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Half-Truth in Online Commentary from a Non-Defamatory Perspective

Shu Yee Teoh
Magistrate, Magistrates' Court of Alor Gajah, Melaka, Malaysia
teohshuyee@yahoo.com.my
ORCID iD: 0000-0002-6052-0337
(Corresponding author)

Ahmad Muzhaffar bin Abdul Razak
Muzhaffar Razak Chambers, Ayer Keroh, Malaysia
mrcadvocates@gmail.com
ORCID iD: 0009-0005-9055-5126

ABSTRACT

Online commentary has gone mainstream on the internet where potentially defamatory material can be shared widely and quickly. This article examines the mechanism of half-truth in online publications and draws a clear distinction between protected opinion and defamatory falsehoods made with the intent to harm one's reputation. Half-truth is not specifically governed by the Defamation Act 1957, however, defamation analysis is a kind of narrative construction determining all the context, omissions and implications in a way that influences their audience. Everyone has a right to express their own opinion openly and honestly without malice. This article suggests reform and provides clearer guidance on limits of defending protected opinion statements from a non-defamatory perspective. The key is where a statement that was true when made does not become a misleading half-truth simply because circumstances later changed, provided the speaker had no actual knowledge of those changes at the time of publication. It is recommended that the half-truth statements should be recognised as a distinct category in defamation law by creating a specific provision under the Defamation Act 1957 with clear criteria, thereby safeguarding honest digital speech and providing a clear guidance on the limits of protected opinion statements from non-defamatory perspective.

Keywords: Online commentary; Defamation; Half-truth; Omissions; Protected opinion

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1. Introduction

In the current era, online commentary has gone mainstream on the internet. That is why defamatory material is widely shared, quickly made available, and streamed in many different ways throughout the web. It is important to be borne in mind that publishing false statements about someone that harm their reputation can be considered defamation. Offensive acts in the online platform can manifest in numerous ways, ranging from posting negative testimonials to making up claims or spreading falsehoods intended to hurt the individual's reputation (Jiyauddin & Banerjee, 2025). This paper shall analyse the law concerning civil defamation as it is enshrined in the law of Malaysia under the Defamation Act 1957 (Act 286) and hereinafter referred to as "DA 1957".[1] Although the DA 1957 does not specify what slander and libel are, both are forms of defamation that involve false statements that impair reputation and are acknowledged in the local context. Slander generally refers to defamation expressed through speech or by gestures, while libel refers to defamation that is permanent in the form of the writing, printing, or an online post.[2] Libel, as this paper will discuss, is a common legal form for online media.

While freedom of speech is a fundamental right, it is not a license to defame others. Arguments that excessive damages in defamation actions create a "chilling effect" on free speech must be carefully balanced against the significant harm and suffering inflicted upon individuals by venomous and damaging accusations. A person's right to reputation deserves legal protection. In this context, Article 10 of the Federal Constitution provides for freedom of speech and expression,[3] however it expressly permits Parliament to impose restrictions that make such restrictions necessary in the interests, among others, of defamation. Thus, our freedom of speech is not absolute as an absolute right would allow irresponsible attacks on reputation to go unpunished, causing more damage to the public than good. In our digital era, online commentary and social media writings have an amazing impact and a potentially damaging effect to a reputation in a matter of minutes. One such recent landmark precedent is the Federal Court case of *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* (hereinafter referred to as "Seema Elizabeth Isoy").[4] The Federal Court unanimously found that "a half true" statement as one that deliberately omits a known material fact may be defamatory. However, this kind of half-truth statement is not specifically governed by the Malaysian DA 1957. The Court further held that directing readers to "google for more information" does not diminish the defamatory nature of the impugned statement. The decision acts as a stark reminder of how language functions and

[1] Defamation Act 1957 (Act 286).

[2] *Ling Wah Press (M) Sdn. Bhd. & Ors v. Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 Malayan Law Journal 77 (Federal Court, Malaysia).

[3] Federal Constitution of Malaysia, art. 10.

[4] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

the legal liability of communication especially in the cyber world. It also ar-gues for an increased doctrinal clarity and points out too closely a reliance upon interpre-tative exercises of innuendo that can lead to inconsistency in the digital and metaverse epochs. In light of the above, this paper aims to explore the half-truth mechanism used by the user in online commentary and to present a clear division of protected opinion and defamation of falsehoods if it be made with intent to damage a person's reputation. Final-ly, the study proposes reform to Malaysia's civil defamation law by explicitly addressing half-truth statements and providing a non-defamatory lens through which to assess such statements from the limits of protected opinion statements.

2. Defamatory Online Commentary

In such a recent Federal Court decision in the case of *Seema Elizabeth Isoy*,[5] it was held that what is referred to as a "half-truth" statement as one which purposively omitted a known material fact and may be defamatory. The half-truth statements are not expressly governed by the DA 1957, and inviting readers to google or search online for more information does not neutralise their defamatory nature. The fact that readers had been instructed to explore the matter further could not be an excuse to wipe away the harm of TS David Chiu's reputation caused by the impugned statement. That judgment is a critical reminder of how words are used, particularly in online communication. It signals a warning to the legal profession against relying too heavily on elaborate interpretive exercises based on innuendo, which may lead to inconsistency in this digital era. Innuendo emerges when words that are harmless when read together with extrinsic facts known to readers can become defamatory. The extended meanings are becoming more common since the rapid evolution of social media, in which readers immediately have access to contextualized information through a search online. Misleading innuendo could stem either from the words that are offensive or from a combination of statements and images. In contrast, actual innuendo which has secondary meaning must be specifically pleaded and proven in the trial by extrinsic evidence. However, if there is an innuendo which, however subtle, can still be discerned from the words as it is part of the normal expression of the publication on a natural and ordinary interpretation.

