

TEAM CODE-WS30_D

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

Ordinary original civil Jurisdiction

IN THE MATTER OF

MR. HEISENBERG.....PLAINTIFF

VERSUS

TRAVEL SOLUTIONS PRIVATE LIMITED.....DEFENDANT

Suit No. of 2017

Written statement on behalf of the Defendant

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

TABLE OF CONTENTS	PAGE NO.
INDEX OF ABBREVIATIONS	2
INDEX OF AUTHORITIES	3
Table of cases	4
Books Referred	5
Research database	5
Statutes	5
STATEMENT OF JURISDICTION	6
STATEMENT OF FACTS	7
STATEMENT OF ISSUES	8
SUMMARY OF ARGUMENTS	9
ARGUMENTS ADVANCED	10
ISSUE 1: Whether the Plaintiff proves that the Defendant acted negligently?	10
1.1. Was there duty of care?	10
1.2. No breach of duty	11
1.3. Plaintiff's carelessness leading to negligence	11
1.4. No actionable negligence	12
ISSUE 2: Is the Plaintiff entitled to compensation, if yes, the quantum thereof?	13
2.1. Remoteness of Damages	13
ISSUE 3: Whether the Defendant proves that the statements of the Plaintiff amount to defamation?	15
3.1. Statements of Plaintiff are defamatory	15
3.2. The statements are false and published	16
3.3. Presence of malicious propaganda	17
ISSUE 4: Is the Defendant entitled to compensation?	18
PRAYER	20

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

INDEX OF ABBREVIATIONS

A.C.	Appeal Cases
A.I.R.	All India Reporter
All E.R.	All England Law Reports
All.	Indian Law Reports, Allahabad
A.L.J.R.	Allahabad Law Journal Reports
ALD	Andhra Legal Decision
A.P.	Andhra Pradesh
Bing. N.C.	Bingham's New Cases
Bom.	Indian Law Reports, Bombay
Cal.	Indian Law Reports, Calcutta
Camp.	Campbell's Reports
CA	Court of Appeal
D. & R.	Dowling & Rylands
Ex	Exchequer
EWCA	England and Wales Appeal
H. & N.	Hurl Stone & Norman
HL	House of Lords
Hob.	Hobart's Reports
H.P.	Himachal Pradesh
I.L.R.	Indian Law Reports
Jur. N.S.	Jurist New Series
K.B.	Law Reports, Kings Bench
L.B.R.	Lower Burma Rulings
L.J.	Lord Justice
L.R.	Law Reports
L.T.	Law Times
Lah.	India Law Reports, Lahore
M. & W.	Meeson & Welby
M.H.C.	Madras High Court Reports
M.P.L.J.	Madhya Pradesh Law Journal
M.L.J.	Madras Law Journal Reports
M.W.N.	Madras Weekly Notes
P.C.	Privy Council
P.L.R.	Punjab Law Reporter
Q.B.	Law Reporters, Queens Bench
SC	Supreme Court
SCC	Supreme Court Cases
TSPL	Travel Solutions Private Limited
T.L.R.	Times Law Reports
W.R.	Weekly Reporter

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

INDEX OF AUTHORITIES

TABLE OF CASES

Case	Cited On
• Barrow v. Lewelli, (1615) Hob. 62	17
• Baba Gurdit Singh v. “Statesman Ltd.”, (1935) ILR 62 Cal 838.	19
• Blake v Galloway [2004] CA	11
• Blyth v. Birmingham Waterworks Co.,(1856) 11 EX 781	10
• Bolam v. Friern Barnet Hospital Management Committee, (1957) QBD	12
• Bonnington Castings v. Wardlow, (1956) AC 613 (HL)	13
• Channel Seven Adelaide Pty. Ltd. v. Manock 2007, 82 ALJR 303, p. 313 para 35	16
• Cheese v. Scales, (1842) 10 M&W 488.	16
• Clement v. Chivis, (1829) 9 B & C 172	17
• De Crespigny v. Weselley 5 Bing 392.08	15
• Donoghue v. Stevenson 1932 AC 562	11
• E. Haulton & Co. v. Jones 1910, AC 20, 23: 101 LT 831: 26 TLR 128.	19
• Governors of Pwabody donation fund v. Sir Lindsay ParkisonCo.Ltd. (1984) 3 ALLER 529:(1985)A 210	12
• Hayward v. Thompson, (1981) 3 All ER 450 (458) (CA).	16
• Heaven v Pender,(1883) 11 QBD 503	12
• Kaikshuru Naoroji Kabraji v. Jehnagir Byarmji Muzban, (1890) 14 Bom 532	18
• Khair-ud-Din v. Tara Singh, (1926) ILR 7Lah 49.	16
• Konee Subhadra v. Subbarayadu (1990) 10 MLJ 83	19
• Leslie Rogers v. Hajee Fakir Muhammad Sait, (1918) 35 MLJ 673	19
• Lewis v. Daily Telegraph, 1963 2 All ER 151 (HL) (154)	16
• Lt. Col. Gidney v. The A.I. & D.E. Federation, (1930) ILR 8 Ran 250	17
• Mallet v McMonage [1970]A.C. 166 at 176	13
• Mc Ghee v. National Coal Board,(1972) 3 ALL ER 101829	13
• McKew v. Holland &Hallen&Cubitts, (Scotland) Ltd 1969 3 ALL E.R. 1621 (H.L.SC.)	11

