TABLE OF CONTENTS

Preface to Second Edition v
Preface vii
Table of Cases xvii

PART 1: THE ACTION

Chapter 1: Introduction 3

Chapter 2: The Distinction Between Libel and Slander 11
1. History 11
2. Distinguishing Libel and Slander 12
3. Legal Effect of the Distinction 16
4. Slander Actionable *Per Se* 17
   (1) Imputations Affecting Business, Office, Job and Profession 17
   (2) Imputations of Criminal Offence 19
   (3) Imputations of a Contagious or Loathsome Disease 22
   (4) Imputing Unchastity to a Woman 23
5. Slander Actionable by Way of Special Damages 24

Chapter 3: The Action for Defamation and Its Defence 27

Chapter 4: What is Defamatory? 29
1. Defamation Defined 29
2. Character of the Defamatory Imputation 31
3. Manner and Form of the Defamatory Imputation 35

Chapter 5: Defamatory Sense and Meaning 47
1. Rules of Construction 47
2. Changing Community Values 52
3. Context and Circumstances 54
4. Reasonable Person Test 59
5. Intent, Understanding and Belief 63
6. The Innuendo 65
7. Special Problems of Defamatory Meaning 68
   (1) Newspapers and Magazines 68
   (2) Television, Radio and Motion Pictures 73
   (3) Books 77
   (4) Internet 79

Chapter 6: Identification 81
1. Introduction 81
2. Test for Identification 82
3. Intent 85
4. Works of Fiction 87

5. Identification Within a Group or Class 89

Chapter 7: Publication 95
1. Introduction 95
2. Liability for Republication by Others 102
   (1) General Rule 102
   (2) Express or Implied Authority to Republish 103
   (3) Moral, Legal or Social Duty to Republish 104
   (4) Republication as a Natural and Probable Consequence 104
3. Liability for Publication by the Plaintiff 105
4. Liability of Secondary Publisher for Repetition of Defamatory Statements 107
5. Place of Publication 110
6. Special Rules of Publication 111
   (1) Publication Through the Mail and by Fax 111
   (2) Publication to a Clerk or Secretary 112
   (3) Publication in a Will 113
   (4) Communications Within a Company or Corporation 113
   (5) Communications Media 115
      (a) Common Law Rule 115
      (b) The United States Single Publication Rule 116
      (c) Canada and Other Common Law Countries 117
      (d) Liability and the Innocent Dissemination Rule 117
   (6) Internet Publications 119

Chapter 8: The Parties 121
1. Introduction 121
2. Plaintiffs 121
   (1) Individuals 121
   (2) Trading Corporations 123
   (3) Non-Trading Corporations 126
   (4) Unincorporated Associations and Partnerships 127
   (5) Governmental Bodies 129
   (6) Religious Institutions and Ecclesiastical Disputes 130
3. Defendants 133
   (1) Corporations 133
   (2) Unincorporated Associations 134
   (3) Partnerships 135
   (4) Governmental Entities 135
   (5) Vicarious Liability 136
4. Collective Agreement Regimes 138

PART 2: THE DEFENCES

Chapter 9: Introduction to Defences 143

Chapter 10: Justification 145
1. Introduction 145

2. Belief, Intention and the Repetition Rule 147
3. Test for Justification 149
4. Justifying Part of a Defamation 152
5. Justifying a Meaning Different from that Pleaded by Plaintiff 153
6. Burden of Proof 154

Chapter 11: Consent 155
1. Introduction 155
2. Nature of the Consent 155

Chapter 12: Absolute Privilege 159
1. Introduction 159
2. Executive Officers 159
3. Parliamentary Privilege 162
4. Judicial Proceedings 164
(1) Introduction 164
(2) Judicial Attributes 167
(3) Persons to Whom the Privilege Extends 171
(a) Immunity of Judges 171
(b) Immunity of Parties 173
(c) Immunity of Counsel 175
(d) Immunity of Witnesses 178
(e) Immunity of Jurors 183
(4) Scope of the Privilege 183
(a) Generally 183
(b) Proceedings in Court 184
(c) Proceedings Outside of Court 186
(d) Documents and Material Filed with or Prepared for the Court 186
(e) Documents and Material Issued by the Court 188
(f) Conferences and Interviews 188
(g) Actions in Contemplation of Litigation 190
(h) Information Given to Initiate Legal Proceedings 192
(i) Information Given to Investigative Bodies 193
(j) Communications Outside the Privilege 195

Chapter 13: Qualified Privilege 199
1. Introduction 199
2. Classification of Privileges 211
(1) Generally 211
(2) Protecting Personal and Private Interests 212
(3) Protecting Another's Interest 215
(4) Protecting Common Interests 217
(5) Protecting the Public Interest 223
3. Special Privilege for Political and Governmental Speech 225
(1) Introduction 225
(2) The Australian Privilege 226
(3) The New Zealand Privilege 228

(4) The English Privilege 229
(5) The South African Privilege 230
(6) The Canadian Privilege 231
(7) Assessment of the Privileges 233

