

Important information on libel and defamation

Definitions

Defamation is:

- 'A statement concerning any person which exposes them to hatred, ridicule or contempt, or which causes them to be shunned or avoided, or which has a tendency to injure them in their office, profession or trade.'
- 'A publication to a third-party of matter which in all the circumstances would be likely to lower a person's reputation in the eyes of right-thinking members of society generally.'

Libel is defamation that occurs in any written format. The above definitions are tests currently applied under English law. However, defamation varies from jurisdiction to jurisdiction. This is important because Taylor & Francis books are published worldwide and libel actions may be brought in more than one territory, depending on where publication takes place. Local laws will apply in each case: for example, in France it is possible to libel the dead if the deceased's friends and relations are affected by the alleged libel. In some other jurisdictions, libel/defamation is a criminal offence. Although English law applies the highest standards, it may still be necessary to take the advice of local foreign lawyers.

Examples of where libel/defamation might arise

Although it is libel/defamation involving politicians and show business personalities which makes the headlines, in our experience allegations of libel/defamation can arise in all sorts of unlikely and unexpected places. Statements about political figures have indeed been a problem for us, and so too have statements about the political bias of news organizations, about the professionalism or otherwise of professionals in their professional area, and about the sexual orientation of (named) ordinary individuals. Other examples include the alleged political extremism of leading educationalists and referring to some people as criminals when their convictions were overturned on appeal (in the interval between completion of the script and publication). In all these real examples, proper attention to detail and proper application by the authors of their undertakings that their work will contain nothing which is defamatory, and that all statements purporting to be facts are true, would have saved a great deal of time, trouble and expense.

You should also note that merely repeating what other people have said can be highly dangerous – repeating a libel counts as a fresh libel every time it is done. There is also a serious risk of defamation by innuendo or implication, as well as by direct statements of fact or opinion. In addition, particular care may be needed in the following areas:

- Images (such as a photograph): Using an image of a particular individual in an inappropriate context may lead to allegations of defamation.
- Companies and institutions: It is possible in some circumstances to libel companies and institutions. We suggest that the same care is taken with companies and institutions as would be taken with individuals.
- Lists: When giving several examples together in a list, be careful that all the examples really are examples of the phenomenon described. For example, in listing war criminals, listing Himmler next to someone who was acquitted of war crimes would be defamatory.

How the risk of libel/defamation can be reduced

At Taylor & Francis we expect that our authors' work will always conform to the highest scholarly standards. Therefore, we require our authors to undertake that their work will contain nothing which is defamatory, and that all statements purporting to be facts are true; and moreover that the truth of such statements can be demonstrated by providing references where appropriate to source material, or can otherwise be justified. If these undertakings are complied with, then the risk of libel/defamation should be greatly reduced.

Sometimes the risk of defamation can be reduced – if not entirely removed – by making a relatively minor change: for example, converting a statement of fact (which cannot be proved) into a statement of opinion (which might be regarded as a fair comment, if based on fact, made without malice, and on a matter of public interest).

More often, however, it is safer simply to leave out any statements where there is any suspicion of libel or defamation. *If in doubt, leave it out.*

What T&F can do: If you have any reason at all for thinking that any part of your work may be libellous or defamatory, please raise the matter with your Editor without delay. Taylor & Francis may be able to advise on what may be defamatory and may be able to suggest changes or deletions to make material less unsafe. Also, we may be able to arrange for further specialist advice if this is thought necessary. In addition, our experience of previous cases can be brought to bear.

Possible consequences

Occasionally we are faced with cases where libel/defamation is alleged. Such cases, even where the allegation cannot be supported, are worrying, troublesome and time-consuming. They can also be very expensive in that we may need to take legal advice, even on what may seem to be trivial points. Also, there may be substantial costs involved in delaying publication, or withdrawing copies already printed. It is important to avoid any risk, even of libel being alleged, if possible. Therefore, if you have any

reason whatsoever for thinking that any part of your work may be libellous or defamatory, please raise the matter with your Editor without delay.

Even where the author has given a warranty and indemnity against any risk of defamation, it is very likely that Taylor & Francis, as well as the author, would be joined as a co-defendant in any claim for libel/defamation and, if the claim succeeds, damages may be awarded against us. In addition, an injunction may be granted requiring us to take copies off sale or preventing us from publishing at all. *Therefore, we will not publish your work if there is any suspicion that material may be libellous or defamatory.*

The warranty and indemnity clause in your contract

In order to demonstrate to our authors that libel/defamation is a serious matter, and in order to demonstrate, if necessary, in our own defence in court, that we take our responsibilities at Taylor & Francis seriously, we require all our authors to warrant to us that the work 'contains nothing ... defamatory' and 'that all statements contained therein purporting to be facts are true'. This warranty, which forms part of the contract which we ask all authors to sign, goes on to commit the author to indemnifying Taylor & Francis 'against all losses, injury or damage and actions, claims, costs and proceedings (including legal costs and expenses and any compensation costs and disbursements paid by the Publishers on the advice of their legal advisers to compromise or settle any claim) occasioned to the Publishers in consequence of any breach or claimed breach of this warranty'.

In other words, if Taylor & Francis are sued for any defamation contained in the work, in breach of the warranty, and lose, we can reclaim the full amount of any award of damages against us and our legal costs from the author. In addition –and this is why it is particularly important that statements where there is any doubt at all about defamation get removed –we can reclaim our costs from authors in those cases where there is an 'out of court settlement' and where the issue of whether a statement is defamatory may not always be completely resolved.

Although this warranty and indemnity may seem a little heavy-handed, the alternative – of not having a warranty – could leave Taylor & Francis open to the charge that we publish negligently, recklessly and without due care. In addition, our contracts with authors must make it clear that Taylor & Francis cannot be obliged to publish material which may be unlawful. Please note that these clauses in our author contract are not unique to Taylor & Francis and are in line with general publishing practice.