

CONSTITUTION OF BRUNEI DARUSSALAM
{Order under section 83(3)}

EMERGENCY (DEFAMATION) ORDER, 1999

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SCHEDULE – Newspaper statements having qualified privilege.

No. S 40

CONSTITUTION OF BRUNEI DARUSSALAM
{Order under section 83(3)}

EMERGENCY (DEFAMATION) ORDER, 1999

In exercise of the powers conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam hereby makes the following Order —

1. (1) This Order may be cited as the Emergency (Defamation) Order, 1999.

Citation, long title and application.

(2) The long title of this Order is "An Order relating to libel and slander and for matters connected therewith".

(3) This Order applies to any statement made on or after the date of commencement of this Order.

2. In this Order, unless the context otherwise requires —

Interpretation.

"broadcasting by means of telecommunication" means publication for general reception by means of a telecommunication;

"newspaper" means any paper containing public news or observations thereon or consisting wholly or mainly of advertisements which is printed for sale and is published in Brunei Darussalam either periodically or in parts or numbers at intervals not exceeding 36 days;

"telecommunication" means any system for the transmission, emission or reception of signs, signals, writings, images and sounds of all kinds by means of radiowaves, wire, cable or other electromagnetic systems;

"words" includes pictures, visual images, gestures and other methods of signifying meaning.

3. For the purpose of the law of libel and slander, the broadcasting of words by means of telecommunication shall be treated as publication in a permanent form.

Broadcast statements.

4. Words spoken and published which impute unchastity or adultery to any person shall not require special damage to render them actionable.

Words imputing unchastity or adultery.

Slander affecting official, professional or business reputation.

5. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

Slander of title, etc.

6. (1) In any action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage —

(a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or

(b) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Section 3 applies for the purposes of this section as it applies for the purposes of the law of libel and slander.

Unintentional defamation.

7. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him 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 proceedings for libel or slander shall be taken 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 shall be a defence, in any proceedings by him for libel or slander 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) 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 by him 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.

(3) 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 part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) 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 High Court, the decision of which shall be final;

(b) the power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in 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 or to be incurred by that party in consequence of the publication in question;

and if no such proceedings as aforesaid are taken, the High 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 such proceedings.

(5) For the purposes of this section, words shall be treated as published by one person (referred to in this subsection as the publisher) innocently in relation to another person if and only if the following conditions are satisfied —

(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

(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 that 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.

(6) Subsection (1)(b) shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

Justification. 8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every 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.

Fair comment. 9. In an action for libel or slander 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 every 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.

Apology in mitigation of damages. 10. (1) In any action for defamation the defendant may (after notice in writing of his intention to do so duly given to the plaintiff at the time of filing his written statement of his case) give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action or, where the action was commenced before there was an opportunity of making or offering such apology, as soon afterwards as he had an opportunity of doing so.

(2) In an action for libel contained in any newspaper, any defendant who has paid money into court under the provisions of any written law relating to civil procedure may state in mitigation of damages, in his written statement of his case, that such libel was inserted in such newspaper without actual malice and without gross negligence and that, before the commencement of the action or at the earliest opportunity afterwards, he inserted or offered to insert in such newspaper a full apology for the said libel, or, if the newspaper in which the said libel appeared should be ordinarily published at intervals exceeding one week, had offered to publish the said apology in any newspaper to be selected by the plaintiff in such action.

11. (1) A fair and accurate and contemporaneous report of proceedings publicly heard before any court lawfully exercising judicial authority within Brunei Darussalam and of the judgment, sentence or finding of any such court shall be absolutely privileged, and any fair and *bona fide* comment thereon shall be protected, although such judgment, sentence or finding be subsequently reversed, quashed or varied, unless at the time of the publication of such report or comment the defendant who claims the protection afforded by this section knew or ought to have known of such reversal, quashing or variation.

Reports of
judicial
proceedings.

(2) Nothing in this section shall authorise the publication of any blasphemous, seditious and indecent matter or of any matter the publication of which is prohibited by law.

12. (1) Subject to this section, the publication in a newspaper of any such report or other matters as is mentioned in the Schedule shall be privileged unless the publication is proved to be made with malice.

Qualified
privilege of
newspapers.
Schedule.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule, this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper 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 shall be construed as protecting the publication of any blasphemous, seditious or indecent matter or of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting immediately before the commencement of this Order.

13. (1) The provisions of this Order shall apply in relation to reports or matters broadcast by means of telecommunication as part of any programme or service provided by means of a broadcasting station within Brunei Darussalam, and in relation to any broadcasting by means of telecommunication of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper.

Application of
Order to
broadcasting.

(2) Section 10(2) shall have effect in relation to such broadcasting as if for the words "to insert in such newspaper" there were substituted the words "to publish in the same manner" and section 12(2) shall have

effect in relation to any such broadcasting, as if for the words "in the newspaper in which" there were substituted the words "in the manner in which".

(3) In this section, "broadcasting station" means any telecommunication station which is authorised by law, or in respect of which a licence is granted under any written law authorising the station, to provide broadcasting services for general reception.

Limitation of
privilege at
elections.

14. A defamatory statement published by or on behalf of a candidate in any election to any elected or partially elected body shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

Agreements for
indemnity.

15. An agreement for indemnifying any person against civil liability for libel 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 there is a good defence to any action brought upon it.

Evidence of
other damages
recovered by
plaintiff.

16. In any action for libel or slander, the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

Consolidation
of actions
for libel.

17. (1) Upon an application by two or more defendants in actions in respect of the same or substantially the same libel brought by one and the same person, the court or a judge may make an order for the consolidation of such actions so that they shall be tried together.

