BROADCASTING STATION,
TO EXPLANATION OR CONTRADICTION**

3. A fair and accurate report of the proceedings of the legislature of any territory outside Samoa or of any Committee of any such legislature.

4. A fair and accurate report of the proceedings of any Court of justice outside Samoa, whether those proceedings are preliminary, interlocutory, or final, and whether in open Court or not, or of the result of any such proceedings.

5. A fair and accurate report of the proceedings in any inquiry held under the authority of the Government or legislature of Samoa or of any territory outside Samoa, or a true copy of or a fair and accurate extract from or abstract of any official report made by the person by whom the inquiry was held.

6. A fair and accurate report of the proceedings of any international organisation of which Samoa or any other territory within the Commonwealth, or the Government of Samoa or any such territory, is a member, or of any international conference to which the Government of Samoa or any other territory within the Commonwealth sends a representative.

7. A fair and accurate copy of or extract from any register kept in pursuance of any Act which is open to inspection by the public, or of any other document which is required by the law of Samoa to be open to inspection by the public.

8. A notice or advertisement published by or on the authority of any Court of justice, whether within Samoa or elsewhere, or any Judge or officer of such a Court.

9. A fair and accurate report of the proceedings at any meeting or sitting in any part of Samoa of any person or body appointed or constituted by or under, and exercising functions under, any Act (not being a Court of justice or a person holding an inquiry to which clause 5 of this Schedule relates), not being a meeting or sitting

admission to which is denied to representatives of newspapers and other members or the public.

10. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of:

- (a) promoting or safeguarding the interests of any game, sport, or pastime to the playing or exercise of which members of the public are invited or admitted; or
- (b) promoting or safeguarding the interests of any trade, business, industry, or profession, or of the persons carrying on or engaged in any trade, business, industry, or profession; or
- (c) promoting or encouraging the exercise of or interest in any art, science, religion, or learning, being an inquiry relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

11. A fair and accurate report of the proceedings, or of the result of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of promoting and safeguarding the standards of the Samoa press.

12. A fair and accurate report of the proceedings at any public meeting held in Samoa, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

13. A fair and accurate report of the proceedings at a general meeting of any company or association constituted or registered by or under any Act or of any other incorporated company or association operating in Samoa (other than a private company) within the meaning of the Companies Act 2001, not being a meeting admission to which is denied to representatives of newspapers and other members of the public.

14. A copy or fair and accurate report or summary of any statement, notice or other matter issued for the information of the

public by or on behalf of the Government or any department or officer thereof.

PART 3
INTERPRETATION

15. In this Schedule, unless the context otherwise requires:

“Court of justice” includes the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;

“Government”, in relation to any territory outside Samoa which is subject to a central and a local Government, means either of those Governments;

“Legislature”, in relation to any territory outside Samoa which is subject to a central and a local legislature, means either of those legislatures.

REVISION NOTES 2008 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2008 to 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a” or “each” where appropriate
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “pursuant to” changed to “under”
 - “in respect of” changed to “for”
 - “despite that” changed to “even if”
 - “under the hand of” changed to “signed by”
 - (iv) Removal of superfluous terms
 - “at any time”
 - “the provisions of”, “of this section”
 - “the term”
 - “as the case may be”

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Defamation Act 1993

- (v) Numbers in words changed to figures
- (vi) Part numbering changed to decimal
- (vii) definition of "broadcasting station" amended to be aligned with the Broadcasting Act 2010 which defines "broadcasting facility"

Citation of the Act changed to Defamation Act 1993 - i.e. the year in which the Act was passed and assented to.

The following amendment was made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Audit Act 2013, (No.22), commenced on 27 January 2014:

Part I of the Schedule new clause 2A inserted after clause 2

*This Act is administered by
the Ministry of Justice and Courts Administration.*