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Defamatory Half-Truths in Malaysia: Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong

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Abstract

Seema Elizabeth Isoy wrote in a condominium owner Whatsapp group that developer David Chiu had been arrested for fraud several years earlier. She knew but left out that he had later been acquitted. In holding her liable for defamation, the Malaysian Federal Court in *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* relied on the concept of a half-truth – a statement that is literally true but omits key information that would change the statement's meaning – raised by Lord Shaw in *Sutherland v Stopes*. This note suggests that, while the Federal Court's conclusion ultimately may have been justified, it should have more carefully considered whether a report of a preliminary act such as an arrest or charge necessarily implies guilt and whether an acquittal actually lessens the sting of an arrest and charge. Judgments cited by the Federal Court – from India, the US, Malaysia, Canada and South Africa – did not adequately address these issues, making this note of potential interest to readers across the common law world.

Keywords: torts; defamation; half-truths; Malaysia

Introduction

Truth is generally an absolute defence to a charge of defamation. It does not matter if the defendant was acting spitefully or maliciously. The law struggles to establish clear rules, though, for half-truths. Half-truths consist of a true statement (the first half) and an omission of additional true information (the second half). The evil of a half-truth can manifest in two ways: first, when the stated half-truth is something bad that would no longer be so bad if the second half were disclosed; and secondly, when the stated half-truth falsely implies something not stated that is also bad, or even worse than the stated half-truth; disclosing the second half would clear up this false implication.

Half-truths recently came before the Federal Court, Malaysia's highest court, in *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* (*Isoy*).[1] *Isoy* and some of the issues it leaves unresolved have implications for common law courts beyond Malaysia, illustrated by the geography of the judgments that *Isoy* cites: US, Canada, India, South Africa and Malaysia.[2] Half-truths are told everywhere. Isoy's use of Whatsapp illustrates how easy it has become to spread them widely.

[1] *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong* [2024] 4 MLJ 260.

[2] The cases were: US: *Klentzman v Brady*, 456 SW 3d 239 (Tex App 2014); Canada: *MD Mineralsearch Inc v East Kootenay Newspapers Ltd* [2002] 97 BCLR (3d) 291; India: *V Radhakrishnan v Alla Rama Krishna Reddy* (2018) SCC Hyd 98; South Africa: *The Citizen 1978 (Pty) Ltd and Others v McBride* [2011] 5 LRC 286; Malaysia: *Lim Guan Eng v Utusan Melayu (M) Bhd* [2012] 2 MLJ 394; *Sivabalan P Asapathy v The New Straits Times Press (M) Bhd* [2010] 7 CLJ 885; *Sharifuddin*

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In this note, I review the three Malaysian judgments (the High Court held in Isoy's favour while the Court of Appeal and the Federal Court ruled against her) and suggest that the Federal Court failed to adequately address two key points that common law jurisdictions should account for when considering their own defamation cases involving investigations, arrests, charges, convictions, dismissals and acquittals. These are that a report of a preliminary act such as an arrest or charge may not necessarily imply guilt; and that the preliminary act may carry a sting that is independent from any eventual court verdict. Indeed, if stating the omitted half-truth would not impact the truthfulness of the stated half-truth and its reasonable implications, then the stated half-truth is actually a whole truth.

1. Facts

The bad blood between Isoy and Chiu appears to have developed over several years. Isoy owned a unit of the Waldorf & Windsor Towers Service Apartments (W&W) in Kuala Lumpur. She was a member and at one point the chairperson of W&W's management committee. Chiu was the founder and chairperson of Malaysia Land Properties Sdn Bhd (Mayland), the company that developed W&W. Between 2011 and 2017, there were nine lawsuits involving W&W management and Mayland or people connected to Mayland.

On 27 August 2017, Isoy posted a long message in a Whatsapp group of 55 other unit owners that included a bullet-pointed list of arrests and charges against Chiu, his father and his grandfather. In the 1980s, Chiu and his father in fact had been arrested and charged in Hong Kong for financial misconduct but were apparently acquitted in the 1990s. The message said Chiu had 'been in the past arrested and charged for the same offenses as Deacon Sr' (his father) and that he 'also faced charges of conspiring to falsify documents purporting to show that more than $246 million in credit facilities had been granted to the bank by various companies'. It continued, 'Mayland is the CHIU family' and added, later, that Mayland had been convicted of fraud and misrepresentation against W&W owners. It ended with, 'The apple doesn't fall far from the tree … Please google these names to read more.' Ten days later, the Whatsapp group administrator removed Isoy.[3]

