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FACEBOOK—AM I LIABLE FOR WHAT OTHERS POST?

As an increasing number of people are using the internet for their sole source of news and communication so too are more people finding themselves the victims of online smear attacks. When it comes to Facebook and blog sites defamation can seem difficult to deal with as the damage can be done by different people posting comments below the original post. Facebook forums can be a malicious free for all with no attempt made to ensure balance or accuracy.

In recent cases the High Court has held that the publisher of a blog or Facebook page may be liable not only for their original post but also the subsequent comments posted in response.

Section 21 of the Defamation Act 1992 allows the publisher of a Facebook page or blog site the defense of 'innocent dissemination' where they did not know the comments were or were likely to be defamatory and their lack of knowledge was not due to negligence or willful blindness. However the defense of innocent dissemination ceases to apply as soon as the publisher has received notice or knowledge of the defamatory content.

If the owner of the Facebook page or blog is advised that comments on their page or blog are defamatory then failure to remove those comments within a reasonable time frame could cause that owner being found liable for those comments as publisher.

The case of Karam v Parker concerned comments made on social media sites following David Bain's acquittal in the 2009 retrial. The defendant Mr Parker was the creator of a Facebook page "Justice for Robin Bain". The Court rejected Mr Parker's argument of innocent dissemination regarding comments that were posted on the site by third parties. The Court held that as

Mr Parker knew of the posts and their defamatory content and that as he had the power to edit and remove the posts, Mr Parker was regarded as being the publisher of the comments made by the third party.

In assessing damages the Court held that the defamation amounted to a full scale assault on Mr Karam's reputation and awarded damages in the amount of \$350,000.00 together with an injunction to prevent any further publication of any defamatory comments.

If you find yourself the victim of a defamatory statement then simply notifying the comment poster or page owner that the statements maybe defamatory and that they are liable for them under the law, may be sufficient to lead to the defamatory statements being removed.

If this is not the case then filing defamation proceedings could be a possible next step. However it is worth noting that attempts to remove or censor information on the internet can end up drawing more attention to the matter, resulting in the statements being published to a wider audience than had the original statements simply been ignored. This occurred in the McDonalds v McLibel case in the United Kingdom where McDonalds sued two activists for handing out pamphlets allegedly defaming McDonalds practices. It also didn't help McDonalds that the allegations made were largely true which is the first defence to any defamation action.

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