In this context, the article focuses on the mechanism of half-truth in online commentary, distinguishing between protected opinion which tends to express biased views and false statements intending to damage the reputation of another. Irony often arises when readers notice deliberate inconsistencies in the speaker's words or when they compare the story being told with real-world facts. A passage often becomes meaningful only once it is read as ironic, showing that natural tendency of the readers to understand and engage with irony when it fits the situation (Corcos, 2003). New forms of defamatory meaning have emerged through new technological advances in social media. Words that appear online can acquire a broader defamatory meaning using innuendo, where possibly the special facts known only

[5] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

to certain readers yield a negative implication into the words that are not visible from their face. On the digital side, meaning might also come from inferences drawn by an ordinary reader based on how a sentence is framed, especially where hyperlinks, images or past posts are available with a simple click. There are two types of innuendos known as false innuendo and true innuendo. Making the distinction between false innuendo and true innuendo is crucial.[6] The false innuendo occurs where the natural and ordinary meaning of the alleged offending words is given alone or together with accompanying images or surrounding context. Whilst, true innuendo or secondary meaning is based on extrinsic facts and must be pleaded and proven at trial, if it is established by extrinsic evidence that the intended audiences had special knowledge to understand the defamatory meaning. In this regard, this article reviews the mechanism of half-truth in online commentary, with the purpose of clarifying the line between allowable opinion often held by individuals who have only one side to an issue and false statements expressed in a way designed to hurt another's reputation.

The feature of a half-truth depends on whether its defamatory meaning comes directly from both false and true innuendos, as in the matters from the statement itself or only happens when combined with other elements. In general, the trite law takes a sharp view of its principles believing those that only omitting important facts are defamatory. Conversely, if the statement is substantially true, it may well not be classified as a half-truth. Further, there is malice in those cases where a person deliberately makes a half-truth, especially if the material fact is intentionally omitted. However, if the speaker honestly believes the statement to be true, it may not consider a half-truth. In the current law on freedom of speech, some kinds of speech including obscene, insulting or fighting words are not protected because they have little social value and may cause harm or breakdown of public order. Philosophically, John Stuart Mill who was popular with his work on the beneficial consequences in the defence of free speech, had argued that suppressing opinion is dangerous because it presumes that authorities always know what they are talking about (Tourkochoriti, 2014). He stresses that it is important to contest ideas so that they do not result in unquestioned beliefs. Mill also holds that many ideas can be regarded as only half-truths and actually our progress made comes from conflict of opposing views. Freedom of expression is vital to truth-seeking and the creation of well-informed citizens. Speech, however, may be deprived of any protection if it becomes behaviour that goes beyond opinion and leads to the harmful behaviours of violence or hostility. Under this rubric, half-truth statement is such a term that means something that is not entirely false but misleading in that the falsehood when the statement omits the key factual details. Whether it is defamatory will depend upon whether correctly understood in natural meaning as well as how it can be inferred whether or not it is true. Accordingly, the law has to make a distinction between protected opinion and the misleading statement that is defamatory in nature.

[6] *Yuvarani Ravindra v. Percetakan Kum Sdn. Bhd. & Ors and Another Suit* [2010] 6 Malayan Law Journal 106 (High Court, Malaysia).

It is a trite law that the claimant must prove the following elements in order to prove defamation and there are (a) the statement contains defamatory imputations; (b) the statement must refer to or reflect upon the plaintiff's reputation; and (c) the statement was published to a third party by the defendant.[7] The court must see words from the perspective of an ordinary reasonable person when evaluating if they are defamatory. Such a reader is entitled to read between the lines, inferring from the words in light of general knowledge and experience of worldly affairs. Some statements seem outright defamatory on the surface, but usually the sting is on what the average reader would infer rather than on the actual words, in which these inferences form part of the natural and ordinary meaning of the statement.[8] The digital age has led to intensified threats towards personal reputation, especially through online social media. While defamation law is seeming as a restriction on freedom of expression, the "serious harm" threshold is introduced to provide more protection to free speech with no harm caused to others. It aims to prevent scarce judicial resources from being invested in trivial claims unless there is objectively demonstrable real-life reputational impact can be established of a proper threshold of gravity.[9] The serious harm threshold test is really an exercise in fact-finding and claimants must prove factually impugned statements caused actual reputational damage by extrinsic evidence. This might be challenging for online defamation as direct evidence as presented by third-party reader testimony is hard to come by. However, the fundamental element in determining whether the serious harm has been met remains the gravity of the allegation regardless of whether the allegation is an online publication or delivered by the traditional media channels. Considering the extent of the gravity, courts have similarly seen relevant factors to this assessment as including the size and growth of a defendant's social media following in a range of settings. For instance, in the case of *Riley v. Murray*,[10] the court ruled that social media posts might be subject to percolation or grapevine effect where readership far beyond measurable analytics due to sharing, public interest concern or the viral nature of online disputes. This dissemination mode should be considered when assessing the extent of reputational damage as a result.

