

RECEPTION OF DERBYSHIRE PRINCIPLE RELATING TO SUIT FOR DEFAMATION BY CENTRAL OR LOCAL GOVERNMENT BODIES: THE AMBIVALENCE OF MALAYSIAN JUDICIARY

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Abstract

The defamation rule applies to all plaintiffs regardless of their nature, including cooperation. However, an important dent to this rule was made in the seminal case of *Derbyshire County Council v Times Newspapers Ltd and others* [1993] AC 534, by the United Kingdom House of Lords that on the grounds of public interest in the freedom of expression, the courts will not allow free speech to be fettered, by permitting government bodies, whether local or central, to sue for libel. Essentially, the *Derbyshire* principle lays down that under the common law, government bodies, whether central or local, do not have the right to maintain an action for damages for defamation as it would be contrary to the public interest for the organs of government (whether central or local) to have that right because it is of the highest importance that a government body should be open to uninhibited public criticism, and the right to sue for defamation would not only have a chilling effect but would also place an undesirable fetter on the freedom of speech. In the context of Malaysia, the Malaysian judiciary have so far displayed an ambivalent response to the reception of the common law principle laid down in *Derbyshire Country Council*. Some of the courts of first instance have accepted the principle while others have refused to receive the rule. The Malaysian Court of Appeal – through at least two cases - have displayed equal ambivalence to the reception of this common law rule. While one Court of Appeal judgment appears to have openly embraced the rule, the Court of Appeal in a recent judgment by a majority have refused to adopt the principle on the cogent ground that Malaysia has two statutory provisions which expressly allow a local or central governing body to sue for defamation, which the common law embodied in *Derbyshire* cannot abrogate. In light of the foregoing, this paper argues that the Federal Court, the apex court in Malaysia, should decide this critical issue and not let uncertainty in the law prevail. The paper seeks to persuade that while the common law can be abrogated by statute either expressly or by necessary implication, the common law cannot abrogate statutory provisions. Further, while freedom of expression is an important safeguard, it may be more rigorously applied in mature and well developed societies. The primacy of freedom of expression in preventing governmental authorities from suing for defamation may not be a suitable or valid justification in the context of local political situation in Malaysia, where too much freedom of the press with ethical codes not similar to those in the developed democracies, may endanger the reputation of governmental bodies, if freedom of expression were allowed free reign.

Keywords: Defamation, Derbyshire principle, Central or local government bodies

1. INTRODUCTION

It is useful to lay down the basic elements of defamation before discussing the main issue. The tort of defamation aims to protect the interests of the individual in his reputation, for reputation is the soul of the individual. So where a defendant makes an untrue defamatory statement about the plaintiff, the plaintiff will have a right of action against the defendant, unless the defendant can establish one of the many defences available in a defamation action. The courts are required to balance the interest of the individual in the protection of his reputation against the freedom of speech of the person who makes the allegedly defamatory statement. It might appear at the first that the maker of the defamatory statement should not be able to claim the benefits of a constitutionally protected freedom of speech because his statements is of little value, but it should be remembered that some statements which are alleged to be defamatory are statements which are critical of the government or public figures or statements on matters of public interest. Thus, a person who is in fear of being sued in a defamatory action will be discouraged from criticising the government or from making statements in matters of public interest, and an essential principle of democracy will be undermined. Needless to say, not all defamatory statement are matters of public interest, and so worthy of protection, but it should be remembered that the easier it is for the plaintiff to succeed in a defamation action, the more likely that it is that significant inroads will be made into the protection of freedom of speech.

2. LIBEL AND SLANDER

The tort of defamation offers a person means to clear his name, where the defendant has made a statement attacking the plaintiff's reputation. In this way defamation seeks to balance the apparent irreconcilable issues of protecting one's reputation with the right of others to say what they want. A satisfactory balance is critical so that baseless allegations do not ruin lives while allowing a free investigative press to flourish. Defamation takes two forms: libel, in which the statement is of an enduring nature, e.g. written; and slander, where the statement is in a transitory form, e.g. spoken. In either form, the defamation requires a publication of a statement which tends to expose the plaintiff to ridicule or contempt or tends to lower the plaintiff in the minds of right-thinking members of the public. For the most part it is a tort which does not require proof of damage, unless the statement is made in a mere transitory form. The core elements of the tort has remained much the same over the years: the statement must be defamatory, it must refer to the plaintiff and it must be published.