2. Court decisions

(a) The High Court decision

In his 2018 defamation lawsuit against Isoy, Chiu argued that the Whatsapp message implied that he had committed and been convicted of fraud.[4] The High Court disagreed, finding that the ordinary and natural meaning of the message did not imply that Chiu engaged in dishonourable conduct, did not tend to lower Chiu in the estimation of right-thinking members of society generally and did not expose Chiu to ridicule, contempt or hatred. Instead, it merely stated true facts.[5] The High Court was persuaded that the juxtaposition in the message of the phrases 'arrested and charged', 'faced charges' and 'purporting', associated with Chiu, with the phrase 'has been convicted', associated with Mayland, showed that Isoy was distinguishing Chiu from Mayland (which had been found liable for fraud).[6] There was no imputation, therefore, that Chiu was a fraudster or that he had ever been convicted of any crime. On the half-truth, the High Court concluded that reasonable readers understand that arrests and charges are only allegations, nothing more.[7]

Mohamed & Another v Dato' Annas Bin Khatib Jaafar [2016] MLJU 1729; *Tan Sri Dato' Tan Kok Ping, JP lwn The New Straits Times Press (M) Bhd dan lain-lain dan satu lagi guaman* [2010] 2 MLJ 694; *Dato' Seri Anwar bin Ibrahim v The New Straits Times Press (M) Sdn Bhd & Another* [2010] 2 MLJ 492.

[3] *Seema Elizabeth Isoy v Tan Sri David Chiu Tat-Cheong*, above n 1, at [6], [11].

[4] *Tan Sri David Chiu Tat-Cheong v Seema Elizabeth Isoy* [2021] MLJU 1426.

[5] Ibid, at [22]–[24].

[6] Ibid, at [28]–[29].

[7] Ibid, at [84].

(b) The Court of Appeal decision

The Court of Appeal reversed the decision of the court below.[8] Addressing the juxtaposition of phrases, the Court explained that by presenting the conviction of Mayland in the same message with the arrest and charges against Chiu, Isoy was inviting the Whatsapp group members to equate, not distinguish, them. As a result, the statement 'convey[ed] to the ordinary man that [Chiu] is dishonest and a fraudster'. But the Court went further, extending the implication not only to Chiu's character but also to his possible conviction on the charges: 'the impugned text as a whole gives the clear impression that the plaintiff is guilty, liable for, or predisposed to dishonesty, fraud or misrepresentation'.[9] The Court explained: 'the omission to paint the full picture is the very nature and essence of the concept of "half-truth" which establishes liability for defamation in circumstances where the failure to present the requisite information portrayed a false impression in the minds of the ordinary person'. The invitation at the end of the message to Google for more information, for the Court, was insufficient to negate the statement's 'utter falsity'.[10] The Court added that because Isoy knew of the acquittal, and because there was no reason to include the allegations against Chiu other than to malign him, Isoy had acted with malice (and thus, under the law, could not resort to the defences of fair comment or qualified privilege).[11]

(c) The Federal Court decision

Isoy argued at the Federal Court that the Court of Appeal was mistaken to conclude that a reader would infer that Chiu was guilty of fraud.[12] The Federal Court disagreed. It explained that words are defamatory if they 'in their natural and ordinary meaning, tend to lower the plaintiff in the estimation of a reasonable man in society'.[13] The words must be considered in context and include not just what is expressed but also implied.[14] The implied (or indirect) meaning must be 'a meaning which is capable of being detected in the language used' and cannot require special knowledge, strict rules of legal construction or extrinsic facts.[15]

On whether Isoy's statement was a half-truth, the Federal Court turned to Lord Shaw's opinion in *Sutherland v Stopes* where he explained:

> truth must not be stated without being fully stated; that is to say, without that context in the case of a libel, and without those circumstances in the case of a slander, which would put a different complexion upon matter which is libellous or slanderous standing by itself, and would possibly or probably destroy altogether its character as such.[16]

The Federal Court was of the view that Isoy's disclosure of the acquittal 'certainly would have neutralised the sting in the eyes of the readers'. Like the Court of Appeal, the Federal Court went further to also suggest that Isoy's message 'resulted in the defamatory impression that he was guilty of the charge in the eyes of the readers'.[17] Readers would conclude, the Court reasoned, that Isoy implied a conviction, not just an arrest. Truth could not therefore come to her defence.[18]

[8] *Tan Sri David Chiu Tat-Cheong v Seema Elizabeth Isoy* [2023] 3 MLJ 674.
[9] Ibid, at [48].
[10] Ibid, at [66], [69].
[11] Ibid, at [32]–[33].
[12] Ibid, at [19], [22].
[13] Ibid, at [31].
[14] Ibid, at [33].
[15] Ibid (citing *Jones v Skelton* [1963] 3 All ER 952).
[16] Ibid, at [38] (citing *Sutherland and Others v Stopes* [1925] AC 47).
[17] Ibid, at [43].
[18] Ibid, at [77].

