

***“1<sup>st</sup> Surana & Surana National Tort Law  
Moot Court Competition”***

**Before The High Court of Judicature, Bombay**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**(Clause 12, Appendix B of the Letters Patent Act, 1948)**

**SUIT NO \_\_ OF 2018**

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**Mr. Heisenberg**

*(Petitioner)*

**v.**

**Travel Solution Private Limited**

*(Defendant)*

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***Memorandum on behalf of Defendant***

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# 1<sup>ST</sup> SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION

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STATEMENT OF JURISDICTION

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The Hon'ble High Court of Bombay has its Ordinary Original Civil Jurisdiction in this matter under **Clause 12, Appendix B** of the **Letters Patent Act, 1948** of the said court.

**1<sup>ST</sup> SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION****STATEMENT OF FACTS**

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Mr. Heisenberg is a data analyst working with Data Max Company. Travel Solutions Private Limited [hereinafter TSPL] is a highly reputed private limited company based in Mumbai that provides travel services. For making arrangements for his trip to Australia, he contacted TSPL. TSPL advised him that the flight from Chennai to Sydney would be much cheaper and consider that he would be booking the tickets for his entire family, it would be more economical. Acting on the advice of TSPL, he got the flight bookings to Sydney through Chennai on 08.09.2017. He was given a list of documents required for the processing of visa on 07.08.2017 by Mr. Tommen of TSPL. He had requested him to secure the documents and give it to him personally so that he may scrutinize it. Mr. Heisenberg managed to submit the documents to TSPL on the evening of 11.08.2017 at the reception desk by which time Mr. Tommen had already left the office. Mr. Heisenberg called up Mr. Tommen who instructed the receptionist to dispatch the documents immediately to Delhi. On 21.08.2017, Mr. Heisenberg got a call from the Delhi office of TSPL informing him that an additional document was required and the information could not be made out earlier due to the holidays. On 06.09.2017, the Visas were finally issued to Mr. Heisenberg by the Australian embassy. TSPL received copies of the passports. Mr. Heisenberg requested that the passports be dispatched immediately. TSPL advised him that owing to the paucity time, it would too risky for the passports to be dispatched to Mumbai and instead passports would be sent to the Chennai airport directly. He left Mumbai on 08.09.2017 but missed his flight because of late arrival of the passports. Out of frustration, he tweeted “Travel Solutions Private Limited- a bunch of liars cheats and thieves with no ethics and was the worst company ever. Further, he uploaded a picture of his entire family stranded at the airport along with a detailed post placing the entire blame on the company.

**MEMORANDUM ON BEHALF OF DEFENDANT**

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**STATEMENT OF ISSUES**

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**ISSUE-I**

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**WHETHER TSPL IS LIABLE FOR NEGLIGENCE?**

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**ISSUE-II**

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**WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?**

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**1<sup>ST</sup> SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION****SUMMARY OF ARGUMENTS**

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**ISSUE-I****WHETHER TSPL IS LIABLE FOR NEGLIGENCE?**

Duty of care was implemented carefully by the Travel Solutions Pvt. Ltd. TSPL is not denying of its duty to take care but there has to be limited duty as just and reasonable action was taken by the company. The company duly completed its obligations to do hotel reservations, air tickets and visa processing. If the act provided by service provider was with bonafide intention, then the act cannot be held as negligent or deficient. Secondly, there was no breach of duty as well because negligence is determined by the test of ordinary skilled man exercising and professing to have that special skill and a man need not to possess highest expert skill. Therefore, the defendant is judged not against the benchmark of what could reasonably have been expected of him and lastly the damages were not in consequence of the breach of its duty

**ISSUE- II****WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?**

Defamation was committed on the Part of Mr. Heisenberg on several grounds. Firstly, Mr. Heisenberg tweeted post “travels solution private Limited- a bunch of liars cheats and thieves with no ethics, the worst company ever” which was highly defamatory in nature. Secondly, the tweeted post clearly referred to TSPL. Thirdly, post re-tweeted several hundred times so clearly publication was done. Fourthly, there was injury caused to TSPL because they have suffered a tremendous loss of image, reputation and good-will.