Defamation takes two forms; libel and slander. Libel is a defamatory statement which is contained in a permanent form. The commonest way in which libel is committed is by writing. However, it may be committed in other ways, as long as it is in permanent form. So in *Monson v Tussauds Ltd* [1894] 1 QB 671, the defendants were held to have libelled the plaintiff in displaying a wax work effigy of him near the Chamber of Horrors in their wax works. It was held that wax work could be libel as it was in a permanent form. A statute, a caricature, an effigy, chalk marks on a wall or pictures may constitute a libel. Slander on the other hand, is a defamatory statement which is not in a permanent form such as a spoken statement. Although it may be sometimes difficult to distinguish between libel and slander, there are in fact some crucial differences between libel and slander. Libel can be a crime as well as a tort, slander is only a tort, although the spoken words may constitute a crime, for example, blasphemy. Libel is actionable per se, but the general rule is that slander is only actionable where the plaintiff can show that he has suffered special damage. Special damages requires that the plaintiff suffer loss which is capable of being estimated in money. So loss of friendship is not capable of being estimated in money terms and so does not constitute special damage, but loss of hospitality or loss of marriage prospects may constitute special damage: see *Roberts v Roberts* (1854) 5 B & S 384.

Although the plaintiff in a slander action must generally show that he has suffered special damage, there are certain exceptional cases where this is not so. These exceptional cases are: (i) imputation of a crime. So where the defendant implies that the plaintiff has committed a crime which is punishable by imprisonment, then the plaintiff need not show that he has suffered special damage.¹ (ii) Imputation of unchastity: Imputation of unchastity in women is also actionable without proof of special damage. Such imputations include an imputation of lesbianism² and an imputation that the plaintiff has been raped.³ (iii) Imputation of disease. Where there is an imputation that the plaintiff suffers from an infectious or contagious disease, such as a venereal disease, which is likely to prevent other persons from associating with the plaintiff, then such a slander is actionable without proof of special damage.⁴ (iv) Imputation of unfitness in one's trade or profession. This is

¹ *Hecking v Mitchell* [1910] 1 KB 609

² *Kerr v Kennedy* [1942] 1 KB 609.

³ Section 5 provides: 'In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.'. See also *Yousouppoff v MGM* (1930) 50 TLR 581.

⁴ *Bloodworth v Gray* (1844) 7 Man & G 334.

provided by section 5 of the Defamation Act 1957.⁵

2.1. Essential Elements of Defamation

The burden is on the plaintiff to show that, (a) the words are defamatory, (b) the words complained of must refer to the plaintiff; and that (c) the words had been published.⁶ The words which are used by the defendant must be words which are defamatory. This can be difficult. Lord Atkin in *Sim v Stretch*⁷ said that defamatory words were 'words which tend to lower the plaintiff in the estimation of right thinking members of society generally'. The statement may lower the plaintiff in the estimation of right thinking people by exposing him to 'hatred contempt or ridicule'.⁸ But the statement need not have that effect.

It has been held in *Youssouf v MGM*,⁹ to be defamatory to impute that the plaintiff had been raped. The fact that the plaintiff was said to have been raped would not have exposed her to 'hatred contempt or ridicule', but it may have caused people to shun her or to avoid or lose confidence in her. In deciding whether a particular statement was defamatory the approach which should be adopted is that of the hypothetical ordinary reader who was neither 'naïve' nor 'unduly suspicious', but who 'could read in an implication more readily than a lawyer, and might indulge in a certain amount of loose thinking' on the other hand the hypothetical ordinary reader was not someone who was 'avid of scandal', and he was not someone who selected one bad meaning where, other non-defamatory meanings were available.¹⁰