3. Comment

The relationship between the first and second half-truths helps to determine whether the first half is, in the Court of Appeal's words, an 'utter falsity' or, actually, something less than the whole story but still a full truth. In this note, I suggest that the Malaysian courts should have more carefully considered whether either of the two types of half-truths described in the introduction applied to Isoy's Whatsapp statement. More specifically: (1) whether a report of an arrest and charge really leads ordinary people to infer guilt; and (2) whether the disclosure of an acquittal really takes the sting out of an arrest and charge. I present cases from other jurisdictions that suggest the answer to both queries can, depending on the facts, be 'no'.

I start by turning briefly to insights from US case law to understand how courts deal with half-truths that mention initial arrests and prosecutions but fail to report criminal court outcomes. Caution is required when referencing US defamation laws in a Commonwealth context because US libel laws place the burden of proving falsity on the plaintiff, while UK laws place it on the defendant to prove truth; but here, the difference is immaterial to the nature of half-truths. In a 2021 article, Eugene Volokh describes how US courts mostly find liability when the omitted half-truth is an exculpatory legal decision.[19] The ways of exculpation or ending proceedings, however, are varied: a conviction may be overturned on appeal; a court may find a charge baseless; the parties may settle before trial; an arrest may be expunged; or charges may be dismissed for non-innocence-related reasons. Volokh explains that when an action 'doesn't demonstrate innocence of the original charge' (eg a settlement or expungement), omitting it is not defamatory. In contrast, describing the charge without the court's finding that it was baseless would misrepresent the charge's validity.[20] Mentioning a prosecution without also mentioning an acquittal, he writes, 'may well be libelous' because it 'does change the gist of the overall story'.[21]

The problem is that some acquittals or dismissals may signify innocence but others do not, and some may change the overall gist while others do not. Where a newspaper reported a police brutality case without mentioning the prosecution and acquittal, a US District Court found no defamatory half-truth because the omitted information 'would not have placed the officers in any better light in the public mind'.[22] The Vermont Supreme Court similarly held that a published statement describing the defendant as an alleged child molester against whom criminal charges had been filed was not a defamatory half-truth even though it failed to include that the charges had been dismissed because the 'plaintiff had been alleged by the State to have molested a child' and '[t]he fact that defendant failed to mention that plaintiff's criminal charges were later dismissed and thereby place plaintiff in a more positive light does not rise to the level of tortious conduct'.[23]

In contrast to the reporting of charges, courts may be more likely to find liability when the reporting is of a conviction that is later overturned. The High Court of Australia (the country's highest court) found liability when a newspaper truthfully reported that a man had been sentenced for conspiracy to defraud but left out that the conviction had been quashed.[24] Similarly, the Washington Court of Appeals found that the half-truth of reporting an assault conviction without including that the conviction had been dismissed on appeal was equivalent to a falsity (the reporter and newspaper ultimately prevailed because they reasonably misunderstood the effect of the dismissal).[25]

It might be helpful in the context of *Isoy* to frame the issues more specifically and examine how cases outside of half-truths might help to resolve them. First, do average, ordinary readers equate an arrest and charge with guilt? Isoy insisted they do not.[26] Secondly, do ordinary readers understand an acquittal to

[19]E Volokh 'Libel by omission of exculpatory legal decisions' (2021) 97 Notre Dame Law Review 351.

[20]Ibid, at 353–355; see also *LaMon v Butler*, 722 P2d 1373 (1986) (finding liability where an arrest was reported without mentioning that it was a mistake).

[21]Volokh, above n 19, at 355.

[22]*Casper v Washington Post Company*, 549 F Supp 376 (ED Pa 1982).

[23]*Hoyt v Klar*, 2021 WL 841059.

[24]*Howden v "Truth" and "Sportsman" Ltd* (1937) 58 CLR 416.

[25]*LaMon v Butler*, above n 20.