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

• Newstead v. London Express Newspapers Ltd., (1939) 2 KB 317	19
• Ogilvie v. The Punjab Akhbharat & Press Co 1929, ILR, Lah 45	17
• Parvathi v. Mannar 1884, ILR, 8 Mad 175, 180	19
• Per Tindal, C.J.in Vaughan v. Menlove, (1837) 3 Bing NC 468,475	12
• Pullman v. Hill & Co., (1891) 1 QB 524: 39 WR 263: 64 LT 691	17
• Railroad Co. v. Denman, 10 Minn., 250 (Gli. 208).	18
• Ramakant v. Devilal, 1969 MPLJ 805 (G.P. Singh. J.)	15,16
• Subbaraidu v. Sreenivasa Charyulu, (1926) 52 MLJ 87.	19
• Suraj Narain v. Sita Ram (1939) ALJR 394.	18
• Swan v. North British Australasian co.,(1862)7 H&N 60	
• Telikoff v. Matusевич, (1991) 4 All ER 817: (1992) 2 AC 343	16
• Thorley v. Earl of Kerry, (1809) 3 Camp. 214 N.	18
• Union Benefit Guarantee Company v. Thakorlal , (1935) 37 Bom LR 1033	19
• Waithman v. Weaver (1882) 11 Price 257.	18
• Watkin v. Hall, (1868) LR 3 QB 396.	16,18
• Weaver v. Lloyd, (1824) 4 D&R 230	16

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

BOOKS REFERRED

- Ratanlal and Dhirajlal; The Law of Torts (Updated 26th Edition)
- Dr. N. V. Paranjape; Law Of Torts
- Winfield and Jolowicz; Tort
- M P Jain; The Indian Constitutional Law
- Dr. S K Kapoor; Law of Torts
- R K Bangia; Law of Torts with Consumer Protection
- C K Takwani; Civil Procedure Code with Limitation Act,1963
- Black's Law Dictionary (7th Edition)
- Mahendra C. Jain; Bombay High Court (Original Side) Rules
- P RamanathaAiyar's Advanced Law Lexicon,4th Edition, Volume 3

RESEARCH DATA BASE

- Manupatra Online Resources, <http://www.manupatra.com>
- Lexis Nexis Academica, <http://www.lexisnexis.com/academica>
- Lexis Nexis Legal, <http://www.lexisnexis.com/in/legal>.
- SCC Online, <http://www.scconline.co.in>
- www.indiankanoon.org

STATUTES

- Indian Contract Act,1872
- Constitution of India
- Civil Procedure Code,1908

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

STATEMENT OF JURISDICTION

The Defendant most humbly and respectfully submits to the jurisdiction of this Hon'ble High Court of Mumbai that the Defendant Company is situated in Mumbai, the actual bookings took place in its Mumbai office, and the cause of action has also arisen in Mumbai. Therefore, this Hon'ble Court of Mumbai has within its jurisdiction the authority to try, entertain, decide and dispose of the present Suit.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

STATEMENT OF FACTS

In July 2017 Mr Heisenberg planned a family vacation to Australia and approached TSPL for making arrangements for it. He was assured that the issuance of tourist visa generally takes 10-15 days. He wanted to book the tickets from Mumbai to Sydney for 08.09.17 but TSPL advised him to book tickets from Chennai to Sydney as they were cheaper.