(a) The words may be defamatory in their ordinary and natural meaning or may carry a secondary meaning (known as innuendo) or both.¹¹ In considering whether a statement is defamatory regard must be had to all the circumstances of the case. Words must be interpreted in the context in which they are written or spoken. It is sometimes said that vulgar abuse is not defamatory. This is not entirely correct. Much depends on the manner in which the words were spoken. Were they slanderous or mere vituperative. In *Fields v Davis*,¹² the defendant called the plaintiff, a married woman a 'tramp'. These words were held not to be defamatory because they were uttered by the defendant in a fit of temper and were understood by those around as being mere vulgar abuse. In *C Shivanathan v Abdullah bin Dato' Haji Abdul Rahman*,¹³ the words by the defendant that the plaintiff was 'dishonest, cheat, liar' were uttered in anger and understood in their context as not imputing a crime but as mere general abuse. Words spoken in jest were held not to be defamatory in *Mohamed Azman v System TV (M) Bhd*.¹⁴

(b) The word must refer to the plaintiff: The statement uttered by the defendant must refer to the plaintiff. This requirement is easily satisfied where the plaintiff is referred to by name by the defendant. Where the plaintiff expressly referred to by the defendant, the plaintiff need not show that the defendant intended to refer to him. In *Hulton v Jones*,¹⁵ the defendant published an article in their newspaper which purported to describe a motor show in Dieppe. IN the article they described the activities of one Artemus Jones, who was a church warden in Peckham and who was described as 'life and soul of a gay little band that haunts the casino and turns night into day, besides betraying a most unholy delight in the society female butterflies'. The plaintiff who was called Artemus Jones but was a barrister rather than church warden at Pekham, brought a liber action against the defendants. Neither the writer of the article nor the editor of the paper had heard of the plaintiff and neither intended to refer to him, but the plaintiff brought witnesses who said that they thought that the article referred to him. The House of Lords held that if reasonable people understood the language of the article as being defamatory of the plaintiff, it was irrelevant that the defendant did not intend to defame the plaintiff. A defendant may be liable if his statement is true of one person, but is in fact defamatory of another person, not known to the defendant and who suffered injury as a result of the publication of the statement. In *Newstead v London Express Newspapers Ltd*,¹⁶ an article in the defendants' newspaper entitled 'why do people commit bigamy' referred to a self-confessed bigamist called 'Harold Newstead, a thirty-year old Camberwell man'. The plaintiff,

⁵ *Luk Kai Lam v Sim Ai Leng* [1978] 1 MLJ 214 and *Wan Abdul Rashid v S Subramaniam* [1984] 1 MLJ 385.

⁶ Per Varghese George JCA in *Dr Syed Azman bin Syed Nawawi & Ors v Dato' Seri Haji Ahmad bin Said* [2015] 5 MLJ 141, 146.

⁷ [1936] 2 All ER 1237.

⁸ *Parmitern v Coupland and Another* (1840) 6 M & W 105.

⁹ See footnote 5 above.

¹⁰ See *Hartt v Newspaper Publishing Plc* (1984) The Times 7 November.

¹¹ All these common law principles have been adopted in Malaysia in a plethora of decisions some of which are *Syed Husin Ali v Syarikat Perchetakan Utusan Malayu Bhd* [1973] 2 MLJ 56; *Chok Foo Chow v The China Press* [1999] 1 MLJ 371; *DP Vijendran v Karpal Singh* [2000] 3 MLJ 22.

¹² (1955) CLY 1543.

¹³ [1984] 1 MLJ 62.

¹⁴ [2000] 4 MLJ 120.

¹⁵ [1910] AC 20.

¹⁶ [1940] 1 KB 377.

who was of the same name and lived in Camberwell, brought a libel action against the defendants. The defendants argued that they had not intended to refer to the plaintiff but to another Harold Newstead who lived in Camberwell. However the defendants were held liable to the plaintiff, because they should have taken greater care to ensure that their article could not have been taken as referring to someone else. The useful case in Malaysia expressing similar sentiments is *Ummi Hafilda bte Ali v Karangkraft Sdn Bhd*.¹⁷

However there is no requirement that the plaintiff be expressly referred to by the defendant. It is sufficient if the statement impliedly referred to the plaintiff, and it can also be satisfied where the defendant's statement does not make obvious reference to the plaintiff. Such was the case in *Morgan v Odhams Press Ltd*.¹⁸ The plaintiff claimed that he had been libelled by the defendants in an article concerned with a dog-doping gang which had allegedly kidnapped a certain Miss Murray. At the time Miss Murray was staying in the plaintiff's flat, and the plaintiff produced six witnesses who testified that they thought that the article was referring to the plaintiff and that he was involved with this dog-doping gang. The House of Lords held that there was sufficient evidence to go to the jury, because the ordinary reader who had special knowledge of the circumstances would conclude that the article referred to the plaintiff.