In line with one of the authors' earlier doctoral research (Teoh, 2023) which focused the liability for contempt of court decision for internet intermediaries with reference to social media commentary, this present article applies an emphasis solely on online defamation in this discussion. Also significant is the Content Code 2022, enacted and registered with Malaysian Communications and Multimedia Commission (MCMC) which came into effect on 30 May 2022 (Communications and Multimedia Content Forum of Malaysia, 2022). The latest Content Code has set an industry level standard in self-regulation that encourages creativity, innovation and sustainable development while ensuring its online conduct is in accordance to established Malaysian culture, harmonious and normative standards. It is still

[7] *Masyitah bt. MP Hassan v. Sakinah bt. Sulong* [2021] 7 Malayan Law Journal 144 (High Court, Malaysia).

[8] *Yuvarani Ravindra v. Percetakan Kum Sdn. Bhd. & Ors. and Another Suit* [2010] 6 Malayan Law Journal 106 (High Court, Malaysia).

[9] *Courtney v. Ronksley* [2024] England and Wales High Court (King's Bench Division) 572.

[10] *Riley v. Murray* [2022] EWCA Civ 1146 (England and Wales Court of Appeal).

required that the public be made aware of this regulatory framework. The said Content Code 2022 was created by the Communications and Multimedia Content Forum (CMCF) in accordance with the provisions of section 213 of the Communications and Multimedia Act 1998 (CMA) and registered with the MCMC as above-mentioned. As such, a long-standing problem which can be addressed is the extent of liability borne by internet intermediaries for third-party content published on their platforms with reference to the Code about responsibility for monitoring and controlling access to online content lies with the user, who decides the nature of the content consumed and the tools used across Internet Access Service Providers (IASPs), link providers or Online Content Hosting Providers (OCHs) under Part 6, Content Code 2022 and further Part 5 on the concept of innocent carrier, as previously has been examined at the same doctoral research.

Providers that host content and online platforms are generally shielded from liability for illegal content, provided that they maintain a neutral or passive approach towards such content. That exemption applies only if the host does not know about such illegal behaviour in fact and does not create the content in an illegal way or where the legality issues arise. Assuming that awareness is gained or there is information about a content being taken, the intermediary needs to take a swift step to remove the offending content or disable access. Therefore, those defamatory online commentary posted by users pose significant challenges for web portals and social networks particularly where platforms transition from passive facilitators to active moderators of content. Internet mediators are commonly perceived simply as mere conduits, caching providers or hosting providers. Although all these three are believed to work as technical service rather than content contributors, the legal framework for hosting providers has become more complex. The hosting service providers are now subjected to additional obligations such as providing a reporting mechanism for illegal content and provide justification for reason to remove certain content or conduct specific monitoring or filtering of the material to prohibit continued dissemination of the illegal content when appropriate (Popovic, 2021). The said developments demonstrate the need for the intermediaries to take corrective actions and also provide a legal basis within which to hold them liable where they fail to exercise due diligent in responding appropriately to the defamatory content from third parties.

On the other hand, as for the individual author's post, the courts have also weighed the defendants influence and social reach particularly in the social media realm in assessing liability and reputational damage. The defamation case which lacked evidence of "serious harm" as the claimant's claim was based on emotion rather than showing how the posting tarnished their reputation. While emotional distress could impact compensation later, it provides insufficient material to prove such serious harm. The focus is that the claimant could have failed to provide specific examples of how the post harmed their reputation and mixed reactions to parts of the post that were not defamatory rather than the defamatory meaning. In order for the claimant to establish serious harm, they needed to present clear facts regarding the seriousness of the accusations, the reach of the post's publication, and the social context of both parties. On the premise, the defamation case could be weakened when

the claimant failed to show that their reputation was damaged in the minds of others but not merely emphasized on personal upset of the reputational damage.

The threshold for "serious harm" has, among other factors, been set based on merit of the allegation, extent of dissemination and defendant's social or professional standing in a given field. It is in step with that of section 1 of the Defamation Act 2013 (UK) which increases the threshold to an extent that trivial claims are rendered less desirable and that freedom of expression is enshrined (Brimblecombe, 2025). However, the "serious harm" requirement may be especially difficult for claimants who sue someone for online defamation because it makes establishing reputational damage in the online platform a challenge. In the Malaysian context, the implementation of the half-truth argument may potentially confuse criterion with what traditionally are held to be forms of defences such as justification, fair comment or qualified privilege. It was submitted that the concept of half-truth reversed the traditional standard of an ordinary reader being reasonable which is neither over-suspicious nor enthusiastic about scandal. The test for determining whether words are defamatory has been a settled issue. Moving on, a word is defamatory if taken at its natural and ordinary meaning, where the word generally diminishes the plaintiff's value to the estimation of right-thinking members of society with imputing dishonourable conduct or lack of integrity, or expose hate, contempt, ridicule, or adverse opinion against the claimant.[11]

As held by *Colour Your World v. Canadian Broadcasting Corporation*,[12] the plaintiff company had suffered damages for a television report alleging mercury in paint created serious risks to health. The trial court ruled that the report had given one false impression that could undermine the company's reputation. However, the trial court's decision was set aside on appeal whereby the Court of Appeal emphasized that whether the statement is defamatory is necessary to be judged by the viewer who is assumed to be a reasonable and ordinary person. The crux of the issue is whether this statement would reduce the claimant's reputation in the mind of a reasonable person. Generally, a false impression may lead to misleading statements, no matter how technically correct it is. Despite such, the appellate court ruled that a reasonable viewer would not find that mercury in paint induced the level of harm as found in the poisoning incidents referred to upon the critical difference between these courts' approaches. The trial judge looked at the potential that a half-truth could mislead the viewers, whilst the Court of Appeal took the other approach and considered the reasonableness of the audience, assuming that viewers had critical reasoning skills and would not readily reach defamatory conclusions. As such, the courts must not presume the internet will impose greater harm in all instances of online publication since each case should be evaluated on its own merits and the truth meaning of the statement in connection with its actual impact. This had led to awarding oppressive damages in the absence of

[11] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

[12] *Colour Your World v. Canadian Broadcasting Corporation* [1998] Canadian Legal Information Institute 1983 (Ontario's Court of Appeal).

evidence of actual harm might stymie actual criticism and diminish the value of the Internet as a space for exchange of ideas (Danay, 2010).