On 07.08.17 Mr.Heisenberg was given a list of documents by Mr.Tommen and was asked to hand over the documents personally to him for scrutinising. Mr.Heisenberg submitted the documents by evening of 11.08.17 to the receptionist as Mr.Tommen had left the office. Mr.Tommen instructed the receptionist to dispatch the documents immediately.

On 21.08.17 Mr.Heisenberg got a call from TSPL Delhi office asking for an additional document and was also informed that from 12.08.17 to 15.08.17 the office was closed owing to public holidays. The documents dispatched on 16.08.07 were received on 18.08.17 and verified on 21.08.17. Mr.Heisenberg sent the documents by express courier to Delhi on 22.08.17.TSPL received the documents and filed the visa form on 23.08.17.

On 06.09.17 visas were issued and the conformation of the same was sent to Mr Heisenberg via WhatsApp. Due to time crunch TSPL advised that they would send the passports to Chennai airport directly.

On 08.09.17 Mr Heisenberg reached Chennai airport with his family at 2 pm and the passport reached by 9 pm hence they missed the flight and were informed that the flight from Chennai was non-refundable and the one from Mumbai was refundable.

Out of frustration, he tweeted "Travel Solutions Private Limited-a bunch of liars, cheats and thieves with no ethics. The worst company ever". He uploaded a picture of his entire family stranded at the airport along with a detailed post narrating the instant episode. He ended the post with #TSPLsucks and a logo of the company. The tweet and the post became viral.

Mr.Heisenberg sued TSPL for their negligence before the High court of Mumbai for a sum of Rs.1 Crore. TSPL filed a counter claim of malicious propaganda and defamatory misinformation.

STATEMENT OF ISSUES

1. WHETHER THE PLAINTIFF PROVES THAT THE DEFENDANT ACTED NEGLIGENTLY?
2. IS THE PLAINTIFF ENTITLED TO COMPENSATION, IF YES, THE QUANTUM THEREOF?
3. WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF PLAINTIFF AMOUNT TO DEFAMATION?
4. IS THE DEFENDANT ENTITLED TO COMPENSATION?

SUMMARY OF ARGUMENTS

ISSUE 1: WHETHER THE PLAINTIFF PROVES THAT THE DEFENDANT ACTED NEGLIGENTLY?

It is most humbly and respectfully contended before this Hon'ble Court Of Mumbai that there was no negligence on the Defendant's part as it has exercised all reasonable care and skill towards the Plaintiff. Rather the Plaintiff has been unable to follow his duty of care and has been negligent in submitting all the documents required at proper time leading to the damages suffered.

ISSUE 2: IS THE PLAINTIFF ENTITLED TO COMPENSATION, IF YES, THE QUANTUM THEREOF?

It is most humbly and respectfully contended before this Hon'ble High Court of Mumbai that since there is no breach of duty on the part of the Defendant, the Plaintiff is not entitled to any kind of compensation. Moreover, the damages suffered by the Plaintiff were due to his carelessness. The delay in the arrival of the visas at Chennai airport happened inadvertently and due to unavoidable circumstances.

ISSUE 3: WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF THE PLAINTIFF AMOUNT TO DEFAMATION?

It is most humbly and respectfully submitted before this Hon'ble High Court of Mumbai that the statements of the Plaintiff amount to defamation as they were false, published and defamatory. The statements by the Plaintiff manifested as malicious propaganda because the Plaintiff resorted to publish his grievances on his social media handle rather than approaching the Defendant.

ISSUE4: IS THE DEFENDANT ENTITLED TO COMPENSATION?

It is most humbly and respectfully submitted before this Hon'ble High Court of Mumbai that the Defendant is entitled to compensation. The Defendant suffered enormous economic loss as well as harm to its reputation as an outcome of the defamatory statements of the Plaintiff.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

ARGUMENTS ADVANCED

**ISSUE 1: WHETHER THE PLAINTIFF PROVES THAT THE
DEFENDANT ACTED NEGLIGENTLY?**

Negligence is the breach of duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or something which a prudent and reasonable man would not do.¹

1.1 WAS THERE DUTY OF CARE?

Duty of care is a legal obligation which is imposed on an individual requiring adherence to a standard of reasonable care while performing any acts that could foreseeably harm others.² The Defendant hereby states that it followed all the necessary and reasonable duty of care towards the Plaintiff as enumerated below.