**MEMORANDUM ON BEHALF OF DEFENDANT**

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**[1]. WHETHER TSPL IS LIABLE FOR NEGLIGENCE?**

1. Negligence is the breach of duty caused by the omission to something or an action which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something or an action which a reasonable man and prudent would not do. Actionable negligence consists in the neglect of the use of ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or a property.<sup>1</sup> The three essential of the tort of Negligence are that [1] A legal duty to exercise due care on the part of party complained of towards the party complaining the former's conduct within the scope of duty,<sup>2</sup> [2] Breach of Said duty, and [3] Consequential damage. It is submitted on behalf of the defendant that Travel Solutions Pvt. Ltd is not responsible for negligence and the grounds for the same are stated below sequentially.

**[1.1]. Duty of care was implemented carefully by the TSPL.**

2. The rule of law that was established in *Blyth v. Birmingham Water Works Co.*<sup>3</sup> is that negligence is the failure to do something a person of ordinary prudence would do or taking of an action that a person of ordinary prudence would not take. Travel Solutions Pvt. Ltd tried its level best to make sure that visa was processed on time and delivered to Mr. Heisenberg, just because of mere accident that is not occasioned by the failure to take such an action does not qualify as negligence.

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<sup>1</sup> Jacob Mathew v. State of Punjab and Another, AIR 2005 S.C.

<sup>2</sup> Donoghue v. Stevenson, (1932) AC 562, 579.

<sup>3</sup> (1856) 11 Ex Ch 781, 156 ER 1047.

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**3.** In the *Caparo Industries plc v Dickman*,<sup>4</sup> it was decided that it is never sufficient to ask simply whether A owes B a duty of care rather it is always necessary to determine the scope of the duty by reference to the kind of damage from which A must take care to save B harmless. Caparo had bought shares in the company relying upon the results of the audit report showing that the company earned huge profit but it was under a loss of 1.2 billion in turn causing a loss for Caparo. It was held that there was no duty owed at all, either to existing shareholders or to future investors by a negligent auditor. The duty did not extend to the provision of information to assist shareholders in the making of decisions as to future investment in the company. In the instant case, defendant discharged its duty of procuring visa for the petitioner well in advance however due to unfortunate delay of hours by the courier company it couldn't reach petitioner on time, the scope of the petitioner's duty cannot be reasonably enlarged to cover delay caused by the courier company. The company did all of its tasks efficiently.

**4.** In the *Peabody Donation Fund's*<sup>5</sup> case, it was held that once approval for grant was given, the housing executive owed no duty of care to the recipients of improvement grants. The reason was that the executive had no power of control over building operations and so it would not be fair and reasonable to impose a duty of care on the executive. Therefore, the defendant is not denying of its duty to take care but there has to be a limited duty. Imposing an extra duty of care would lead to 'defensive practices' as it will increase reluctance to deny a duty. So in the instant case, liability can't be attributed to the company for late delivery of passport at Chennai airport.

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<sup>4</sup> [1990] UHKL 2.

<sup>5</sup> [1985] AC 210.

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5. In the case of *D v. East Berkshire Community Health NHS Trust*<sup>6</sup>, Lord Brown said that there is always a temptation to say in all these cases that no one, whether a doctor concerned with possible child abuse, a witness or a prosecutor will ever in fact be held liable unless he has conducted himself manifestly and unreasonably and in the present case, neither the respondent has behaved unreasonably nor he has conducted himself incomprehensively.

6. In the view of definition of Section 2(1) (o) and 2(1) (g) of the Consumer Protection Act, 1986 deficiency in service cannot be alleged without attributing fault, imperfection, shortcomings or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance to any service and in this present case, there was no imperfection by the defendant.