For the defamatory author or an internet intermediary who fails to take due diligence or corrective actions to prevent the harm which can be held responsible for defamatory speech, the authors submit that it is increasingly important to distinguish carefully intentional innuendo from half-truth information in the online commentary. The reputational harm caused by these commentaries is irreversible once published. The damage of online defamation has, for far too long, been observed as exceptional by the courts. With even greater access than printing via online media ecosystem, they can be reproduced and disseminated far more easily than via traditional media. Specifically, false allegations, if there are, can continue for years in the air for readers to communicate that in this information age with the notion that the truth rarely catches up with a lie (Freckelton, 2020). Hence, it is clear being the main reason for the professionals to increasingly willing take a firm stand against the false online publication.

3. Determining the Extent of Half-truth Commentary

In the era of digital evidence, when assessing the significance of an alleged innuendo, context is usually emphasised by the court. In the case of *Molotlegi v. Mokwalase*,[13] initially the High Court had issued a separation of issues order which sought to establish the meaning of the perceived innuendo without any reference to the circumstances in which the words were published. This raises an issue as to whether it is actually acceptable in defamation cases to separate the determination of meaning from the surrounding context, most especially when a claimant employs a secondary or extended meaning. In the field of defamation law, words can have a primary or a secondary meaning. The primary meaning is the natural and ordinary meaning that a reasonable reader would ascribe to it, while the secondary meaning is that which true innuendo accrues defamation when a user recognises the defamatory force behind the words in the context of extrinsic facts known to the user. As said, such special circumstances have to be pleaded with particularity and proven by evidence demonstrating both the existence of those facts and the readers' knowledge of them.[14] In contrast, meanings that are implied or inferred or that come directly from the words themselves are part of their natural and ordinary meaning, and have historically been described as false innuendo.[15] Especially in the local context, it is now widely established that the meaning of words cannot be determined independently, as the High Court decision was also set aside by the Supreme Court of Appeal, ruling that the meaning of an innuendo must be determined by considering the context in which the words were spoken.[16]

[13] *Molotlegi v. Mokwalase* [2010] 4 All South African Law Reports 258 (Supreme Court of Appeal, South Africa).

[14] *National Union of Distributive Workers v. Cleghorn & Harris Ltd* [1946] Appellate Division 984 (Appellate Division of the Supreme Court of South Africa).

[15] *W v. Atoll Media (Pty) Ltd* [2010] 4 All South African Law Reports 548 (Western Cape's High Court).

[16] *Molotlegi v. Mokwalase* [2010] 4 All South African Law Reports 258 (Supreme Court of Appeal, South Africa).

Objectively, ordinary and natural meaning of the words has to be examined within the context of the publication in its entirety including its tone, structure and surrounding circumstances through their literal or inferred or indirect meaning.[17] The courts may weigh the literal significance of the words against potential implications or interpretations a reasonable reader might make. Figuring out innuendo without context is artificial and as such, it may distort the defamatory sting of the publication. Although procedural rules allow courts to order some areas of dispute to be set down where questions of law or fact can be conveniently decided beforehand, such order of separation of issues should be taken with care. There can be no fair and expedient way to separate meaning or context in defamation cases of innuendo. In light of this, it would be unfair to require a claimant to prove any defamatory effect without reference to this very context from which a defamatory imputation might have arisen (Gowar & Visser, 2011). Thus, separation of issues is improper where defamatory meaning derives from context or extrinsic fact. It follows that defamation has become more multifaceted in such a digital environment. For instance, online commentary which is written in language that is often informal and internet slang, or made in visual forms like pictorials and emojis may carry multiple meanings. Defamation law has evolved to reflect that reputational harm is a recipient-centric issue as to the extent to which a statement is defamatory depending on how it would be perceived by a reasonable audience in that communicative context. In other words, the statement should in no case be considered defamatory, although the statement is offensive in a different context even if it might not be perceived as socially unreasonable or harmful by its intend-ed community. At the same time, where an adversary's words are capable of damaging reputation both online and offline through online commentary, the courts should recognise that substantial damages may be appropriate to compensate for harm to relational interests arising from the interactive nature of online platforms (Szilagyi, 2022).

One problematic example of online defamation is a half-truth, where a literally ac-curate statement is presented in a manner that creates a false and detrimental impression. A half-truth statement cannot, therefore, be judged without considering the context, including the facts that have been omitted. Much of what passes through the minds of the reader in such statements is made by inference where the audience is required to draw negative conclusion from omitted facts. In that regard, half-truth was found from false innuendo as the damage done is less from the extrinsic facts that can be asserted than from what can be implied. Nevertheless, if the defamatory meaning turns on facts that the readers know of the story whether acquittals or contextual developments, which can lead to the true innuendo. In this sense, a half-truth can be false innuendo where the defamatory meaning is that of what is implied rather than evidence that one had to admit was found to be true from external facts. However, it may also fall under true innuendo if the defamatory meaning relies on facts already disclosed to certain readers. In the premise, whether the statement is a half-truth has to do with audience and what they know. For instance, in the case of *Dato' Seri Muhammad*

[17] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

Sanusi bin Md Nor v. Datuk Seri Saifuddin Nasution bin Ismail,[18] the court held that defendant relied on half-truths and falsehoods when falsely alleged regarding the plaintiff had mishandled public funds under the Malaysian Road Records Information System (MARRIS) and also during an election rally the defendant alleged to the public by labelling the plaintiff as "*pencuri*" of the rare earth element. This implied such statements were defamatory in their natural and ordinary meaning, as the statements were suggesting criminal wrongdoing, weakening the plaintiff's reputation and putting him at risk of ridicule. The court also found proof of express malice as it was inferred from the selective use of half-truths and the timing at which the statements were made during a political campaign.