(c) Publication: The third requirement is that the defendant must publish the defamatory statement about the plaintiff, because it is the plaintiff's reputation in the eyes of others that is protected and not his pride. The defendant need not have intended that the defamatory statement be communicated to any particular person. It is sufficient that the publication to that person could have been reasonably anticipated. So in *Theaker v Richardson*¹⁹ the defendant wrote a defamatory letter to the plaintiff accusing her of being a whore and a brothel-keeper. The plaintiff was a married woman and was a fellow local councillor with the defendant. The defendant put the defamatory letter through the plaintiff's letter box in a manila envelope, similar to the type used for election addresses. The plaintiff's husband picked up the envelope, and believing it to contain an election address, he opened it and read its contents. The defendant was held liable because it was a natural and probable consequence of the defendant's method of delivery of the letter that the plaintiff's husband would open it and read it.

The limits of this rule can be seen in *Huth v Huth*,²⁰ the defendant sent a defamatory letter to his wife, from whom he was separated, stating that they were not married and that their children were illegitimate. The letter was opened by a curious butler who read its contents. It was held that there was no publication of the letter because the defendant could not reasonably have anticipated that an inquisitive butler would open his wife's mail. The common law relating to publication is the same in Malaysia as shown by leading cases eg. *Ying Cheng Ang v Taro Imanka*,²¹ and *Tan Sri Abdul Rahim bin Datuk Thamby Chik v John Marcom*.²²

2.2. Who May Be Defamed?

It is only a living person who can bring an action in defamation. A dead person cannot be defamed, no matter how distressing the defendant's statement is to the deceased's relatives. Corporations have personality for this purpose so that they can sue for defamatory statements made affecting their business.²³ The defamatory rule thus applies to all plaintiffs regardless of their nature.²⁴ Even a local authority was allowed by the English common law to sue for defamation. In *Bagnor Regis UDC v Champion*,²⁵ it was ruled that 'just as a trading company has a trading reputation which it is entitled to be protected by bringing an action for defamation, so the plaintiff as a local government, has a governing reputation which they are equally entitled to protect in the same way...bearing in mind the vital distinction between defamation of a corporation and defamation of its individual officers or members'.

However the House of Lords made a major dent into this common law principle in *Derbyshire CC v Times Newspapers* (The Derbyshire principle) and overruled the *Champion* case above and ruled that a local authority does not have the right to maintain an action for damages. The facts of *Derbyshire CC v Times Newspapers* were that the defendants published an article questioning the propriety of certain investments made by the Council of money in its superannuation fund. The Council claimed that it had been injured in its credit and reputation and had been brought into public contempt. This raised the question whether a local authority could

¹⁷ [2003] MLJ 684.

¹⁸ [1971] 1 WLR 1239.

¹⁹ [1962] 1 WLR 151.

²⁰ [1915] 3 KB 32.

²¹ [1997] 4 MLJ 65.

²² [2000] 5 MLJ 191.

²³ *Metropolitan Saloon Omnibus Co. v Hawkins* (1859) 4 H & N 87.

²⁴ *South Helton Coal Co Ltd. v North Eastern News Association* [1894] 1 QB 133.

²⁵ [1972] QB 94.

claim for liable in respect of its administrative or governing reputation. The House of Lords affirming the decision of the Court of Appeal held: (i) under the common law a local authority does not have the right to maintain an action for damages as it would be contrary to the public interest for the organs of government, whether central or local to have that right; (ii) It was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech.²⁶

3. THE STANCE OF THE MALAYSIAN JUDICIARY TO THE RECEPTION OF THE COMMON LAW *DERBYSHIRE* PRINCIPLE: TO RECEIVE OR NOT TO RECEIVE?

