

DUNCAN AND NEILL ON DEFAMATION

Third Edition

Sir Brian Neill
Richard Rampton QC
Heather Rogers QC
Timothy Atkinson
Aidan Bardley



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Duncan and Neill on Defamation

Third Edition

Rt. Hon. Sir Brian Neill

Richard Rampton QC

Barrister, One Brick Court

Heather Rogers QC

Barrister, Doughty Street Chambers

Timothy Atkinson

Barrister, One Brick Court

Aidan Eardley

Barrister, One Brick Court

With a foreword by Rt. Hon. Lord Bingham of Cornhill, K.G.

Series editor

Andrew Grubb MA (Cantab), LLD (Lond), FMedSci

*Senior Immigration Judge, Asylum and Immigration Tribunal; Visiting
Professor of Law, Cardiff Law School, Cardiff University*



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Published by LexisNexis

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A CIP Catalogue record for this book is available from the British Library.

ISBN 9780406178312

Typeset by Letterpart Ltd, Reigate, Surrey

Printed in the UK by CPI William Clowes Beccles NR34 7TL

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Series Preface

The common law is justifiably seen as a jewel in the crown of English law. The common law has travelled far afield to many other countries where it has been adopted and developed by the local courts. No longer the sole preserve of the judges in London (or Edinburgh and Cardiff), its durability and richness has been due in no small way to the diversity of approach that exists between the common law countries throughout the world. Many of the great judges in England, such as Coke, Mansfield, Blackburn, Atkin, Devlin, Reid and Denning, and those from overseas such as Oliver Wendell Holmes, Benjamin Cardozo and Owen Dixon, have been masters of the common law. As we enter the new Millennium, the common law continues to influence the development of law elsewhere. It will remain a major export, but now also an import, of this country.

Butterworths Common Law Series conceives of the common law in broad terms, providing analyses of the principles informing the frameworks of the law derived from judicial decisions and legislation. The *Series* seeks to provide authoritative accounts of the common law for legal practitioners, judges and academics. While providing a clear and authoritative exposition of the existing law, the *Series* also aims to identify and examine potential developments in the common law drawing on important and significant jurisprudence from other common law jurisdictions. Judges have increasingly looked to academic works for guidance on the accepted view of the law but also when contemplating a reformulation or change of direction in the law. The *Series* may, it is hoped, provide some assistance such that the law is less likely to be left undeveloped ‘marching ... in the rear limping a little’, to quote a famous judicial aphorism (*Mount Isa Mines v Pusey* (1970) *per* Windeyer J).

Andrew Grubb

Foreword

When it first appeared in 1978, *Duncan & Neill on Defamation* was seized upon as manna from heaven, not only by those for whom forays into the field of defamation were an occasional (and nerve-racking) experience but also by seasoned campaigners, relieved to find a clear, succinct and highly authoritative exposition of this surprisingly difficult subject.

Over 30 years have passed since that first appearance, and more than 25 since the second edition was welcomed in 1983. In that time, further legislation, developments in international and EU law, enactment of the Human Rights Act 1998, emergence of a nascent right to privacy, the internet, the emergence and development of *Reynolds* privilege and procedural changes have combined to make the goals of succinctness and simplicity even harder to achieve.

But fortune smiles on the ambitious, and the long-lived. Happily, the genius and expertise of Sir Brian Neill, so evident in the first two editions, have inspired this third edition also. At the helm with him are an accomplished team of authors, some household names in the defamation world, others on their way (doubtless) to becoming such. Between them they have produced what every practitioner, and every judge, prays for: an up-to-date, accurate, unopinionated, comprehensive, readily intelligible and (so far as the subject matter permits) simple account of the law and practice of defamation as they now stand. It is cause for rejoicing. The lean years are over.

Tom Bingham
July 2009

Preface

It is a matter of regret that over 25 years have elapsed since the publication of the second edition. But the delay has brought some advantages. New editions sometimes do not go much further than reproduce the last edition with amendments and some supplementary material. On this occasion much of the text has had to be completely rewritten. In a number of respects the law of defamation has been subjected to some fundamental changes. In addition the authorship has been the work of a team. I have written some parts myself, but the great majority of the chapters are contributions by practitioners who between them have a mastery of the subject that I cannot match. It is only as a result of their expertise and their indefatigable work that it has been possible to produce this new edition.

Our aim has been to continue to provide a book that is not only a source of help for the expert but also of assistance to those who are looking for an intelligible guide in an unfamiliar field. We have tried to state the law as at July 2009.

We are most grateful to Stephen Schaw Miller for his advice on the passages dealing with insolvency. We also wish to pay tribute to the extraordinary patience of our publishers and in particular to Evelyn Reid whose gentle insistence on deadlines has helped us on our way.

Brian Neill
London
July 2009

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