In another case of *Tan Sri Dato' Seri Tan Kok Ping v. Chow Kon Yeow*,[19] the plaintiff argued that the impugned statements were defamatory, on the ground that they induced false impressions in their natural meaning or through innuendo, and thus amounted to half-truths. The plaintiff resigned as a trustee after his proposed project to develop the unused portion of the Corporation's land into a workers' hostel was not approved. He attached a timeline showing that preparatory work had begun before the defendant was briefed. In his resignation letter, the plaintiff accused the defendant of making "fake promises" and stated that he would elaborate further at a press conference. It was alleged that, during the press conference, he made the impugned statements and presented half-truths. However, the court found that the significant statement in that case was true and was substantiated by contemporaneous evidence including a chronology of events. It was therefore not a half-truth. This is due to the court accepted that the defend-ant had an honest belief in the veracity of the statements and acted reasonably in carrying out its duties which were no indications of malice or improper motive. Both cases apply the ruling in the case of *Seema Elizabeth Isoy* that a half-truth can be defamatory if it produces an incorrect impression. However, the court should examine the statement as a whole. What seems to be crucial here is that the plaintiff and/or claimant cannot rely on selected parts of publication in isolation if other parts remove the defamatory meaning, and should always consider the full context and surrounding circumstances.

Liability has been imposed where a defendant declares a criminal charge and knowingly omits that the claimant was acquitted, thereby providing a misleading impression as to the claimant's guilt.[20] Failure to include such material facts may make the publication defamatory, especially if the defendant knew something about the offending information and failed to exercise due care. Not every omission, however, is defamatory. By leaving information out like an expungement or settlement, the intent of the original statement is not modified. The crux of the question is whether the omission does anything seriously to falsify factually important information damaging to one's reputation.

[18] *Dato' Seri Muhammad Sanusi bin Md Nor v. Datuk Seri Saifuddin Nasution bin Ismail* [2026] 7 Malayan Law Journal 610 (High Court, Malaysia).

[19] *Tan Sri Dato' Seri Tan Kok Ping v. Chow Kon Yeow* [2024] Malayan Law Journal Unreported 3749 (High Court, Malaysia).

[20] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

Challenges also arise in that one where opinions are given on incomplete or selectively revealed information. An opinion can be actionable where it refers to unacknowledged defamatory facts. The key question to look into is whether the speaker exercised due care to ascertain what fact gave rise to the opinion, other than highlighting the strategic value of innuendo where a publication appears neutral to the general public but defamatory to those with special knowledge amongst the false and true innuendos.[21]

From the above, defamation analysis resembles a form of narrative construction in which the speaker is aware of the words used, omissions made and implications conveyed to influence the audiences, which may result in the statement being characterised as protected opinion when the speaker is just expressing his or her viewpoints. By presenting only half of the story, a speaker may compel readers to infer a negative conclusion that is not necessarily true. A look at half-truth under the innuendo, as mentioned earlier, is especially noteworthy as their defamatory nature derives from external facts known to an audience member. The authors contend that proof of such an innuendo must be provided and shown by evidence expressing that readers had special knowledge that allows them to see what was omitted and to make a defamatory conclusion. A simple example was made for reference here, which is "A was seen at the Magistrates' Court Alor Gajah last night". Even though it is a factual claim, readers might be led to conclude that the courts are associated with criminals and may conclude that A's involvement in the offence charged in the court. If it brings everyone to act as though Ali was a criminal and destroys A's reputation, the statement may be defamatory despite being true in the literal sense. Crucially, it is generally unnecessary to establish that any single person was the one who understood the statement in the very defamatory sense, but that those words can be taken as meaning something. And yet not all omissions are defamatory (Volokh, 2021). To miss follow-up information is not defamation where, in no way, it substantially changes the substance of the statement such as describing an arrest without mentioning that charges were eventually dismissed for non-innocence-related reasons or alluding to a lawsuit without stating that it had been settled. In such cases, the theory is "true" only because it helps explain things and not because it fully reflects reality (Schroeder, 1995).

Liability, by contrast, may arise where an opinion is based on implied but undisclosed defamatory facts. The facts stated, if they are themselves non-defamatory, true or privileged which shall make the facts not actionable. The difficulty lies in determining whether all material facts have truly been disclosed, as speakers should not be permitted to avoid liability merely by asserting that their opinion is fully informed. Overall, while the reader is generally capable of distinguishing fact from opinion and the opinion shaped by selective disclosure and implication will tend to carry that real defamatory sting, as facts by themselves are innocuous. Opinion statement usually is the one on a matter of public concern in nature and no such thing as a false idea arises (Phillips, 1975). It is worth noting that innuendo is where seemingly neutral statements become potentially defamatory as they are read with contextual attention, facilitated by modern technology when readers can

[21] *Vadic v. The Ballarat News Pty Ltd* [1981] Victorian Reports 213 (Supreme Court of Victoria, Australia).

instantly search for context online. For the false innuendo that can result from a word or combination of words or true innuendo that has to be pleaded and proved by extrinsic evidence, in either case, the focus is on the reasonable reader and the meaning in contextual information. It becomes clear that half-truth can be defamatory if it is misrepresented in a way that discredits or dishonours the claimant.

