

Posting, sharing and liking could get you into legal hot water

Social media users often share or like funny memes, embarrassing videos and stinging remarks about people without considering the consequences. Even seemingly innocent reposts and comments could increase a social media user's risk of being held liable for defamation.



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Good name and reputation

“In law, every person has the right to a good name and reputation, which is the respect and status he or she enjoys in society. Any action that has the effect of injuring a person's status in the community is defamatory, and the doer may therefore be held liable,” Johannes du Plessis, legal advisor at [RBS](#) says.

He explains that this liability includes defamation committed by way of sharing videos, pictures, jokes, remarks or general information about a person via social media. “According to case law, it is irrelevant whether the defamatory allegation is true or false. It also does not matter whether the defamatory material originated from you, or whether you simply repeat, confirm, share, or even draw attention to it. You are still at risk of being held liable,” he adds.

Case law

According to case law, whether the good name of the person involved has in fact been infringed is irrelevant when determining wrongfulness. “The only relevant question is whether, in the opinion of a reasonable person, the reputation of the person concerned has been injured. It is thus an objective approach. In a civil case, a person may be liable for intentionally or negligently injuring defamed persons' good name, reputation and dignity. In a criminal case, a person may be criminally liable for intentionally injuring defamed persons' good name, reputation and dignity,”

Wide application

Du Plessis says that this wide application of defamation, makes it very easy for social media users to be held liable.

There are also many examples in South African case law that demonstrate the risks of careless social media behaviour. “All persons who shared a defamatory item may be jointly and severally liable in solidum for the same damage, according to the Apportionment of Damages Act. An employer may also be held liable for the defamatory actions of an employee,” he says.

“This is not a hypothetical discussion, and South African courts have already seen cases where people’s social media activity had cost them. The courts have ordered individuals, whom the court held to have defamed another person on social media, to pay tens of thousands in compensation for the damage.

Jointly and severally liable

The courts have also held persons who were tagged in the defamatory comment, to be jointly and severally liable therefore, because such persons failed to take steps to actively distance themselves therefrom,” Du Plessis states. The courts have further held persons, who have intentionally defamed other persons, to be criminally liable for injuring defamed persons’ dignity.

The implication of this is clear. “Always remember that it is very easy for you to be held liable for defamation by means of social media. So do not put yourself at risk by posting, sharing or even calling attention to defamatory material on social media. Finally, to guard against the risk of liability for defamation, a social media user should ensure that he or she is sufficiently covered by defamation insurance,” Du Plessis concludes.

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