

## Choose your words wisely

Published: 15 Dec 2013

Newspaper Section: Spectrum

These days there is an almost constant stream of invective being hurled by protest leaders against certain government officials. In some other countries defamation cases brought by sitting government officials or politicians, with potentially ruinous damages or even criminal sanctions, have arguably had the effect of limiting vibrant political debate and probing press coverage. Is this possible or even present in Thailand? A simple Google search will yield numerous examples of the increasing use of defamation charges in Thailand's political arena. Yet to better understand what all the fuss is about, let's look at what is defamation and what is the relevant Thai law.



Defamation can come in the form of either “libel”, which is written or otherwise in a fixed medium such as a broadcast, and “slander”, which is spoken and transitory. Whether it's someone with whom you had a previous business or personal relationship, a competitor in your field of work, or a political figure with whom you disagree, it is defamation if you spread damaging lies about a person. To use a Hollywood example, Courtney Love sent a short burst of savage (and misspelled) tweets suggesting that her fashion designer was a thief, a liar, a drug user and a drug seller, among a litany of other things, and ultimately paid over \$400,000 in damages for doing so. Erroneous allegations of infidelity, plastic surgery and drug use in and around the Sunset Strip have had led to similar results. In Thailand, an individual who commits defamation against another person may be subject to both civil and criminal prosecution.

Under Section 423 of the Thai Civil Code Civil and Commercial Code, defamation occurs when a person circulates false information about another person that is injurious to the reputation, credit, earnings, or prosperity of that other person. If the defendant (i.e. the defamer) was unaware that the information was false, but reasonably should have known it was false, they are still liable to pay the victim compensation for damages. There is no upper limit on the damages that can be claimed.

Thailand is among a number of countries whose laws include the concept of criminal defamation. The United National Commission on Human Rights has taken the position that this compromises freedom of expression. The concern is that the threat of imprisonment, coupled with the sometimes astronomical civil damages claimed by the aggrieved party, can cause all but the bravest public critics to bite their tongues out of self-preservation. In Thailand criminal defamation is defined, under Section 326 of the Thai Criminal Code, as anything imputed to another person in communication with a third person that impairs the reputation of the person or is stated so as to expose such other person to hatred or scorn. Punishment for defamation could result in up to 1 year imprisonment and/or a fine not exceeding 20,000 baht. The

penalties increase dramatically under Section 328, to 200,000 baht and a prison term of 2 years, if the defamation is committed through publication of a document, drawing, film, or picture, or through a recording or other means of propagation. In addition, Section 327 protects deceased persons and their surviving kin from defamation in the same manner and with the same penalties that the previous section protects living persons.

In Thailand, along with various common law countries, there are well known defenses to charges of defamation, including if the allegedly defamatory statement is in fact true. However, if the alleged defamer wants to defend himself on the basis that the impugned statements were true, the burden of proof is on the alleged defamer to establish that truth. Also, proving that a defamatory statement is true is not a defence to criminal defamation if the defamatory statement concerned personal matters and if it is not of benefit to the public to know of that true statement.

Thai law follows that in many other jurisdictions in permitting a “fair comment” defence to defamation claims, such that a statement made “in good faith by way of fair comment on any person or thing subjected to public criticism” will not be defamatory. This is an important defense for journalists and public commentators alike. Also, as in many other jurisdictions, statements and opinions expressed by one member to another in a sitting of the House of Representatives or the Senate or at a joint sitting of the National Assembly cannot give rise to defamation suits, unless those statements or opinions are broadcast through radio or television to people outside of those forums and the expression of such words constitutes a criminal offence or a wrongful act against a person who is not a Minister or member of that House.

As on a sporting field, harsh words can be shouted across the aisle in parliament, but civility is to be the rule outside those hallowed halls.

If there is a lesson here, it is that in a world of constant and almost limitless connectivity, a false criticism can spread quickly and cause considerable damage. Don't drink and tweet.

Angus Mitchell ([angus.mitchell@dfd.com](mailto:angus.mitchell@dfd.com))  
Matthew Christensen ([matthew.c@dfd.com](mailto:matthew.c@dfd.com))  
Ponpun Krataykhwan ([Ponpun@dfd.com](mailto:Ponpun@dfd.com))



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