4. Defending Protected Opinion

Defamation law acknowledges several defences that balance reputation protection with freedom of expression, such as justification, public interest in the topic created via the statement and good faith publication. In the case of *Seema Elizabeth Isoy*,[22] it was undisputed that the impugned WhatsApp messages referred to the respondent. The defence of justification provided by the appellant (the speaker) failed because the statement was not substantially true and conveyed a false impression to the readers. Justification is based upon the truth or substantial truth of the defamatory imputation. For instance, section 8 of the DA 1957 states that it is not necessary to establish the truth of every allegation, provided that any unproven statements do not materially injure the claimant's reputation. Where a statement is substantially true, the defendant enjoys a complete defence regardless of malice or intent. However, when a defendant pleads justification, the defendant must provide full and detailed particulars of the facts relied upon so that the claimant may be able to understand precisely what imputations are sought to be justified.[23] In the same case of *Seema Elizabeth Isoy*, the appellant spoke of the respondent being charged but omitted the crucial fact that he had been acquitted. This was a half-truth that materially harmed the respondent's reputation by implying guilt. Since the full truth was not disclosed, the statement was false in substance and could not be justified. Whilst section 8 acknowledges that a justification defence may succeed even where not all material statements are proven true, this exception applies only where the unproven words do not materially injure the claimant's reputation. A misleading and defamatory half-truth would not fall within this protection. One might distinguish even with a state-ment made as opinion and not as fact, especially where the speaker genuinely lacks knowledge of the full circumstances. The defence must be justification or privilege if the imputation is one of fact.[24] However, the appellant in the case of *Seema Elizabeth Isoy* had acknowledged having known of the respondent's acquittal and deliberately omitted it from her post. This knowledge negated any claim that the omission was inno-cent or based on uncertainty.

Similarly, the appellant of *Seema Elizabeth Isoy*[25] relied on the defence of qualified privilege claiming that the WhatsApp communication was made for the benefit of unit

[22] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

[23] *Sundra Rajoo Nadarajah v. Thirilogachandran Shanmugasundaram* [2025] 7 Current Law Journal 478 (High Court, Malaysia).

[24] *Dr Zakir Abdul Karim Naik v. Ramasamy Palanisamy & Another Case* [2024] 3 Current Law Journal 731 (High Court, Malaysia).

owners of Waldorf & Windsor Tower Serviced Apartments. Although committee members may owe a social or moral duty to inform other owners of matters affecting their property, qualified privilege can be defeated by malice. Malice can be inferred where the publication contains irrelevant, excessive or gratuitous imputations or where the defend-ant lacks an honest belief in the truth of the statement based on prior hostility (Perian, 2025). The omission of the respondent's acquittal in the case of *Seema Elizabeth Isoy* was held to be a vital omission that created a defamatory impression and supported a finding of malice. Once malice is established, the defences of qualified privilege and fair comment both fail. Malice must be proven by evidence but not conjecture, and may be inferred from the defendant's prior knowledge, failure to verify information and indifference to the truth, by clear and convincing proof that the defendant had acted with actual malice.[26] In that case, the appellant did not show any meaningful effort to verify the in-formation and merely encouraged readers to conduct their own searches. Such conduct fell short of responsible communication, particularly given the sensitivity of the allegation. It is important to consider the nature and extent of the duty or interest before addressing the issue of actual malice.[27]

In addition, a WhatsApp group of unit owners who may share some degree of privilege to discuss may have built the basis for such discussions, but this privilege does not extend to defamatory statements about a developer unless directly relevant and responsibly communicated. A privileged occasion may be lost where the publication contains extraneous, irrelevant or gratuitous imputations that damage the claimant's reputation, as such excess may amount to evidence of malice. Although a person is allowed considerable latitude in defending his interests or responding to accusation against him, the language used must still be honestly and reasonably believed to be necessary for that purpose which is still essential for the communication to remain relevant and sufficiently connected to the occasion.[28] The law also recognises that privilege is more readily afforded where there is an existing relationship between the publisher and the recipients than where the publication is made to strangers.[29] Ultimately, one must take the impugned statement in its totality and in context. Given the appellant's knowledge in the case of *Seema Elizabeth Isoy*, omission of critical facts and lack of verification with having knowledge of the respondent's acquittal by actual malice, the publication constituted a defamatory half-truth and the defences of justification and qualified privilege were rightly rejected.

Next is the defence of fair comment. The central issue was whether the defamatory words were defamatory in their natural and ordinary meaning to impute the claimant's

[25] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

[26] *Herbert v. Lando* vol. 441 United States Reports 153 (United States Supreme Court, 1979), pp. 169–175.

[27] *Barbaro v. Amalgamated Television Services Pty Ltd* (1985) 1 New South Wales Law Reports 30 (Supreme Court of New South Wales).

[28] *Megna v. Marshall* [2010] NSWSC 686 (Supreme Court of New South Wales).

