

Defamation, Political Speech & Public Office: A Commentary On *Yeoh Tseow Suan v Musa Hassan*

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For more information, please contact:

Datuk D P Naban
naban@rdslawpartners.com

Austen Emmanuel Pereira
austen@rdslawpartners.com

Bahari Yeow Tien Hong
bahari@rdslawpartners.com

Farah Shuhadah Razali
farah@rdslawpartners.com

Kenny Lam Kian Yip
kenny@rdslawpartners.com

Lim Zhi Jian
jian@rdslawpartners.com

Michael Soo
michaelsoo@rdslawpartners.com

Rosli Dahlan
rosli@rdslawpartners.com

Steven Perian KC
speriankc@rdslawpartners.com

Vinayak Sri Ram
vinayak@rdslawpartners.com

The Court of Appeal's decision in *Yeoh Tseow Suan v Musa Hassan* [2026] 3 CLJ 593 marks an important development in Malaysian defamation law, particularly in its treatment of public officials, political discourse, and the limits of permissible speech. The case is significant not merely for its outcome, but for its careful doctrinal clarification across several contested areas, most notably the scope of the Derbyshire principle, the threshold requirements of defamation, and the proper application of established defences.

In reversing the High Court's dismissal of the plaintiff's claim, the Court of Appeal delivered a strong corrective judgment that reinforces the protection of individual reputation, even within the rough-and-tumble arena of political debate.

Revisiting The Derbyshire Principle: A Misapplied Shield

A central issue in the case concerned the High Court's reliance on the Derbyshire principle, derived from *Derbyshire County Council v Times Newspapers Ltd & Ors* [1993] 1 All ER 1011 and affirmed locally in *Lim Guan Eng v Ruslan Kassim* [2021] 2 MLJ 514. The High Court had adopted an inaccurate reading of the principle, effectively barring the plaintiff from suing on the basis that she was an elected representative.

The Court of Appeal firmly rejected this approach. It clarified that the Derbyshire principle is confined to governmental bodies and public authorities, which are precluded from suing in defamation as a matter of public policy. The rationale is to prevent the chilling of legitimate criticism against the state. However, this rationale does not extend to individuals who happen to hold public office.

Importantly, the Court went further in dismantling the High Court's reasoning by rejecting any distinction between statements made about a public officer in their "official" capacity and those made in a "personal" capacity. Such a distinction, the Court observed, was both artificial and unworkable. Public officials do not shed their personal reputations when acting in office, nor should they be left without recourse when personally defamed.

This clarification is doctrinally significant. It ensures that the Derbyshire principle is not misused as a blanket immunity for defamatory speech directed at individuals under the guise of political critique.

Defamatory Meaning: The Irrelevance Of Actual Harm

In addressing whether the impugned statements were defamatory, the Court of Appeal reaffirmed a fundamental principle: the law of defamation is concerned with the tendency of words to damage reputation, not the actual extent of harm suffered.

This aspect of the judgment is particularly important in cases involving prominent public figures. The High Court appeared to have been influenced, at least implicitly, by the plaintiff's public standing and resilience. The Court of Appeal rejected this line of reasoning, emphasising that the ability of a plaintiff to withstand reputational attacks did not negate the defamatory nature of the statements.

By doing so, the Court preserved the objective nature of the test for defamation. The focus remains on how the words would be understood by a reasonable person, rather than on the subjective impact on the plaintiff.

Identification: Context Over Formalism

Another key issue concerned whether the impugned statements referred to the plaintiff, given that she was not expressly named and the term "mereka" ("they") was used. The Court of Appeal adopted a contextual and common-sense approach. It held that identification does not require explicit naming, so long as the plaintiff is reasonably identifiable from the surrounding circumstances. In this case, references to the plaintiff's political party and her book were sufficient to bring her within the scope of the impugned statements.

This approach reflects a broader judicial trend away from formalism and towards contextual interpretation. It recognises that defamatory statements are often framed indirectly, particularly in political discourse, and that the law must be capable of addressing such realities.