**[1.1.1]. TSPL has taken just and reasonable action.**

7. Travel Solutions and Pvt. Ltd. completed its liability as the visa was duly processed within the promised and assured time i.e. within 15 days and visa clearance was not under their control as it is subject matter of the embassy. The company duly discharged its duty by submitting all papers and documents required for procession of visa application to the embassy on time and by completing all hotel reservations, air tickets on time

8. In the case of *Interglobe Aviation Ltd. v. N. Satchithanand*<sup>7</sup>, it was observed that compensation cannot be granted merely because there was inconvenience or hardship on the grounds of sympathy and the thing that relevant is whether there was any deficiency in service in the course of providing facilitation. If the act provided by service provider was with bonafide

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<sup>6</sup> (2004) 20 PN 58, 63).

<sup>7</sup> (2011) 7 SCC 463.

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intention, then that act cannot be called as negligent or deficient. Similarly, in the instant case, TSPL cannot be held liable for negligence simply because petitioner couldn't catch his flight. The company made a wise decision of sending passport to Chennai due to paucity of time as passport had arrived only two days before the flight of Mr. Heisenberg and they gave advice in bonafide manner to take passport from Chennai airport.

**[1.2]. TSPL did not breach its duty of care.**

9. In the case of *Bolam v. Friern Hospital management Committee*<sup>8</sup>, the judges came to the conclusion that when you get into a situation which involves the use of some special skill or competence, the test as to whether there has been negligence or not is determined by the test of ordinary skilled man exercising and professing to have that special skill and a man need not possess highest expert skill. A man need not possess the highest expert skill; it is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.<sup>9</sup>

10. In the case of *Hawkins v. Coulsdon & Purely UDC*<sup>10</sup>, it was held that while the reasonable person is not all seeing and all-knowing and he can therefore make reasonable mistakes. This is so because he always acts reasonably within the scope to which he can think fit. In reality, no individual is infallible and even the most careful persons can on a few occasions. He is presumed to be free from over- apprehension. In the present case, the company did its best to do the visa

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<sup>8</sup> [1957] 1 W.L.R 582, 586.

<sup>9</sup> *Ibid.*

<sup>10</sup> (1954) 1 ALL ER 97 CA.

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processing within its ordinary and prudent approach. It was because of national holidays and 2<sup>nd</sup> Saturday and Sundays that they got late notification of missing of an additional document.

Even if we suppose that Mr. Tommen had personally scrutinized the documents, then also due to holidays of the company, embassy and due to national holidays, it was not possible for Mr. Tommen to find out the missing of extra document because it was only possible after cross checking from the embassy.

**11.** In the case of *Rajkot Municipal Corporation v. Manjuben Jayanti*<sup>11</sup>, it was held that every negligent act will not result in liability in negligence. There has to be some control device in order to determine when liability is capable of arising and the caution of accident should be accessible. Therefore, going by this deduction, visa clearance was not under the control of Travel Solutions Private Limited and therefore the company cannot be held liable for compensation for negligence as the company was successful in clearing the process of visa within 15 days.

**12.** In the case of *Jacob Mathews v. State of Punjab*<sup>12</sup>, it was held that any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures the person dealing with him that the skill which he possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result of his actions be it a doctor or a lawyer.

**13.** The High Court in the case of *Wyong Shire Council v Shirt*<sup>13</sup> held that a person cannot be held liable for failure to take precautions against a risk that could be described as ‘far-fetched’,

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<sup>11</sup> 1992 ACJ 792.

<sup>12</sup> AIR 2005 SC 3180.

<sup>13</sup> (1980) 146 CLR 40.

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even if it was foreseeable. In this case, it can be interpreted as it was far-fetched to predict whether the passport delivery was better at Mumbai or at Chennai airport and though the result was foreseeable but it cannot be considered as negligence.

In this complex society, ordinary people might have insufficient knowledge or experience of the activities under consideration. The best example is the *Wagon Mound* litigation. In a different action launched by the different petitioner of the same cause, the trial judge held that the plaintiff were not entitled to recover in negligence, for although the damage was foreseeable, the risk was so remote that it could be disregarded and was therefore not reasonably foreseeable.<sup>14</sup> Therefore, the defendant is judged not against the benchmark of what could reasonably have been expected of him, but against the yardstick of the reasonable person.

