

Exercise 1: Answers

1. These facts raise issues relating to defamation. The questions that arise here are whether the reported comment is defamatory of the shop owner, whether the newspaper is responsible for publishing the statement made by Mrs Wag, and whether it is responsible for the online comments made by others.

Defamation requires an untrue published statement that lowers a person in the minds of others in a way that damages their reputation. Here the statement suggests the shop owners are fraudulently selling bogus signatures. Fraud is a crime, so the statement is a serious allegation. Unfortunately, it is clearly wrong. This means the words are highly likely to be defamatory. The ordinary, reasonable person, listening to Mrs Wag, would have taken from the words that the shop owners are dishonest people. Clearly, then, Mrs Wag is responsible for making this untrue suggestion. It makes no difference that she spoke the words. Spoken words can be defamatory too, and as long as witnesses can be produced to attest that the statement was made. The shop owners could sue.

2. Potentially, yes. The chain of publication rule in defamation states that anyone involved in publishing the statement is potentially responsible as a publisher too. So you cannot repeat the defamatory statements of others without running the risk of being sued yourself.

3. The newspaper's position is weak. It cannot argue truth. However, it could argue that the story was in the public interest, and that it was not reckless about accuracy even though it got the facts wrong. This depends on the *Lange* defence of political discussion being extended to cover all matters of public interest and might be successful. It could be difficult to argue that there was real interest in a story about celebrities, so the public interest aspect to focus on would be the disclosure of alleged criminal activity by the shop owners.

The newspaper could also argue that Mrs Wag should be responsible for any further publication of her statement in the media because as a celebrity she could foresee that the media would be sure to pick up on any of her statements made in public. This argument has in fact been accepted in a case in the United Kingdom.

Of course, it could simply run an apology and pay the shop owners compensation, in the hopes this extinguishes any legal action.

4. The final issue to think about is the question of whether the *Daily Newz* should be responsible for statements made by people as comments on the online story. The answer is again, potentially yes. Although the matter of responsibility for online comment by third parties has not been settled finally in New Zealand as yet, there are indications the judges may hold the media liable for publishing the statements of others online when the media have actual knowledge the statements are there and do not take them down, and even when they ought to know they are there in the circumstances. So if the *Daily Newz* invited repetition of the statements in its original story, or took some of the statements down but not others, it could not argue it had no idea that defamatory statements were on its website.

If the *Daily Newz* was liable as a publisher in this way, it would have to rely on the possible defences and strategies discussed above.

Exercise 2: Answers

1. This scenario raises issues about privacy and trespass. Secret filming is always risky. The only time it may be tolerated by the law is when the story is in the public interest and there is no other way the evidence could be obtained. Jono's position is relatively weak as he could probably have made inquiries elsewhere - for example, from customers and neighbours.

2. The first thing to note is that Jono has entered private property using pretence. So he is there for a purpose that it is pretty certain Madame Xtreme would not agree to. Even though members of the public (including the media) have an implied licence to enter private property for the purpose of making inquiries, there is no implied licence to use subterfuge in this way. Jono could argue the entrance area of the house is not really private, but this a weak argument as even if this was true, it would not make it lawful for him to secretly film there.

So Jono is probably a trespasser from the time he enters the home.

3. Madame Xtreme could argue that she is entitled to an injunction to stop any broadcast because Jono obtained the film while illegally trespassing.

Also, Madame Xtreme could bring an action in the tort of privacy to prevent Jono from using the information. She would have to argue that she has a reasonable expectation of privacy about what was on the film. She could do this by arguing that the film was taken in a private place and depicts activities connected with sexual (inherently private) activities. Madame Xtreme would also have to argue that broadcasting the film would be highly offensive to an ordinary reasonable person in her shoes. There is a strong argument that for cultural and social reasons, brothel-keeping is a legal but very discrete commercial activity and so broadcasting the film would be highly offensive.

Jono could resist the claim by Madame Xtreme by arguing the story is in the public interest. But since prostitution is now a legal activity, it would be hard to argue that the story is in the public interest, unless there is some suggestion that the brothel does not comply with the law (such as it employs underage prostitutes, allows other crimes - such as drug taking - to occur on the premises, or is not complying with any relevant council bylaws). Simply arguing that prostitution is an immoral activity, or that the neighbours would not like it, would not make the story in the public interest.

Alternatively, Madame Xtreme might use the new tort of intrusion into seclusion to prevent Jono from using the film. She would have to argue that he has intentionally and without authority intruded into her intimate personal activities, space or affairs, which infringed her reasonable expectation of privacy in a way that was highly offensive to a reasonable person. Again, he might argue the story is in the public interest, but he faces the same problems with this defence discussed above.

So it seems Madame Xtreme has a reasonable chance of preventing broadcast of the film, unless the story has a strong public interest element.

Madame Xtreme could also complain to the BSA and has a good chance of succeeding there with a privacy and an unfairness complaint. But that would only be possible after broadcast, and would not prevent the film being shown.

Exercise 3: Answers

1. The issues here are confidentiality and disclosure of journalistic sources.

Breach of confidence occurs when someone discloses information they have received in a confidential relationship or which is information about which there is a reasonable expectation of confidentiality. An employment relationship is clearly one which gives rise to confidentiality and so the concerned employees will undoubtedly be breaching the confidence they owe to the company by giving the information to you. If discovered, they could be sued by the company for breach of confidence.

2. Probably yes. As a third party receiving confidential information, whether you could be liable for publishing or prevented from publishing depends on your behaviour and knowledge. You have not encouraged the employees to breach confidence, nor have you paid for it, which is good. But if you know, or ought to know, the information is confidential, and you still publish, you may be in breach of confidence also.

If any of the information is publically available, it cannot be confidential, so you are safe to publish that. Alternatively, there is a defence if the story is genuinely in the public interest. Here there appears to be a good argument that the story is in the public interest, because the company is large, influential and well-known. Many people will be affected by any dire financial position it is in. Also, the documents appear to show evidence of fraud, which is a crime, and there is strong public interest in stories that reveal criminal activity. So you appear to have strong grounds to go ahead and publish and this would be a defence for the employees breaching confidence also.

The final issue to think about is the possibility that if the matter went to court, you might be asked to disclose your sources. It is an ethical principle that journalists do not disclose their sources, and although the courts try to avoid compelling journalists, ultimately they have the power to do so, even though the journalist/source relationship is seen as confidential. If you refused to disclose, you would be in contempt of court and could in fact be imprisoned while you continue to refuse to comply.

When deciding to order you to disclose, the court would weigh up whether forcing you to disclose is truly necessary and whether it would have detrimental effects on the sources themselves or would make it more difficult for the media to get stories generally. The outcome depends on the facts of each case. Because this story appears to be strongly in the public interest, it appears unlikely the court would order disclosure.