

Defamation and Thai law

Thailand has witnessed a number of high-profile defamation actions in recent years, many of which are currently pending in its courts. Of particular public interest is the 2004 case filed by Shin Corporation against media activist Supinya Klangnarong, and the recent media war between Prime Minister Thaksin Shinawatra and *Manager* founder Sondhi Limthongkul, which resulted in several defamation lawsuits that have since been withdrawn.

These multi-million-baht actions have drawn the attention of the international media and have placed an intense spotlight on the impact that Thai defamation law has on the free exercise of speech. While the focus is on the potential chilling effects in the media, the reality is that Thai defamation law directly affects businesses and private citizens alike.

In fact, average individuals, business owners, and company directors can find themselves subject to defamation lawsuits for the unwitting or careless publishing of statements, even in situations where there is a reasonable belief in their truth.

It is not necessary that the claimed defamation occur in a media setting, as liability can arise from statements made outside the wider media arena. For example, carelessly drafted demand letters and e-mails, criticisms of company policies and procedures, and even negative reviews of restaurants can all lead to potential defamation actions.

Regardless of an individual's personal feelings about the issue of free speech and open debate, it is important to understand Thai defamation law as it stands today, the legal process, and most importantly, how to minimise the likelihood of having to defend such actions. This article is a first of a two-part series providing such guidance.

Defamation. Defamation refers to a category of claims based upon intentionally harmful or false statements "published" in spoken or written form to third parties. Thai law makes no general distinction between spoken (slander) and written (libel) defamation. Further, and of critical importance, is the fact that in Thailand a party can be subjected to civil or criminal litigation for defamation, or both.

Civil Defamation. Section 423 of the Thai Civil and Commercial Code defines civil defamation as a statement made contrary to the truth, which is asserted or circulated as a fact, with resulting injury to the reputation, credit, earnings or prosperity of an individual.

Civil defamation claims are barred after one year from the date that the defamatory act and the person bound to make compensation became known to the plaintiff, or 10 years from the date the act was committed. Being unaware that a statement is false does not constitute a defence if a reasonable person should have known that such statement was false. All that is required is that an untrue

statement was made with resulting damage to the plaintiff.

The problem, however, and what affects most defendants, is that the practical burden of proving falsity under Thai law does not lie on the plaintiff. Rather, the defendant is invariably placed in the position of having to prove that his statement was true to escape liability. Such truth can be difficult to prove in court and may prevent potential speakers from rendering even truthful statements if they are concerned about their ability to prove the allegedly defamatory statements in a later civil court action.

Even if a defendant is able to prove the truth of his statements, he may not be absolved of liability. This is because a defendant may also be required to prove to the satisfaction of the court that the allegedly defamatory statements were substantially justified, even if true. Statements made about certain "private" facts, even if they concern "public figures", may subject one to civil liability.

While admittedly good arguments can be made that such comment is justified, Thai courts have historically placed a greater burden on defendants in proving such justification than is required in some Western jurisdictions.

A defendant may also defend that his statements were privileged. For example, a legitimate defence may lie where the defendant can show that the communication was made in good faith to persons having a rightful interest in the information, such as when an employer provides employee performance evaluations to related business units related to an employee transfer, or when an association circulates notices to its members concerning actions that could potentially damage its business. Other forms of privilege include statements originating in court proceedings and in the Senate, House of Representatives and National Assembly.

With regard to evidentiary proof, Thai law permits a civil court to accept as true those facts adjudged by a criminal court relating to the same defamatory statements. This can streamline the evidentiary process and is one reason why civil defamation actions are often pursued current with or subsequent to criminal defamation actions.

Finally, it is important to emphasise that, in addition to available civil defences, the Thai Supreme Court recognises that a defendant in a civil defamation action has a right to defend using criminal defences to defamation. These criminal defences, which offer some advantages over traditional civil defences, will be discussed in Part 2 of our series: Criminal Defamation.

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