**14.** In the case of *Barrett v. Enfield LB*<sup>15</sup>, Lord Slynn, observed that it is an undoubted principle that a person who fearlessly carried out his professional role will not be held to be negligent. Therefore, by referring to the above two judgments, it can be inferred that over burden cannot be placed at the party doing some professional work because it will then make the customer or consumer do illicit practices.

**15.** In the case of *Ranveet Singh Bagga v. KLM Royal Airlines*<sup>16</sup>, it was observed that the respondent cannot be held guilty of rendering inefficient service because its staff at Amsterdam is proved to have acted fairly and in a bona fide manner keeping in mind the security of

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<sup>14</sup> [1961] AC 388.

<sup>15</sup> [2001] 2 AC 550.

<sup>16</sup> 2000 1 SCC 66.

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passengers. Therefore, the bona fide action taken by an agent or a staff cannot be held a deficiency in service and result in negligence.

**[1.3]. TSPL is not liable for damages.**

**16.** It may be recalled that in the *Donoghue v. Stevenson*<sup>17</sup> case that consumer's claim of negligence against the manufacturer was not that she suffered economic loss but it caused physical damage to her. Therefore, the company in the present case cannot be held liable for damages.

**17.** In the case of *M/s Spring Meadows Hospital v. Harjot Ahluwalia*<sup>18</sup>, the apex court has said that an error of judgment in a professional service is not necessarily negligence. The court observes that if an error occurred by taking ordinary care, then it is not considered to be negligence. It is not possible for every professional to possess the highest level of expertise or skills in that branch which he practices. A highly experienced and professional may be possessed of better qualities, but that cannot be made the basis or the yardstick for judging the performance of the professional proceeded against on inducement of negligence.<sup>19</sup>

**18.** In the case of *Bryan v. Maloney*<sup>20</sup>, it was held that pure economic loss should not generally give rise to liability in negligence. If liability were to be imposed for doing of anything which caused economic loss that was foreseeable, the tort of negligence would destroy the commercial competition, sterilize many contracts and expose defendants to potential liability in an indeterminate amount for an indeterminate time to an indeterminate class. Physical damage to

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<sup>17</sup> [1932] AC 562.

<sup>18</sup> (1998) 4 S.C.C. 39.

<sup>19</sup> *Ibid.*

<sup>20</sup> 1995 182 CLR 609, p.632.

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person or property is an essential part of the cause of action in negligence and that negligence does not cover purely economic loss.<sup>21</sup>

**19.** In the case of *Murphy v. Brentwood District Council*<sup>22</sup>, the Council had approved the plan of a building on the negligent advice of their engineers which led to the defective foundation of the building resulting in extensive damage to the walls and pipes. The plaintiff suffered loss in reselling the building. The plaintiff's claim of this loss against the Council in an action in negligence was negated by the House of Lords on the grounds that this was pure economical loss.

**20.** In the case of *Mutual life and citizen's Assurance Co Ltd v. Evatt*<sup>23</sup>, the Privy Council held that the plaintiff can't claim their economic cost loss cause by the negligent misstatement to the defendant. In this case, the defendant was Insurance Company and although their work was to give an advice but the financial advice they had given was not an expert in their professional and therefore liability cannot be imposed thereupon. In addition to this, there was no misstatement given by the company as a reasonable and a prudent man would have given the same advice. Also, there was no obligation of the company to give advice to Mr. Heisenberg as its work mainly included visa processing, booking of air tickets and hotel reservations and giving advice was out of generosity as of professional ethics. The company cannot be held liable for not giving perfect suggestion as to where the passports should be dispatched- whether to Mumbai or to Chennai passport. The defendant gave advice to dispatch the passport directly to Chennai

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<sup>21</sup> D & F Estates Ltd. v. Church Commissioners, (1988) 2All ER 992.