[26]*Tan Sri David Chiu Tat-Cheong v Seema Elizabeth Isoy*, above n 4, at [51].

take the sting out of the arrest and charge? The House of Lords judgment in *Lewis v Daily Telegraph Ltd* is instructive on both questions.[27] Lewis sued the *Daily Telegraph* and the *Daily Mail* for reporting that the police's fraud squad was investigating him. He argued that an ordinary person would understand that an investigation by the fraud squad meant that he was actually guilty of fraud. The majority of the House of Lords disagreed, holding that the newspapers' reporting was not, as a matter of law, capable of having that meaning. Lord Reid explained that an ordinary person would not necessarily infer that an investigation means guilt. Some readers may reach that conclusion, he explained, but others would think that, although surely an investigation must mean that 'their affairs are in a mess', one must wait to let the process reach its end rather than jumping to a conclusion. Lords Hodson and Devlin conceded that an ordinary person could infer suspicion from the reporting of the investigation but would not make the further inference of guilt.[28]

The newspaper statement in *Lewis* was not a half-truth because at the time of the statement there was no omission; it nevertheless illustrates two important points. First, ordinary people do not, at least in the view of a majority of the House of Lords, necessarily infer that a preliminary act by police such as an investigation means guilt. This appears to be the prevailing, though not unanimous, judicial view.[29] Ordinary reasonable people understand that because prosecutors must overcome the 'beyond a reasonable doubt' hurdle, many who are guilty will be acquitted.[30] Secondly, the preliminary act in itself may signify something negative (here, it was that Lewis's affairs were a mess) independent of any acquittal or conviction. An acquittal would not erase that mess. An investigation may mean that there were grounds to investigate. Charges may mean that there was enough evidence to bring charges.[31] These are stains independent from and not affected by any eventual verdict. In the context of *Isoy*, an ordinary Whatsapp reader arguably would not jump to the conclusion that Chiu had been convicted, and furthermore would infer that Chiu's arrest and charge signified that the police had some evidence against him, a stain that an acquittal would not erase, even though in the end it was not enough to convict.

It is not a given that courts will or should regard *Lewis v Daily Telegraph Ltd* – and the judgments from multiple Commonwealth countries that have followed it – when considering half-truths. In those cases, the alleged defamation was made before the legal cases were resolved. There was no second half-truth to omit. Perhaps an ordinary person would infer different things from a statement that a person was charged five years ago for fraud without revealing the outcome and one observing that a person was charged three days ago. Decisions discussed above like *Casper v Washington Post Company* and *Hoyt v Klar* indicate nevertheless that even when the cases have finished, liability may be inappropriate for omitting acquittals or dismissals of charges.

Conclusion

The two issues raised by this note (whether a preliminary enforcement or judicial proceeding implies guilt and whether the preliminary action creates an independent sting that cannot be removed by an acquittal) will mostly come up in criminal cases. This is where various stages of proceedings may, or may not, impact the implications of other stages. But civil lawsuits also have stages, such as where the filing of a breach of contract lawsuit may imply at least some degree of undesirable business behaviour. Similarly, research misconduct or sexual harassment cases may raise questions of whether an accusation and investigation imply guilt or carry their own independent taint.

[27] *Lewis and Another v Daily Telegraph Ltd; Same v Associated Newspapers Ltd* [1963] 2 All ER 151.

[28] See also *Independent Newspapers Holdings Ltd v Suliman* [2004] 3 All SA 137 (South Africa Supreme Court of Appeal) (an arrest, even if it implies suspicion, does not imply guilt).

[29] *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293, at [16] (High Court of Australia).

[30] Ibid; D Givelber and A Farrell *Not Guilty: Are the Acquitted Innocent?* (New York: NYU Press, 2012) p 61.

[31] See *Mirror Newspapers Ltd v Harrison*, above n 29, at [17]–[18]; see also P Kutner 'Truth in the law of defamation' (2023) 87 The Rabel Journal of Comparative and International Private Law 326 at 331–332; P Kutner 'Suspicion, investigation and truth: a continuing evolution in English defamation law' (2011) 3 Journal of Media Law 61.

One way courts can better address half-truth cases in the context of legal proceedings is to ground their decisions in the specific language of the defamatory statement. When the language is imprecise, fanciful and loose, reasonable opinion about its meaning varies widely ('Mayland is the CHIU family'; 'the apple doesn't fall far from the tree'). But when the language is precise and carefully selected, it is unfair to twist its meaning ('in the past arrested and charged'; 'also faced charges').[32]

Of course, Isoy could have written everything she knew about Chiu, good and bad. Perhaps the Federal Court was right to find that an acquittal of criminal charges was too obvious to omit. In this note, though, I hope that I have shown that the nature of that acquittal can matter. I could not access details about Chiu's acquittal on the Internet because the news stories were behind paywalls and thus I could not determine whether it was a true acquittal after a full trial or some other type of dismissal. It may be asking too much to expect people to investigate, understand and properly weigh complex considerations before hitting send on a late night Whatsapp message, especially when the information needed to make the decision is not freely accessible.

[32] *Mirror Newspapers Ltd v Harrison*, above n 29, at [20] (quoting *Lewis v Daily Telegraph Ltd* [1963] 1 QB 340).

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