[29] *Kearnes v. General Council of the Bar* [2003] 2 All England Law Reports 534 (Court of Appeal, England & Wales).

dishonourable conduct, lack of integrity or exposed the claimant to hatred, contempt or ridicule. In the case of *Seema Elizabeth Isoy* (2024), the court held that the non-disclosure of the respondent's acquittal was intentional and unfair. Since malice was proved, the de-fences of qualified privilege and fair comment did not operate either. The notion of the half-truth must inevitably entail the determination of truth and falsity, positioning it mostly along the defences of justification and fair comment. Section 9 of the DA 1957 allows for the defence of fair comment even when the truthfulness of every allegation is not established, so long as the comment is fair. In such an absence of statutory guidance about half-truth, English common law principles such as those set out in the case of *Sutherland v. Stopes*[30] apply in Malaysia as set out in section 3(1) of the Civil Law Act 1956. Mal-ice in this context becomes determinative but just falsity is not proof of malice.[31] Deliberately publishing a half-truth that creates an impression that is false or harmful while also expecting readers to independently search for omitted facts is a conduct with malice especially when the appellant admitted that she had knowledge of the acquittal of the respondent's criminal charges.

Considering section 9 is concerned with whether an opinion is fair, based on true facts and about issues of public interest. The comment must be clearly opinion on a matter of public interest based on true facts and reasonable for a fair-minded person to make such a commentary.[32] Every case is inevitably fact-sensitive and where primary facts are true in the absence of malice, the right of fair comment should usually prevail to be consistent with Article 10 of the Federal Constitution. The real test of fair comment is if the commentary represents an honest expression of true and genuine opinion. This inquiry has less to do with factual detail and far more with the psychological condition of the defendant related to the state of mind of the defendant to find liability.[33] The courts need to take a holistic perspective to understand the publication place and appreciate the values of our Constitution.

One important point is that a commentary should be distinguishable from a statement of fact and needs to present itself as the facts on which it is based. Common law comment is merely criticism, evaluation of facts, inference, or conclusion from existing or indicated facts. Given this nature, the defendant must show that there is a basis of fact for the comment to be referred to the matter complained of.[34] A bare allegation of fact or a bare opinion without an identifiable factual basis may not. It should be highlighted that the need to explain the facts that are suggested by the commentary so that people can understand it as an opinion. Therefore, an opinion that implicates undisclosed or false defamatory information must be

[30] *Sutherland v. Stopes* [1925] Appeal Cases 47 (House of Lords, United Kingdom).

[31] *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 4 Malayan Law Journal 260 (Federal Court, Malaysia).

[32] *Joshua Benjamin Jeyaretam v. Goh Chok Tong* [1989] 3 Malayan Law Journal 1 (Privy Council).

[33] *Mohd Rafizi Ramli v. Dato' Sri Dr Mohamad Salleh Ismail & Anor* [2020] 1 Current Law Journal 498 (Court of Appeal, Malaysia).

[34] *Mahdzir Md Isa v. Mohd Ridhuan Tee Abdullah* [2025] 8 Current Law Journal 600 (High Court, Malaysia).

actionable. Simply put, whether an inference is true can be a matter of opinion and thus it can be protected as fair comment. Any kind of comment is fair as long as honestly a reasonable person could have made it irrespective of the speaker's prejudice, exaggeration or obstinacy-simplify.[35]

It is rightly to look into the question as how the reasoning appears to the reasonable reader when the publication is read as a whole. Verifiability is relevant but what is not decisive as excluding verifiable factual inferences from comment risks chilling speech, for whereas the courts traditionally differentiate fact and comment, and in cases where a statement exceeds just making an opinion statement about facts, the court would still consider truth as the only defence available to defendant. This approach reflects the classical defence scope and supports the intention to protect the right to comment as a fundamental English principle. In essence, protecting comment as reasoning and not the assertion of fact.[36] From the viewpoint articulated in the above, everyone is entitled to discuss openly and honestly on any topic that the public cares about whether there is malice in it or not, since they can exchange their opinions with those who share an interest in the matter. In so doing, they enjoy exceptional protection and privilege for free speech by reason of public and social convenience particularly where both the speaker and the audience are concerned about common interest or shared responsibility. This common interest essentially works to rebut the claim that there is malice (Rowland, 1907).

It is necessary to take guidance from classic *Ollman* test which considers four factors such as firstly where the statement's specific language and its common usage is considered, secondly where the statement's verifiability, thirdly is about the full context in its entire publication and lastly to look at the implications of social conventions when affecting the court's fact-opinion analyses.[37] These characteristics guide the courts concerning whether a comment would be actionable. In the said case of *Ollman v. Evans*, the professor of political science sued two newspaper columnists, claiming that their statement that he had no status within the profession and was a pure and simple activist, which had defamed him and caused him to lose a nomination for department chairman at his university by the impugned statement. It was held that once a statement is classified as an opinion, there is no need to further examine whether it implies defamatory facts. In connection with this, the four-factor test can be used to identify statements that are so based on facts that they should not be protected as opinion. However, if an opinion suggests a false fact where it can damage someone's reputation, even if it starts with phrases like "in my opinion" or "I think".[38] Applying this test, the courts can look at several factors to decide if a statement can be considered defamation. These include the way the statement is written, if there are warnings

[35] *Tse Wai Chun Paul v. Albert Cheng* [2001] Entertainment and Media Law Reports 31 (Hong Kong Court of Final Appeal).

[36] *Cook v. Telegraph Media Group* [2011] EWHC 763 (Queen's Bench Division, England & Wales).

[37] *Ollman v. Evans* (1984) 750 Federal Reporter, Second Series 970 (United States Court of Appeals for the District of Columbia Circuit, en banc).