<sup>22</sup> (1990) 2All ER 908 (HR).

<sup>23</sup> (1971) AC 793, (1971) All Er 150, PC.

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Airport<sup>24</sup> because it will provide more time to Mr. Heisenberg and would be safer too because Mr. Heisenberg had to leave on the same day.<sup>25</sup> If someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort.

**[2]. WHETHER MR. HEISENBERG IS LIABLE FOR DEFAMATION?**

**21.** Defamation is the publication of a statement which reflects on person or corporation reputation and tends to lower him in the estimation of right thinking members of the society generally or tends to make them shun or avoid him.<sup>26</sup> In the present case, the essentials of defamation took place [1] publication of defamatory statement took place, [2] The defamatory statement referred to TSPL, [3] The statement published by Mr. Heisenberg was defamatory, [4] There was injury caused to the TSPL.

**[2.1]. Publication of defamatory statement took place.**

**22.** Communicating defamatory matter to some person other than the person of whom it is written is a publication in it legal sense.<sup>27</sup> If the statement is sent straight to the person of whom it is written, there is no publication of it, for you can't publish a libel of a man himself.<sup>28</sup> That can't injure his reputation, though it may injure his, self-esteem. A man's reputation is the estimate in which other holds him, not the good opinion which he has of himself. The word

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<sup>24</sup> Moot Problem, Para 11.

<sup>25</sup> Moot Problem, Para 12.

<sup>26</sup> Rogers, W.V.H. (2002) Winfield and Jolowicz on Tort, 16th edn, London: Sweet & Maxwell.

<sup>27</sup> Pullman v. Hill & Co., (1891) 1 QB 524.

<sup>28</sup> *Ibid.*

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complained of should be communicated to some person other than the plaintiff.<sup>29</sup> Under English law each publication is separate torts. The English law and the community law also do not recognize any global theory of jurisdiction and separate actions in each relevant jurisdiction are permissible.<sup>30</sup>

**23.** Publication plays a core value in the cause of action arises from defamation.<sup>31</sup> It's the Publication, not the composition or subsequent circulation of libel which is actionable wrong.<sup>32</sup> Often sue for publishing is not the writer. Publication is means the act of making defamatory statement to any known person or a person other than a plaintiff himself.<sup>33</sup>

**24.** In the present case tort of defamation has been committed against Travel Solution Private Limited which leads to loss of good will of the company due the defamatory statement that was made from the side of the Mr. Heisenberg, the tort was committed from the social media by posting a pictures and tweeting '#TSPLsucks'.<sup>34</sup>

**25.** Hence, this could be clearly analyzed that the defamatory statement publication was done by the Petitioner of Mr. Heisenberg<sup>35</sup> through the social Media which was re-tweeted many times and spread across the country. It could clearly understandable that the main source of the

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<sup>29</sup> Barrow v. Lewellin, (1615) Hob 62.

<sup>30</sup> Berezovsky v. Michales, (2000) 2 All ER 986.

<sup>31</sup> Powell v. Gelston, (1916) 2 K.B. 615, 619.

<sup>32</sup> Grapelli v. Derek Block Ltd, (1981) 1 WLR 882.

<sup>33</sup> Pullman v. Hill, (1891) 1 HB 514, 527.

<sup>34</sup> Moot Problem, Para 15.

<sup>35</sup> Whitfield v. S.E. Ry., (1858) EB&E.

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malicious propaganda is Mr. Heisenberg and he posted that picture and made false allegation against the company in the case.

**[2.2]. The Defamatory statement referred to TSPL.**

**26.** It is essential in every action for defamation that the defamatory statement should refer to the plaintiff. A court has power in interlocutory proceeding<sup>36</sup> to dismiss the action on the ground that no reasonable person could conclude that the plaintiff should be identified with the person named in the matter complained of the defamatory.<sup>37</sup> It's never necessary, however, that the reference to the plaintiff should be express. It may be latent and it's sufficient a case that it should have been understood even by one person, although it remained hidden from all others.<sup>38</sup>

**27.** The tort of Defamation is not committed unless the defamatory statement refers to the claimant, In the present case the statement that has been cause defamation from the side of Mr. Heisenberg is directly defaming the company's reputation and goodwill at large, The tweet and pictures posted by the Mr. Heisenberg on social media in the libel form is directly referring to the Travel solution Private Limited.<sup>39</sup> Mr. Heisenberg makes false allegation and held liable Travel Solution Private Limited for the missing of Flight. The plaintiff is trying to spread malicious propaganda due to which Travel solution limited have face tremendous loss and loss of goodwill as well.

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<sup>36</sup> Keays v. Murdoch Magazine Ltd, (1992) 1 WLR 1184.

<sup>37</sup> Morgam v. Ordhams Press Ltd. (1971) 1 WLR 1239.

<sup>38</sup> Haywards v. Thompson, (1982) Q.B. 47.

<sup>39</sup> Shor v. Bilingsley, 5 A.D.2d 768 (1956).

**1<sup>ST</sup> SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION****[2.3]. The Statement published by Mr. Heisenberg was defamatory.**

**28.** A defamatory statement is one which has tendencies to injure the reputation of the person or to whosoever it may concern; which tends, that is to say, to lower him in the estimation of right thinking member of the society generally<sup>40</sup> and in particular to cause him regarded with feeling of hatred, contempt, dislike and disesteem.<sup>41</sup> The statement is judged by the standard of the ordinary, right thinking member of the society. Hence the test is an objective one, and it has no defense to say that the statement was not intended to be defamatory, or uttered by way of joke.<sup>42</sup> In the present case, Mr. Heisenberg tweeted “Travel Solutions Private Limited- a bunch of liars, cheats and thieves with no ethics. The worst company ever”<sup>43</sup> that is highly defamatory in its content itself.

**29.** Similarly in the Judgment of *Prof. Imtiaz Ahmad v. Durdana Zamir*<sup>44</sup>, the Delhi High Court observed that "Under the law of defamation, the test of defamatory nature of a statement is its tendency to incite an adverse opinion or feeling of other persons towards the plaintiff. A statement is to be judged by the standard of the ordinary, right thinking members of the society at the relevant time. The words must have resulted in the plaintiff to be shunned or evaded or regarded with the feeling of hatred, contempt, ridicule, fear, dislike or disrespect or to convey an imputation to him or disparaging him or his office, profession, calling, trade or business."

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<sup>40</sup> Sim v. Stretch, (1936) 52 T.L.R 669.

<sup>41</sup> *Ibid.*

<sup>42</sup> Capital and Countries Bank v. Henty, (1882) 7 App. Cas. 771, 772.

<sup>43</sup> Moot Problem, Para 14.

<sup>44</sup> 2009 INDLAW DEL 119.

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**30.** In the Present case, Mr. Heisenberg statement was having mala fide intention to defame the Travel Solution private Limited because he couldn't travel to Australia due to his part of misfeasance and keeping illusion as Travel solution private limited had been a reason of Non-delivery of visa on time. Mr. Heisenberg had posted a tweet alleging "Travel solution limited – a bunch of liars, cheats and thieves with no ethics, the worst company ever".<sup>45</sup> Further, Mr. Heisenberg uploaded a picture of his family stranded at the airport blaming Travel solution private limited for all the problems that they had to face at airport and ended with #TSPLsucks with a Logo of the company which alleged false imputation<sup>46</sup> on the company's reputation and goodwill<sup>47</sup>.

**31.** In the case of *Consider Yousouppoff v. Metro-goldwyn-Mayer Pictures Limited*<sup>48</sup> the word may be defamatory if it is cause the claimant to be shunned or avoided, for it questionably defamatory to impute insanity or insolvency to a person, although, far from exciting hatred, contempt or ridicule, it would rose only pity or sympathy in the minds of reasonable people, who may nevertheless be inclined the to shun his society. In the present case Mr. Heisenberg has spread this false representation through social media at had bad impact on the society at large.

**32.** Hence, in the present case Mr. Heisenberg will be held liable for the act of defamation which is not merely actionable tort, but also as a criminal offence; whereas slander is a civil injury only.

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<sup>45</sup> *Supra* note 43.

<sup>46</sup> *Grants v. Readers Digest Association*, 151 F.2d 733(1945).

<sup>47</sup> *Sim v. Stretch*, (1936) 52 T.L.R 669.

<sup>48</sup> 50 T.L.R 581 (1934).

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Its accepted phenomenon that the likelihood of the breach of peace was a vital factor in criminal libel, but this is now only one relevant factor.<sup>49</sup>

**[2.4]. There was injury caused to the TSPL.**

**33.** In the case of *Thornton v. Telegraph Media Group Ltd.*<sup>50</sup> the Queen's Bench Division held that there were two varieties of each of the torts of libel and slander, viz., personal defamation, which involved imputations as to the character or attributes of an individual, and business or professional defamation, which involved imputations as to an attribute of an individual, a corporation, a trade union, a charity, or some other similar body which imputation was as to the way that profession or business was conducted. Further, the Bench held that in order to give effect to the threshold of seriousness, they preferred definition of a "defamatory" publication was one which affected in an adverse manner the attitudes of people towards the claimant, or had a tendency so to do.

**34.** In the case of company or a trading corporation, word calculated to reflect upon it in the way of its property or trade or business and to injure it therein are actionable without proof of special damage; but if they refer only to the personal character or reputation of its officers, then the special proof of damage is necessary.<sup>51</sup> The rule of English law that a trading corporation or company can sue in libel for general damages when it could prove no financial loss has been

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<sup>49</sup> *Gleaves v. Deakin*, (1980) A.C. 477 (1982).

<sup>50</sup> 2011(1) WLR (1985).

<sup>51</sup> *Union Benefit Guarantee Company v. Thakorlal Thakor*, (1935) 37 Bom LR 1033.

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held to be not in compatible with the European Convention enforced by the Human Right act, 1998 and has been reaffirmed.<sup>52</sup>

**35.** In the case of *Levis V. Daily Telegraph*,<sup>53</sup> court held that “A company can’t be injured in its feelings, in can be only injured in it is pocket. Its reputation can be injured by a libel but that injury should be sound in money.”

**36.** In the instant case, the Travel Solution Private Limited has suffered a tremendous loss of image, reputation and good-will due to the false allegation imposed by the Mr. Heisenberg and the posting of pictures which include the defamatory statement, and few words like saying cheaters and thieves clearly states that Mr. Heisenberg is having mala fide intention to defame the company, here in this case TSPL hasn’t done anything to Mr. Heisenberg which signifies his intention to cheating and thief<sup>54</sup>, where its sole discretion of visa issuance embassy due to which visa couldn’t be delivered on time and Mr. Heisenberg is too responsible for not submitting visa documents properly. The compensation of 1 crores should be granted to the Travel solution Private Limited for the commission of tort of defamation in the case to rebate for the loss of good will.<sup>55</sup>

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<sup>52</sup> Jameel v. Wall Street Journal, (2006) 4 All ER 1279 (H.L.).

<sup>53</sup> (1964) AC 234.

<sup>54</sup> *Supra* note 43.

<sup>55</sup> South Hetton Coal Company Ltd. v. North- Eastern News Association, (1894) 1 QB 133.

**1<sup>ST</sup> SURANA & SURANA NATIONAL TORT LAW MOOT COURT COMPETITION****PRAYER**

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In light of the issues raised, arguments advanced and authorities cited, the counsel for the Defendant humbly prays that the Hon'ble Court be pleased to adjudge, hold and declare:

- TSPL is not liable for negligence.
- Mr. Heisenberg is liable for defamation.
- TSPL should be awarded compensation of 1 crore for defamation.
- Pass any other order that may deem fit in the interest of justice, equity and in a good conscious.

All of which is most respectfully submitted

(Counsel for the Defendant)