There are at least two Court of Appeal cases that have refused to receive and apply the common law *Derbyshire* principle. The first one was 2011 case of *Lembaga Tanah Persekutuan and Anor v Dr Tan Kee Kwong*,²⁷ the majority of the Court of Appeal, on the submission by the respondent that the *Derbyshire* principle ought to be applied in Malaysia as has been applied in several commonwealth jurisdictions – answered that “we do not find any justification for applying the *Derbyshire* County Council principle here. In particular section 15(1) of the Government Proceedings Act 1956) gives the appellant the right to sue and be sued. It would be preposterous for the court to take away a statutory right by the application of the English common law principle. Even section 3(1)(a) of the Civil Law Act 1956 which allows the application of English common law does not contemplate its application beyond what is administered on 7th day of April 1956”.

Two years later in 2013, in *Tony Pau Kim Wee v Syarikat Bekalan Air Selangor Sdn Bhd*,²⁸ the Court of Appeal said: “The local authorities recognise the right of private companies involved in the provision of public services to sue in defamation. The reasons advanced by the English authorities such as *Derbyshire County Council v Times Newspapers* [1993] AC 534, in denying this right to a company performing a similar role to the respondent in the United Kingdom to institute proceedings in defamation has to date **not** be accepted by our courts as the law of this country”. Clearly in these two cases the Court of Appeal refused to apply or receive the *Derbyshire* rule.

Strangely in 2013 the *Derbyshire* principle was received in two High Court cases, *Kerajaan Negeri Terengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors*,²⁹ and *Kerajaan Negeri Terengganu & Ors v Dr Syed Azman Syed Ahmad Nawawi & Ors (No.2)*.³⁰ On appeal to the Court of Appeal, decision of the first case was affirmed, whereas the decision of the second was reversed, thus this clearly displaying ambivalence by the Court of Appeal to the reception of the *Derbyshire* principle. This judicial ambivalence to the reception or rejection was further brought into bold relief in *Utusan Melayu (Malaysia) Berhad v Dato’ Sri Diraja Haji Adnan bin Haji Yaakob*.³¹

In middle of 2016, in the landmark case of *Government of the State of Sarawak and Another v Chong Chieng Jen*,³² by a majority of two to one, **refused to judicially receive the common law *Derbyshire* principle that a local or central authority cannot sue a person for defamation**. The facts as gleaned from the Court of Appeal, were that the defamatory statements attributed to the respondent, a Member of Parliament and State Assemblyman, concerned the alleged mismanagement of State’s financial affairs, where he alleged that RM11 billion had disappeared from the state’s financial coffers. The apparently libellous statement was published in two publications, the *Sin Chiew Daily News* on 3 January 2013 and the online news portal *Malaysiakini*. Arising from these facts the Court of Appeal was asked whether the first appellant being the State Government of Sarawak and/or the second appellant, being a government department and a government organ had the right to sue and maintain an action for damages for defamation against the respondent.

In the High Court below the trial judge had answered the question in the negative, receiving and relying on the *Derbyshire* principle where the House of Lords held that (i) under the common law a local authority does not have the right to maintain an action for damages for defamation as it would be contrary to the public interest

²⁶ The *Derbyshire* principle has now been extended to political parties. In *Goldsmith v Bhoynul* [1988] 2 WLR 435, it was held that the Referendum Party was unable to bring an action for defamation. Buckley J said that ‘the public interest in free speech and criticism in respect of those bodies putting themselves forward for office or to govern is also sufficiently strong to justify withholding the right to sue’. Note that the House of Lords affirmed that a trading corporation that has a trading reputation can sue for defamation (without any need to prove special damage) if the publication has a tendency to damage it in the way of its business, for the good name of a company is a thing of value: see *Jameal v Wall Street Journal of Europe* [2006] 4 All ER 1279. However, for technical reasons a trade union cannot sue: see *EETPU v The Times* [1980] QB 585.

²⁷ Civil Appeal No W.01 (NCVC) -551-10/2011.

²⁸ [2013] 1 LNS 1433.

²⁹ [2013] 1 CLJ 107.

³⁰ [2013] 1 CLJ 124.

³¹ [2015] 7 CLJ 960.

³² [2016] 3 MLJ 41.

for the organs of government, whether central or local, to have that right, because it was of the highest public importance that a governmental body should be open to uninhibited public criticism, and a right to sue for defamation would place an undesirable fetter on freedom of speech.