(2) After any such order has been made and before the trial of the said actions, the defendants in any new actions instituted in respect of the same or substantially the same libel shall also be entitled to be joined in a common action upon a joint application by such new defendants and the defendants in the actions already consolidated.

(3) The court or a judge may, in the case of the same or substantially the same libel published simultaneously in a number of newspapers or copied shortly after publication, give notice to the plaintiff in any action or actions arising out of such libels that a period stated in such notice will be allowed for the discovery of any further publications of such libel in order that the whole of the actions arising out of such libel may be tried together, and after such period has expired no further action shall be instituted in respect of the publication of such libel except for the recovery of special damages.

{4} In a consolidated action under this section, the whole amount of the damages (if any) shall be assessed in one sum but a separate judgment shall be given in respect of each defendant in the same way as if the actions consolidated had been tried separately.

{5} The amount of damages so assessed shall be apportioned amongst those of the defendants against whom judgment has been given, and if costs are given to the plaintiff the court may make such order as it thinks just apportioning the costs amongst such defendants.

18. Whenever in an action for libel the plaintiff sues more than one defendant, whether jointly, severally, or in the alternative, and evidence is given of malice in one defendant or of any other matter of aggravation which would not be admissible in evidence against any other defendant if he were sued alone, such other defendant may apply to the court to have the damages against himself and his co-defendants separately assessed, and if such application be made the court shall assess the damages separately against each defendant and no defendant shall be liable nor shall execution issue against him for any further or other damages than those so assessed against him.

Separate assessment of damages in certain cases in actions for libel.

19. Whenever in any action for libel the plaintiff sues more than one defendant, whether jointly, severally, or in the alternative, each defendant may file a separate statement of his case and appear at the trial by separate counsel or, if he thinks fit, apologise or pay money into court or make other amends, whatever may be the defences set up by his co-defendants, and the plaintiff may accept such apology, money, or other amends and settle or compromise the suit and discontinue the action as between himself and one or more defendants without reference to the other defendants:

Severance of defences.

Provided that the rights and interests of the other defendant or defendants shall not in any way be prejudiced thereby.

20. Sections 17, 18 and 19 shall apply to actions for slander and to slander of title, slander of goods and other malicious falsehood as they apply to actions for libel and references in any such sections to the same or substantially the same libel shall be construed accordingly.

Consolidation of actions for slander, etc.

21. Nothing in this Order affects the provisions of any other law relating to criminal offences or which applies to any prosecution for a criminal offence.

Savings.

22. (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when the issue falls to be determined, that person stands convicted of that offence, shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.

Proof of convictions.

(2) The contents of any document which is admissible as evidence of the conviction shall, without prejudice to the reception of any other admissible evidence, to identify the facts on which the conviction was based, be admissible in evidence to identify those facts.

(3) Where the contents of a document are admissible by virtue of subsection (2), a copy of that document, purporting to be certified by the court concerned shall be taken to be a true copy of that document, unless the contrary is shown.

SCHEDULE

Section 12.

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

**STATEMENTS PRIVILEGED WITHOUT EXPLANATION
OR CONTRADICTION**

1. A fair and accurate report of proceedings —

(a) in public of the legislature of any part of the Commonwealth outside Brunei Darussalam;

(b) in public of an international organisation of which the Government is a member;

(c) in public, of an international conference to which the Government sends a representative;

(d) before any court exercising jurisdiction throughout any part of the Commonwealth outside Brunei Darussalam or a court martial held outside Brunei Darussalam under any law in force in Brunei Darussalam or under any Act of the United Kingdom; and

(e) in public of a body or person appointed to hold a public inquiry by the Government of any part of the Commonwealth outside Brunei Darussalam.

2. A fair and accurate copy of or extract from any register kept in pursuance of any written law in force in Brunei Darussalam which is open to inspection by the public or which members of the public are entitled to have searched or of any other document which is required by any such law to be open to inspection by the public or to which members of the public are entitled on payment of a fee to a copy.

3. A notice, advertisement or report issued or published by or on the authority of any court within Brunei Darussalam or any judge or officer

of such court or by any public officer or receiver or trustee acting in accordance with the requirements of any written law.

PART II

STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

1. A fair and accurate report of the findings or decision of any association formed in Brunei Darussalam for the purpose of —

(a) promoting or encouraging the exercise of or any interest in any art, science, religion or learning; or

(b) promoting or safeguarding the interests of any trade, business, industry or profession or of persons carrying on the same or engaged therein or the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted,

where —

(c) the finding or decision relates to a person who is a member of or is subject by virtue of any contract to the control of the association; and

(d) the association is empowered by its constitution to exercise control over or to adjudicate upon the matters to which the finding or decision relates.

2. A fair and accurate report of the proceedings at any public meeting held in Brunei Darussalam, being a meeting *bone 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.

3. A fair and accurate report of the proceedings at any meeting or sitting in any part of Brunei Darussalam of —

(a) any commission, tribunal, committee or person appointed for the purpose of any inquiry by or under any law; or

(b) any other tribunal, board, commission, committee, or body whether incorporated or not constituted and exercising functions by or under any written law in or under any other lawful warrant or authority for public purposes,

being a meeting or sitting to which admission is not denied to representatives of newspapers or other members of the public.

4. A fair and accurate report of the proceedings at a general meeting wherever held of any joint-stock company or corporation wherever registered whose business is in any way directly concerned with Brunei Darussalam, or of any company constituted, registered or incorporated under the provisions of any written law not being a private company within the meaning of the Companies Act.

Cap. 39.

5. A copy or a fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of the Government or by any public officer or authority.

Made this 5th. day of Jamadilawal, 1420 Hijriah corresponding to the 17th. day of August, 1999 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM