

How to Defend Yourself in Court

Introduction:¹

Often, journalists find themselves required, for one reason or another, to sit for interrogation without being given the opportunity to use a lawyer. For this reason, it is essential for journalists to learn more about the legal defenses that can be used when being interrogated for common crimes such as abasement, libel and publishing trial news.

However, it is important before delving into the details of this topic to highlight three important points:

1. The good intention is the journalist's most important legal defense. This is to mean that the purpose of the journalist is only to seek the public interest. Despite the fact that it is considered a motive that has no effect, in general, on the moral element of the crime, it has its impact on the extent of responsibility in the domain of publication offences.
2. The language used by the journalist in writing is very important because it indicates the intention of the journalist, whether he/she intended to libel a particular person or to seek the public interest. That being the case, journalists often use double entendres and oblique words, which is a tactic used to convey the meaning indirectly to the reader.
3. The importance of news to the public and the purpose of publication affect the extent of liability of the journalist, depending on the circumstances of the case. However, the more the topic is general and important to the public, and the more it has a specific and legitimate goal, the less liable for defamation and libel the journalist is, and vice versa.
4. The ability of the journalist to present, while being interrogated, evidence proving the authenticity of his/her publication will let him/her have good chances of being acquitted.

¹ Introduction is cited from the respectful lawyer, Prof. Najad al-Buraei – A training work paper used in several training courses, held in a number of Arab countries, on legal protection for journalists.

- 1. General Defenses:

1-1 Publishing is about exercising the right to report.

The permissibility to publish news requires that the purpose of publication is to notify judges or administrative governors of a crime. The reported offense should not be one of the offenses that the Public Attorney is not allowed to institute criminal proceedings against it without receiving a complaint or request to this effect, such as adultery, which criminal proceedings cannot be instituted until after it is reported by the husband. Publishing a story about a woman who committed adultery or is accused of adultery, for example, cannot be considered as exercising the right to report. This is because the law limits the exercise of this right in such cases to the husband. Apart from that, the published news should be truthful or is most likely to be true, at least, and the journalist should have a bona fide reason for publishing such news, that is to say, the purpose of journalist is to seek the public interest and help authorities discover crimes.

1-2 Publishing is about exercising the right to publish news

It is stipulated that newspapers have the right to publish news so they can fulfill their mission. This right requires three requirements:

- i. The authenticity and social nature of the news. The authenticity of news is required to achieve the social interest on which the permissibility to publish news is based, because there is no benefit for the society if the news is false. The authenticity of news necessitates the incident per se and to whom it is ascribed are true, and the news should be of general social nature. This means that the rule of permissibility does not extend to news that involves report an infamous incident involving the private life of an individual without a goal to achieve socially.
- ii. Objectivity of presentation: The journalist must present the news as it is without exaggeration and in a manner that does not indicate mockery or sarcasm.
- iii. Bona Fide: It means that the purpose of reporting is seeking the public interest, and not defamation or reprisal. If the news is untrue, but the publisher believed it to be true and came to such conclusion based on the usual investigation made in similar cases, the publisher may use the justification of error.

2. The legal defense for the charges of lack of objectivity, balance and integrity.

- The Plea of Unconstitutionality

Due to the absence of a specific and clear guideline to interpret the meanings of balance, integrity and objectivity, journalists should plea the unconstitutionality of such charges. This is because it violates the principle of the legitimacy of crime and punishment, which states that incriminating texts need to be explicit and understood by the common person, and not only by the people of law since having different interpretations for one legal text will criminalize acts that are not deemed criminal according to the law.

- Pleading the journalistic material is balanced and objective because the information is correct.

Not only should this particular plea allow the journalist to prove the authenticity of the information used in the journalistic material, but also provide admissible legal evidence, on the authenticity of information. If the journalistic material includes some information that cannot be proven authentic, the journalist should present admissible legal evidence on his/her fulfillment of duty in respect to investigating, verifying and scrutinizing the accessed information.

- Pleading the journalistic material is balanced and objective because it is an investigation that does not represent the journalist's opinion.