The Plaintiff approached the Defendant to book tickets for his family vacation to Australia. The sales team of the Defendant guided by customer satisfaction arranged for a tour plan that was economical for the Plaintiff and handed over a standardised list of documents required for processing of Australian visa to him on 07/08/17. The Plaintiff submitted his documents on 11/08/2017 to the Defendant's Mumbai office. It so happened that due to public holidays, unavoidable and inadvertent delay was caused in scrutinising his visa documents. On 21/08/17, upon scrutinizing the documents before submission to the Australian Embassy, the Defendant found a document missing and therefore contacted the Plaintiff to send the additional document immediately which was sent by the Plaintiff on 22/08/17 and received by the Defendant on 23.08.17. Since unavoidable delay had already been caused, taking reasonable duty of care, the Defendant made it a point to file for the visas on 23/08/17. Thus the duty of care on the Defendant's part can be directly inferred from the above mentioned.

¹ Blyth v. Birmingham Waterworks Co.,(1856) 11 EX 781

²Advance Law Lexicon, Volume 2, Edition 4

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

1.2 NO BREACH OF DUTY

Breach of duty is the violation of a legal or a moral obligation; the failure to act as the law obligates one to act.³

As stated in *Blake v Galloway*⁴, only recklessness or a very high degree of carelessness is sufficient to breach the duty of care. Thus in this case the Plaintiff was so careless that he missed a document required to process the visa which caused the delay.

The Defendant cannot be held liable for breach of duty of care on its part as the visa form of the Plaintiff and his family was filed on 23/08/17 i.e. on the same day as the additional document was received. The visas were issued by the Australian embassy on 06/09/17 and the conformation of the same was sent to the Plaintiff by the Defendant via WhatsApp and due to the paucity of time the Defendant advised the Plaintiff that they would directly send the passports to Chennai airport. This advice was given by the Defendant in good faith and acting on the duty imposed by law. Here the Defendant could not reasonably foresee that the passports would not reach Chennai airport on time as being professionals in the field of business they had taken all reasonable steps to deliver the Plaintiff's visa and passports on time and so also to serve him better and to avoid any form of harm to him. Although more, the delay in visa processing cannot be attributed to the Defendant as it is at the sole discretion of the embassy.

1.3 PLAINTIFF'S CARELESSNESS LEADING TO NEGLIGENCE.

The basis of the decision of the House of Lords in *McKew v. Holland &Hallen & Cubitts (Scotland) Ltd*⁵, was that the pursuer's conduct amounted to a *nova causa interveniens* because, even though it may have been foreseeable, it was unreasonable in the circumstances. The rationale of *nova causa intervenies* is fairness between the parties.

In *Donoghue v. Stevenson*⁶, Lord Macmillan held that the law takes no cognizance of carelessness in the abstract. It concerns

³ Black's Law Dictionary, Seventh Edition

⁴ *Blake v Galloway* [2004] CA

⁵ *McKew v. Holland &Hallen&Cubitts (Scotland) Ltd* 1969 3 ALL E.R. 1621 (H.L.SC.)

⁶ 1932 AC 562

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

itself with carelessness only when there is duty to take care and breach of it has caused damage. In such a case only carelessness would assume to be given the legal quality of negligence. As in the instant case the Plaintiff was given a standardised list of required documents which are usually essential for issuance of Australian visa. The Plaintiff being a well-educated man owed a duty to follow the list and carefully submit all the documents in order, and his failure to comply with this resulted in the damage incurred. Moreover there were holidays of such nature that could not have been avoided.

The liability of negligence cannot co-exist with the judgement of an individual.⁷ Therefore, the delay caused is due to the conduct of the Plaintiff himself.

1.4 NO ACTIONABLE NEGLIGENCE

Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the Defendant owes the duty of observing ordinary care and skill, by which neglect the Plaintiff has suffered injuries to his person or property.⁸

The Defendant used all the ordinary and reasonable care and skill in ensuring that the Plaintiff gets the visa on time, it was not negligent in any way, and also the damages claimed by the Plaintiff are exorbitant and lack proximity to the act of the Defendant.

