Publisher's Note

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LAW OF DEFAMATION

Erika Chamberlain

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This release features updates to the case law and commentary in Chapters 1, 5, 6, 7, 10, 12, 13, 14, 15, 15A, 16, 17, 18, 26 and 27.

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Highlights:

CHAPTER 15A—Responsible Journalism/Communication on Matters of Public Interest—The common law *Reynolds* defence has been abolished and replaced by section 4 of the *Defamation Act* 2013 defense on a matter of public interest. Section 4 provides that there is a defence to an action for defamation where a defendant makes a statement on a matter of public interest, whether in the form of a statement of fact or expression of opinion, where the defendant reasonably believed that publishing the statement was in the public interest. Like the common law defence, the statute attempts to strike a balance between a claimant's reputation and the defendant's freedom of expression. The defence "applies where the court is satisfied that the public interest justifies publication notwithstanding that it leaves the defamed individual without a remedy for damage to reputation."

CHAPTER 27—Historical Analysis of American Constitutional Developments—Some courts have adopted the rule embraced by the American Law Institute set out in the *Restatement (Second) of Torts*, or a comparable rule, which discards the common law rule of strict liability in all defamation cases and requires that all plaintiffs, except those who are public officials or public figures, who are required to show actual malice, meet the standard of ordinary negligence. The arguments offered for this approach are many. First of all, some courts take the position that it is mandated by federal or state constitutional guarantees of free speech as well as free press, and the unequal application of a rule to media as against non-media publishers is thought to violate equal protection of the law. Secondly, any distinction between media and non-media publications introduces additional complexities into an area of law already burdened with historical anomalies. Thirdly, in treating all publications by defendants the same, the courts would be moving toward consistency, simplicity and certainty in the law. Finally, in applying a negligence standard, the courts would be bringing the law of defamation into accord with the standards applied generally in the law of torts.