This defense is resorted to in situations where the journalistic material is just a journalistic investigation, meaning it presents and publishes the views of the concerned parties to the audience as they are.

- Requesting the journalistic material to be reviewed by a technical expert to decide its balance and objectivity.

In some cases where the balance and objectivity of the journalistic material is questioned, and whereas this offence is related to the professional duties of journalists, a fortiori, a competent professional expert from the same industry should decide whether the respective material lacks objectivity and balance. This follows the same logic that the courts in cases of medical errors resort to medical technical expertise to determine if there is a medical error or not.

3. Legal defenses for the charges of defamation and denigration

The most common offences relevant to press and publication are defamation and denigration offences (libel). That being said, journalists may use the following defenses:

First: The absence of the material element of the crime. To elaborate:

- The press materials did not include any words or statements that are offensive to the honor, dignity, and moral standard of the complainant.
- The public prosecutor did not present any evidence on the existence of the material elements of the crime, which are the action, the result and the causal relationship thereof. And, it is known that the nature of this offense requires the attribution of a particular material to the complainant and that it would insult the honor and dignity of the complainant and make him/her subject to the regardless and distaste of people.

Second: Lacking the moral element of the crime. To elaborate further:

1. The press material did not address the personality and private life of the complainant.
2. The press material did not include any word or phrase that would undermine the complainant's dignity, honor or prestige.
3. Following the interpretation rules of press materials, one of the most important of which is to interpret the material comprehensively as a single unit, without truncating a phrase

or several phrases, and judging it accordingly, it becomes clear to honorable court the good intention of my client. .

4. The events of the incident are not proven to be true and the public prosecutor did not provide any evidence to prove so.
5. The information included in the press material is true and in the interest of the public because it presented information about a public servant, and the public has the right to know.
6. The public prosecutor failed to present any evidence proving that the journalist intended to offend the complainant or had an ill-intent. This is the basis that the Arab judicial discretion agreed on concerning press and publications cases since the public prosecutor did not sustain the moral element with all its constituents especially, the will of my client to undermine the dignity and honor of the complainant.

Third: The acquittal of the journalist from the offense of denigration.

Article 190 of the Penal Code defines abasement as:

For abasement, and as per Article 190 of the Penal Code, abasement is defined as:

“Every verbal abuse or denigration – other than libel - must be directed at the abased person face to face by words or gestures or in writing or by drawing which did not take place in public, not by telex or by telephone and is not severe in treatment.

Therefore,

It is impossible to commit the offence of abasement through press and publication, and the public prosecutor could not prove that the journalist has verbally abused the complainant face to face, nor did he/she offend the complainant in writing publicly or privately.

Fourth: Reject the complaint because it was submitted by the irrelevant person and / or because no one filed private right of action.

For example, as per Article 364 of the Penal Code: “The cases of abasement, defamation and denigration require the abased to file a case in the capacity of personal plaintiff.”

Fifth: The complainant drops the complaint against one of defendants, which makes the complaint dropped for the rest of defendants.

Given that instituting criminal proceeding or investigation requires the victim or his/her authorized attorney to file a complaint, dropping the complaint is deemed a reason for the expiration of the general lawsuit thereof.

Therefore, you must first check the identity of the complainant and whether his/her agent is authorized to file a defamation lawsuit. Then, you need to make sure that the complainant did not drop the complaint against one of the persons involved in the case such as the editor-in-chief,

caricaturist, or another journalist. This is because dropping the complaint against anyone from the ones being accused means it is dropped against the rest.

Sixth: The plea of anonymity of the abased:

It is known that assigning an incident to a person necessitates that it refers to a particular person. However, attribution in this context does not necessarily mean to mention the partial or full name of the person, but rather it is enough to phrase the words to generalize the intended identify of the victim. For example, the journalist may mention the initials of the victim's name, state his/her career, position, current and previous job, the city or village where he/she was born, or where he/she is living. Thus, convincing the court that the reader cannot identify the intended person through the article makes you undermine an important pillar of the pillars of crime.