An act can be negligent when the person who has a duty of care to perform it omits to do so. The Defendant here has not omitted any duty which it had towards the Plaintiff and used ordinary skill and care towards the Plaintiff. Thus it can be inferred that the Defendant did not act negligently and therefore the action for negligence cannot be brought about.⁹

The Defendant herein will not be guilty of negligence as it has acted in accordance with a general practice with reasonable care that is recognized as proper in the ordinary circumstances.¹⁰

⁷ Per Tindal, C.J. in *Vaughan v. Menlove*, (1837) 3 Bing NC 468,475

⁸ *Heaven v Pender*, (1883) 11 QBD 503; *Swan v. North British Australasian co.*, (1862) 7 H&N 60

⁹ *Governors of Pwbody donation fund v. Sir Lindsay Parkison Co. Ltd.* (1984) 3 ALLER 529; (1985) A 210

¹⁰ *Bolam v Friern Barnet Hospital Management Committee* (1957) QBD;
https://sixthformlaw.info/02_cases/mod3a/aqa/cases_tort_2breach.html

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

**ISSUE 2: WHETHER THE PLAINTIFF IS ENTITLED TO
COMPENSATION?**

Compensation is payment of money by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damnified may receive equal value of, or be made whole in respect of his injury.¹¹

As stated in the case of *Mallet v. McMonage*¹², by Lord Diplock, “The court must make an estimate as to what are the chances that a particular thing will or would have happened and reflect those changes, whether they are more or less than even, in the amount of damages which it awards.”

2.1 REMOTNESS OF DAMAGES

The dominant question in the determination of Defendant’s liability is whether the harm in respect of which he is sued was a foreseeable consequence of his negligent act.¹³

One would be liable for the damage if his wrongful act materially caused the delay, notwithstanding there were other factors that contributed to the delay.¹⁴

As proved above the acts of the Defendant did not cause damage to the Plaintiff as the damage of the Plaintiff lack foreseeability as the Defendant had taken all necessary and ordinary care. And if the damage is not foreseeable it does not make out a case for compensation.

As per Scrutton L.J, damage is indirect if it is, “due to the operation of independent cause which have no connection to with the negligent act, except that they could not avoid the results.”¹⁵

¹¹ Black’s law dictionary, Seventh edition

¹²[1970]A.C. 166 at 176

¹³Winfeild&Jolowicz ,Tort , eighteenth edition, Pg 334, para 3.

¹⁴Bonnington Castings v. Wardlow, (1956) AC 613 (HL):Mc Ghee v. National Coal Board,(1972) 3 ALL ER 1008

¹⁵[1921]3 K.B. at 577

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

As reiterated in the wagon mound case, the requirement that the foreseeable damage must be of the same “kind” as the damage which actually occurred. Therefore, even though the Plaintiff missed his flight, it could not be foreseen by the Defendant and as a result it does not make the Defendant liable to pay any amount, let alone the exorbitant amount of compensation that the Plaintiff is claiming.

Hence, the Defendant proves that the Plaintiff is not entitled to compensation.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

ISSUE 3: WHETHER THE DEFENDANT PROVES THAT THE STATEMENTS OF THE PLAINTIFF AMOUNT TO DEFAMATION?

It is most humbly and respectfully submitted before this Hon'ble Court that the statements of the Plaintiff are defamatory because of the under mentioned.

Defamation is defined by Dr. Winfield as the publication of a statement which tends to lower the reputation of a person generally in the eyes of right thinking people of society or which tends to make them shun or avoid that person.¹⁶

The wrong of defamation maybe committed either by way of writing, or its equivalent, or by way of speech. The term 'libel' is used for the former kind of utterances, 'slander' for the latter. Libel is a written, and slander is a spoken, defamation.

3.1 THE STATEMENTS OF THE PLAINTIFF ARE DEFAMATORY.

A defamatory statement is a statement calculated to expose a person to hatred, contempt or ridicule, or to injure him in his trade, business, profession, calling or office, or to cause him to be shunned or avoided in society. To be defamatory, a statement need not only have the tendency to affect a person's reputation; it need actually lower it.¹⁷

In *De Crespigny v. Weselley*,¹⁸ it was held that the degree of suffering occasioned by loss of character, and compare it with the occasioned by the loss of property, the amount of the former injury far exceeds that of the latter.

The statement complained of has to be read as a whole and the words used in it are to be given their natural or ordinary meaning which may be ascribed to them by ordinary men.¹⁹

The Defendant here is a well reputed travel agency and therefore the Plaintiff's statements should be read as whole which resulted

¹⁶Dr. Winfield: TORT 9 (Seventeenth Edition, 2006) p. 298.

¹⁷ Ratanlal and Dhirajlal: Law of Torts, Updated Twenty Sixth Edition

¹⁸1829, 5 Bing 392.