However, the majority of the Court of Appeal did not agree with the High Court's ruling in accepting the Derbyshire principle. Abdul Rahman Sebli (for the majority) relied on two statutory provision in Malaysia to justify the court's decision that the common law rule embodied in the Derbyshire County Council case can have no place in Malaysia. One such statute is section 3 of the Government Proceeding Act 1956 which provides inter alia, that proceedings by or against the one not bound by the common law rules, but are regulated by statute, i.e. section 3 of the Government Proceeding Act 1956. Section 3 of the Government Proceeding Act 1956 does not exclude proceedings in libel or defamation by or against the government. Section 3 of the Government Proceeding Act 1956 in fact reads as follows: 'Subject to this Act and of any written law where the Government has a claim against any person which would, if such claim had arisen between subject and subject, afford ground for civil proceedings, the claim may be enforced by proceedings taken by or on behalf of the Government for that purpose in accordance with this Act.'

Clearly therefore, there can be no argument that the Government Proceedings Act is a special statute specially promulgated by Parliament to give the Federal and State Governments the right to commence civil proceedings against an person. Section 3 gives the government the same right as a private individual to enforce a claim against another private individual by way of civil action. **It is a statutory right not a common law right.**

Another important statute which the learned Court of Appeal judge cited to justify the Court's refusal to receive the Derbyshire principle is the Civil Law Act 1956, which essentially sets the cut-off date for the reception of the English common law and equity in Malaysia.³³ Effectively this means under section 3(1)(a) of the Civil Law Act 1956, in West Malaysia the cut-off date for the reception of the English common law and equity is 7 April 1956 and for Sarawak (as in the instant case) is 12 December 1949. In *Chung Khiaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd*,³⁴ Malaysian Supreme Court explained the position as follows: "Section 3 of the Civil Law Act, 1956 directs the courts to apply the common law of England only in so far as the circumstances permit, and save where no provision has been made by statutory law. **The development of the common law after 7 April 1956 (for the States of Malaya) is entirely in the hands of the courts of this country. We cannot just accept the development of the common law in England.**"

The Court of Appeal in the *Government of Sarawak* case noted that the position of the law as stated in *Chung Khiaw Bank* is clear, that where a provision has been made by statute, the door to the reception of the common law of England after the dates specified in paragraphs (a), (b) and (c) of subsection 3(1) of the Civil Law Act is closed. After these dates the development of the common law in Malaysia is '**entirely in the hands of the courts of this country**' and '**we cannot just accept the development of the common law in England**'. For Sarawak the cut-off date is 12 December 1949.

The Court of Appeal was of the firm view that in the face of the two statutory provisions, i.e., section 3 of the Government Proceedings Act 1956 which does not bar a local or central authorities from suing anyone for defamation and section 3 of the Civil Law Act 1956 which sets the cut-off dates for the reception of the English law, in West Malaysia 7 April 1956, Sarawak 12 December 1949, **there is no room for the judicial reception of the common law embodied in the *Derbyshire County Council v Times Newspapers Ltd***. There is much force in the Government of Sarawak case. Although Derbyshire principle has been received by common law in the United States or statute as in Australia, the common law is not monolithic, it can always be abrogated by statute. On the other hand, the common law cannot abrogate a statutory provision. The ambivalent stance of the Court of Appeal can only be settled by the Federal Court.

³³ Section 3(1) provides: 'Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall:

(a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;

(b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;

(c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii): Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.'

³⁴ [1990] 1 MLJ 356.

4. CONCLUSION

It is elementary that although common law is not monolithic, but can be abrogated by statute expressly or by necessary implication, clearly the common law cannot override a statute. Therefore, in the light of the express provision of section 3 of the Government Proceedings Act 1956 and section 3 of the Civil Law Act 1956, which does not prohibit, a local or central authority to sue any person including newspapers, and where the door to the reception of common law has been shut after 1956, and in the light of the different social political circumstances *vis-a-vis*, the United Kingdom, United States or Australia, it is only right for our judiciary to be wary of receiving the common law enunciated in the *Derbyshire County Council* case. Uninhibited press freedom can be ruinous to the type of societies in Malaysia.

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