Chapter 14: Protected Reports 235
1. Introduction 235
2. Report of Judicial Proceedings 236
(1) Introduction 236
(2) Fairness and Accuracy 241
(a) Generally 241
(b) Accuracy 241
(c) Fairness 243
(3) Abridgments, Abstracts and Summaries 247
(4) Proceedings in Court 248
(a) Nature of Proceedings 248
(b) Matters Protected 250
(c) Public Nature of Proceedings 251
(d) Pleadings, Documents and Exhibits 252
(5) Supplementary Statutory Judicial Report Privilege 254
(a) Generally 254
(b) Contemporaneous Report 255
(c) Statements of Contradiction or Explanation 255
3. Report of Legislative Proceedings 255
4. Report of Public Documents 258
5. Report of Governmental Bodies 259
6. Report of Public Meetings 260
7. Other Reports Protected by Statute 261
8. Reportage Privilege 262

Chapter 15: Fair Comment 265
1. Introduction 265
2. What is Comment? 268
3. Identifying the Facts 272
4. Fairness 277
5. Matters of Public Interest 284
6. Malice 288
7. Evaluation of the Defence of Fair Comment 290

Chapter 16: Malice 293
1. Introduction 293
2. What is Malice? 295
(1) State of Mind 295
(2) Honest Belief 299
(3) Knowing Falsity 300
(4) Recklessness 302
(5) Negligence 304
3. Evidence of Malice 306
(1) Introduction 306

(2) Intrinsic Evidence 307
(3) Extrinsic Evidence 311
4. Imputing Malice in Joint Torts 316

PART 3: THE REMEDY

Chapter 17: Damages 319
1. Introduction 319
2. Compensatory Damages 322
3. Aggravated Damages 328
4. Aggravating Circumstances 331
(1) Introduction 331
(2) Conduct and Motive of the Defendant 332
(3) Republication or Repetition of Defamation 335
(4) Publication of Additional Defamations 337
(5) Absence of Apology or Retraction 337
(6) Defendant's Influence and Standing in Community 340
(7) Plaintiff's Good Reputation 341
(8) Nature of the Defamation 342
(9) Manner and Extent of Publication 343
5. Mitigating Circumstances 346
(1) Introduction 346
(2) Apology and Retraction 346
(3) Provocation 348
(4) Plaintiff's Bad Reputation 350
(5) Partial Truth 355
(6) Innocent Intent and Motive 357
(7) Previous or Contemporaneous Publications by Others 358
(8) Defendant's Character, Conduct and Condition 361
(9) Miscellaneous Matters in Mitigation 362
6. Punitive Damages 363
(1) Introduction 363
(2) Basis of Award 365
(3) Multiple Defendants 370
7. Nominal and Contemptuous Damages 370
8. Appellate Review of Damage Awards 371
(1) Compensatory Damages 371
(2) Punitive Damages 374

Chapter 18: Injunctions 377
1. Introduction 377
2. Test for Issuance of Interlocutory Injunction 378

PART 4: AMERICAN CONSTITUTIONAL DEVELOPMENTS

Chapter 19: New York Times and the Common Law of Defamation 385

Table of Contents

1. Introduction 385
2. Historical Development 386
3. Public Officials 388
4. Public Figures 393
   (1) Introduction 393
   (2) All Purpose Public Figure 396
   (3) Limited Purpose Public Figure 399
      (a) Introduction 399
      (b) Voluntariness 402
      (c) Nature of the Public Controversy 403
      (d) Matters of Public Controversy 405
      (e) Scope of Criticism 410
5. Constitutional Actual Malice 410
   (1) Actual Malice Defined 410
   (2) Factors in Determining the Existence of Actual Malice 416
      (a) Introduction 416
      (b) Investigation and Verification 417
      (c) Reliability of Informants and Sources 420
      (d) Objectivity of Report 423
      (e) Publication in the Face of Denial 424
      (f) Failure to Protect Against Defamation 425
      (g) Frame of Mind of Publisher 426
      (h) Retraction and Correction 428
      (i) Malice from Language of Publication 428
      (j) Constitutional Burden of Proof 430
   (3) Vicarious Liability for Actual Malice 431
   (4) Inquiries into the Editorial Process and Confidential Sources 432
6. The Communications Media as a Defendant 435
   (1) Introduction 435
   (2) Standard of Care of Media Publishers and Broadcasters ... 437
   (3) Who is a Publisher or Broadcaster 441
   (4) Privilege of Neutral Reporting 443
   (5) Media Damages 445
7. Private Plaintiffs and Non-Media Defendants 447
   (1) Introduction 447
   (2) Common Law Strict Liability 448
   (3) Negligence Standard 449
   (4) Standard of Actual Malice 450
8. Matters of Public Interest and Concern 450
9. Expressions of Opinion 453
   (1) Introduction 453
   (2) Justification of the Rule 456
   (3) Scope of the Protection 457
   (4) Distinguishing Between Fact and Opinion 459
   (5) Identifying the Tests 461
   (6) Miscellaneous Factors Distinguishing Fact from Opinion 464
      (a) Generally 464

(b) Medium of Publication 466
(c) Nature of Expression 469
(d) Character of Publisher 473
(e) Nature of the Audience 474
(f) Rhetorical Hyperbole 475
(g) Cautionary Language 476
(h) Verifiability 478
(i) Precision of Meaning 480
10. Constitutional Appellate Review 481
11. Summary Judgment Proceedings 482
12. Impact on the Common Law of Defamation 484

PART 5: CONCLUSION

Chapter 20: Reflections and Proposals 489
1. Reflections 489
2. Proposals 489
(1) Rule of Strict Liability 489
(2) Definition of Malice 491
(3) Expressions of Opinion 493
3. Conclusion 494

Index 497