¹⁹Ramakant v. Devilal, 1969 MPLJ 805 (G.P. Singh. J.)

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

in damage to the Defendant's goodwill, reputation, thus affecting its business negatively.

The meaning of words in a libel action is matter of impression as an ordinary man gets on the first reading, not on a later analysis.²⁰

For an ordinary man construction in legal sense is not the question. He can read between the lines in the light of general knowledge.²¹ Hence the statements of the Plaintiff can be attributed their ordinary meaning as any layman would interpret.

It is libellous to publish that a man is unfit to be trusted with money.²² The Plaintiff in his statement referred to the Defendant as "cheats" and "thieves". He indicated that the Defendant cannot be trusted with money.

3.2 THE STATEMENTS ARE FALSE AND ARE PUBLISHED.

In *Channel Seven Adelaide Pty. Ltd. v. Manock*²³, it was held that comments made may only be defended as fair if it is comment in facts stated or sufficiently indicated. It must be indicated with reasonable clarity by the words themselves taking them in the context and the circumstances in which they were published that they claim to be comment and not statement of fact.

The Defendant must show that the imputation made or repeated by him was true as a whole in every material part thereof.²⁴ In gross exaggeration, the plea for justification will fail, it must be proved that it is true.²⁵

The imputation by the Plaintiff amounts to gross exaggeration as the Defendant's act cannot be attributed to the acts of that of thieves or cheats. Due care of duty was ensured by the Defendant and thus such words do not hold true. The libel published is in permanent form i.e. on the Plaintiff's social media handle.

²⁰ Hayward v. Thompson, (1981) 3 All ER 450 (458) (CA); Telikoff v. Matusevitch, (1991) 4 All ER 817: (1992) 2 AC 343.

²¹ Lewis v. Daily Telegraph, 1963 2 All ER 151 (HL) (154); Ramakant v. Devilal 1969 MPLJ 805 (G.P. Singh. J.)

²² Cheese v. Scales (1842) 10 M&W 488.

²³ 2007, 82 ALJR 303, p. 313 para 35.

²⁴ Weaver v. Lloyd, (1824) 4 D&R 230; Khair-ud-Din v. Tara Singh, (1926) ILR 7Lah 49.

²⁵ Watkin v. Hall, (1868) LR 3 QB 396.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

The Plaintiff tweeted, “Travel Solutions Private Limited- a bunch of liars, cheats and thieves with no ethics. The worst company ever.” The Plaintiff further uploaded a picture and a post placing the entire blame on the Defendant. He ended the post with #TSPLsucks and logo of the Defendant.

The words complained of should be communicated to some person other than the Defendant.²⁶ The defamatory statements published by the Plaintiff are on social media platforms, the access to which is available to the world at large. Furthermore, the Facebook post was shared several hundred times and his tweet was retweeted several thousand times.

3.3 PRESENCE OF MALICIOUS PROPAGANDA.

Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves a ground of liability. Any act done with such an intent is, in the language of law, malicious.²⁷

A slander may be uttered in the heat of the moment, and under a certain provocation; the reduction of the charge into writing and its subsequent publication in a permanent form show greater deliberation and raise a suggestion of malice.²⁸

In *Ogilvie v. The Punjab Akhbharat & Press Co.*,²⁹ it was held that if a man has stated that which is false and defamatory, malice is assumed.

The Plaintiff is a learned man who is well aware of the fast pace and broad horizons of social media. Outburst as a result of frustration and in the heat of the moment can be comprehended. But to put it in writing, as done by the Plaintiff on his social media handles, shows that he reflected upon it and acted on it. The defamatory allegations against the Defendant show the presence of malice.

Hence, the statements of the Plaintiff amounts to defamation.

²⁶ Barrow v. Lewelli, (1615) Hob. 62; Pullman v. Hill & Co., (1891) 1 QB 524: 39 WR 263: 64 LT 691

²⁷Black’s Law Dictionary, Seventh Edition, p. 968

²⁸Clement v. Chivis, (1829) 9 B & C 172

²⁹1929, ILR, Lah 45; Lt. Col. Gidney v. The A.I. & D.E. Federation, (1930) ILR 8 Ran 250

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

ISSUE 4: IS THE DEFENDANT ENTITLED TO COMPENSATION?

It is most humbly and respectfully submitted before this Hon'ble Court that the Defendant is entitled to compensation.