Publication In The Digital Age

The Court's treatment of publication is notable for its clarity and modern relevance. The High Court had appeared to place weight on the level of engagement or dissemination of the impugned statements on social media.

The Court of Appeal rejected this approach, holding that publication was complete once the words were communicated to a third party. The scale of dissemination, whether the statement went viral or attracted significant attention, is irrelevant to the establishment of liability.

This clarification is particularly important in the context of digital communication. It ensures that liability does not hinge on unpredictable metrics such as views, shares, or likes, which may vary for reasons unrelated to the defamatory nature of the content. Publication is established once the statement is made to someone other than the person of whom it is written.

The Defence Of Justification: Truth Requires Proof, Not Belief

The defendant's reliance on the defence of justification was firmly rejected. The Court of Appeal emphasised that justification requires proof of objective truth, supported by credible and particularised evidence.

The High Court's acceptance of opinions expressed in Facebook posts as supporting evidence was sharply criticised. The Court of Appeal drew a clear distinction between fact and opinion, noting that the latter cannot establish the former. Hearsay, speculation, and unverified allegations do not meet the evidential threshold required for justification.

This aspect of the judgment serves as a strong reminder that the defence of truth is exacting. It is not sufficient for a defendant to believe that a statement is true; they must prove it.

Fair Comment: The Need For Analytical Discipline

The defence of fair comment also failed, largely due to deficiencies in the defendant's pleadings. The Court of Appeal reiterated that the defence of fair comment required a clear pleading separation between fact and opinion, with the opinion being based on true and properly pleaded facts.

The failure to delineate this distinction proved fatal. This reflects a broader judicial insistence on analytical discipline in defamation cases. Courts will not reconstruct a defendant's case for them; the necessary elements must be clearly and properly articulated from the outset.

Qualified Privilege And The Standard Of Responsibility

In addressing the defence of qualified privilege, the Court of Appeal applied the principles set out in *Reynolds v Times Newspapers Ltd & Ors* [2001] 2 AC 127, particularly the concept of "responsible journalism."

Although traditionally associated with media defendants, the Court's application of these principles to a public speaker at a forum is noteworthy. It signals an expansion of the expectation of responsibility to all individuals who make serious allegations on matters of public interest.

The Court found that the defendant had failed to undertake any meaningful verification or investigation before making the impugned statements. This lack of diligence was incompatible with the standard of responsible communication required to invoke qualified privilege.

Balancing Free Speech And Reputation

Underlying the judgment is a careful balancing of two competing values: freedom of expression and protection of reputation. The Court of Appeal's approach reflects a recognition that while the right to free speech is fundamental in a democratic society, it is not without legal constraints.

The decision reinforces the principle that freedom of speech does not extend to the dissemination of unfounded or reckless allegations. The law continues to draw a distinction between robust criticism, which is protected, and defamatory assertions of fact, which must be justified.

Conclusion

The decision in *Yeoh Tseow Suan v Musa Hassan* [2026] 3 CLJ 593 stands as a comprehensive restatement of key principles in Malaysian defamation law. It corrects a significant misapplication of the Derbyshire principle, clarifies the elements of defamation, and underscores the strict requirements of the available defences.

More broadly, the judgment reflects an evolving legal landscape in which traditional doctrines are being adapted to contemporary modes of communication and political engagement. It sends a clear message: public discourse may be vigorous and even harsh, but it must remain grounded in truth, responsibility, and respect for individual reputation.

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KUALA LUMPUR

Level 16, Menara 1 Dutamas No. 1, Jalan Dutamas 1,
Solaris Dutamas, 50480 Kuala Lumpur
T: +603 6209 5400
F: +603 6209 5411
enquiry@rdslawpartners.com

PENANG

Suite S-21E & F21st Floor, Menara Northam,
No. 55, Jalan Sultan Ahmad Shah, 10050
Penang
T: +604 370 1122
F: +604 370 5678
generalpg@rdslawpartners.com

JOHOR BAHRU

8-35, Menara Delima Satu, Jalan Forest City 1,
Pulau Satu, 81550 Gelang Patah, Johor Bahru
T: +607 585 6414
F: +607 509 7614
generaljb@rdslawpartners.com