[38] *Milkovich v. Lorain Journal Co.* (1990) 497 United States Reports 1 (Supreme Court of the United States).

or disclaimers, the statement's social context, whether the statement can be verified and if it uses rhetorical hyperbole (Bhaskar, 2019). After all, fair comment is to defend a just exchange concerning public affairs as long as it is offered without malice and the factual basis is on the truth. An honest comment should fairly reflect the facts, including both positive and negative aspects where relevant and avoid exaggerated or unverified claims.[39] With respect to the half-truth, the defence may only stand up when the speaker genuinely believes in the fact it was relied on and has taken reasonable steps to verify it. Besides, the speaker has not intentionally omitted mate-rial information. Prompting readers only to Google for more information is not an act of honesty or tender-heartedness. If there are omissions that distort this entire impression or alter it, then it causes the defence of fair comment cannot stand.

In the context and limit of defending protected opinion from half-truth statements, it is useful to bear in mind that a statement that cannot be verified will amount to an opinion may qualify as fair comment, provided it is fair and grounded in facts rather than rumour or belief.[40] For fair comment defence, the defendant need only prove the truth of the basic facts relied upon and it is not necessary to disclose every fact underlying the opinion. This distinguishes fair comment from justification which requires all defamatory allegations to be true or substantially true.[41] Applying this principle in the case of *Seema Elizabeth Isoy*, if the speaker genuinely relied on information found through a verifiable online source and honestly believed it to be true when sharing it in the absence of malice which may warrant the invocation of defence. In contrast, merely asking readers to Google for more information without disclosing or verifying the factual basis weakens the defence of fair comment. A statement that was true when made does not become a misleading half-truth merely because circumstances later changed, so long as the speaker had no actual knowledge of those later developments at the time of publication. This reflects the idea of temporal validity as truth is assessed at the time of publication but not with the benefit of hindsight. Using the idea of temporal validity does not claim new theoretical understanding, but simply because it emphasizes a tension between existing external validity and the desire to form reliable predictions over time as meta-science (Munger, 2023). In gist, a statement that was true when made does not become false or misleading merely because later events changed the facts provided the speaker does not have the knowledge of the change.

5. Conclusion and Recommendation

1 In modern defamation law, a statement is actionable if it is defamatory in its natural and ordinary meaning where a significant omission leads a reasonable reader to draw a

[39] *Jones v. Skelton* [1963] 3 All England Law Reports 952 (Privy Council).

[40] *Al Maarif Travel & Tours Sdn. Bhd. v. Nur Farhana Yeop Hussin & Anor* [2022] 1 Legal Network Series 69 (High Court, Malaysia).

[41] *Syarikat Bekalan Air Selangor Sdn. Bhd. v. Tony Pua Kiam Wee* [2015] 6 Malayan Law Reports Appellate 63 (Federal Court, Malaysia); *Dato' Sri Dr. Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2021] 2 Malayan Law Reports Appellate 626 (Federal Court, Malaysia).

defamatory inference, or by way of true innuendo where external facts known to a particular audience give a neutral statement a defamatory meaning and also false innuendo through the natural and ordinary meaning of the alleged offending words with surrounding context. To address gaps in existing legislation, the criteria of a half-truth should be assessed not by what was omitted, but by the integrity of the speaker's inquiry. Where an omission results from reliance on a static or historical public record, rather than an intention to mislead, the statement should be treated as a protected partial truth opinion form rather than an actionable false omission. Under this approach, liability is assessed based on the information reasonably available to the speaker at the time of verification, so that no liability arises from facts unknown to them. Pursuant to the above discussion, these features are able to be incorporated as criteria addressing half-truth statements. This framework is consistent with section 7 of the DA 1957 which recognises unintentional defamation by allowing a defendant who exercised reasonable care and lacked intent to injure to make an offer of amends,[42] such as correcting a statement to reflect an acquittal in the same case, thereby demonstrating good faith and barring the recovery of damages. Lastly, the speaker can argue that one should not be liable where the defamatory implication arises from later-discovered facts that were unknown at the time of publication and where the statement was supported by reasonably credible historical record.

Therefore, in the view of the authors, it is recommended that the half-truth statements should be recognised as a distinct category in defamation law by creating a specific provision under the DA 1957, referring to a statement that is not wholly false but becomes misleading and potentially defamatory through the omission of material facts. Liability arises where such omission creates a distorted impression that would lower the claimant's reputation in the eyes of reasonable persons. While such statements may sometimes be framed as opinions, they remain actionable where they are based on undisclosed or untrue defamatory facts, or imply the existence of such facts, including by way of innuendos either understood only by those with special knowledge or through natural and ordinary meaning of the alleged offending words along with the surrounding context as a whole. Besides, malice may be inferred where the omission is deliberate but it should be a defence if the speaker honestly believed the statement to be true and neither knew nor reasonably ought to have known of the omitted material facts at the time of publication, provided that reasonable care was exercised to verify the factual basis of the statement and that it constitutes a genuine expression of opinion on a matter of public interest. By emphasizing the credibility of the information available when the post was published rather than current accuracy, it safeguards honest digital speech and treats the omission as unintentional and thus non-actionable which is a clear guidance on the limits of protected opinion statements from non-defamatory perspective.

[42] *Dato' Seri K. Kumaraendran & Anor v. Albert Antoni Tass & Anor* [2026] 1 Current Law Journal 467 (High Court, Malaysia).

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One Artificial Intelligence (AI) tool has been used to assist in the grammar of this article, but not to write, partly or wholly, the article: Quillbot.

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