Compensation is defined as payment of damages, making amends; that which is necessary to restore an injured party to his former position.³⁰ An act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, in order that thereby the person damaged may receive equal value for his loss or be made whole in respect of his injury.³¹

A libel is in itself an infringement of a right and no actual damage need be proved in order to sustain an action.³² An action may be maintained for defamatory words reduced into writing, which would not have been actionable if merely spoken.³³

The ambit of social media information is known to any prudent man. The circulation of such information are seldom done with authentication. As a result it can cause to have an impact on judgements of the public at large.

Insulting words which are likely to expose a person to ridicule and humiliation are actionable.³⁴ Also, originator will be liable for the damage resulting from repetition where the repetition was the natural and probable consequence of his act.³⁵

Every repetition of defamatory words is a new publication and a distinct cause of action.³⁶ The widespread condemnation on the internet could have been easily foreseen by the Plaintiff.

³⁰Black's Law Dictionary, Second Edition, p. 232.

³¹Railroad Co. v. Denman , 10 Minn., 250 (Gli. 208).

³²The Law of Torts: Ratanlal&Dhirajlal, Updated Twenty Sixth Edition., p. 266

³³Thorley v. Earl of Kerry, (1809) 3 Camp. 214 N.

³⁴SurajNarain v. Sita Ram (1939) ALJR 394.

³⁵The Law of Torts: Ratanlal&Dhirajlal, Updated 26th Edition, p. 291

³⁶KaikshuruNaorojiKabiraji v. JehnagirByarmjiMuzban, (1890) 14 Bom 532; Watkin v. Hall, (1868) LR 3 QB 396; Waithman v. Weaver (1882) 11 Price 257.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

Therefore, the Plaintiff also becomes liable for the circulation of his tweet and Facebook post.

In *E. Haulton & Co. v. Jones*³⁷, it was held that a person charged with libel cannot defend himself by showing that he intended in his own heart not to defame or that he intended not to defame the Plaintiff, if in fact he did both.

The intention or motive with which the words are used is immaterial, and if the matter complained of does refer, or would be deemed by reasonable people to refer, to the Plaintiff, the action can be maintained.³⁸

In his Facebook post the Plaintiff put a logo of the Defendant and a hashtag #TSPLeucks. This amounts to clear indication that he had the intention to defame the Defendant.

In the leading case of *Parvathi v. Mannar*³⁹, it has been held that mental distress caused by abusive words which amount merely to an insult is not actionable, but mental distress caused by words of abuse which are also defamatory is actionable and no special damage need be proved.

Owing to the acts of the Plaintiff, the Defendant suffered immense loss of image, reputation and good-will. The Plaintiff made false allegations of deficiency of service and aimed to defame the Defendant. As a result of the social media misinformation the sales of the Defendant went down as well.

Hence, the Defendant is entitled to compensation.

³⁷1910, AC 20, 23; 101 LT 831; 26 TLR 128.

³⁸*Newstead v. London Express Newspapers Ltd.*, (1939) 2 KB 317; *Union Benefit Guarantee Company v. Thakorlal*, (1935) 37 Bom LR 1033; *Baba Gurdit Singh v. "Statesman Ltd."*, (1935) ILR 62 Cal 838.

³⁹1884, ILR, 8 Mad 175, 180; *KoneeSubhadra v. Subbarayadu* (1990) 10 MLJ 83; *Leslie Rogers v. Hajee Fakir Muhammad Sait*, (1918) 35 MLJ 673; *Subbaraidu v. SreenivasaCharyulu*, (1926) 52 MLJ 87.

1st SURANA & SURANA AND RAMAIAH COLLEGE OF LAW
NATIONAL TORT LAW MOOT COURT COMPETITION

PRAYER

Wherefore in the light of issues raised, arguments advanced and authorities cited, the Defendant most humbly prays before this Hon'ble Court to declare and adjudge that:

- That this Hon'ble Court may be pleased to declare that the Plaintiff through its defamatory statement caused loss of reputation to the Plaintiff.
- That may be pleased to direct the Plaintiff to issue an apology and pay to the Defendant a sum of Rupees Five Crore as compensation for the loss of business, goodwill, reputation and for the defamation caused to the Defendant
- Cost of the suit be provided for.

And to pass any order or relief in Favour of the Defendant which this Hon'ble court may deem fit in the larger interest of justice.

For this act of kindness the counsel shall remain duty bound forever.

All of which is respectfully submitted.