The Depp v. Heard case in early 2022 took the global media by storm with the revelation of shocking facts and the endeavour to mend a man’s broken reputation. In this case, the defendant, Heard, accused Depp, her ex-husband of domestic abuse and many believed these accusations which in turn, sullied Depp’s reputation and negatively impacted his career. Depp maintained that the accusations were untrue and brought forth a defamation suit against Heard. This case undeniably sparked public interest in the law of defamation and its application across the world. The following article will delve into the topic of defamation law with a comprehensive focus on the law of defamation in the Republic of Ireland and the United States of America, their origins, how they contrast and their similarities. The objective of this article will be to conclude which country has the more effective law on defamation.

Irish Defamation Law

The law of defamation in Ireland is governed by the Defamation Act 2009. This statute determines for the citizens of Ireland what defamation means, how it works, the defenses to defamation and the remedies available. It is also important to note that due to Ireland being
a former colony of Great Britain, many of its laws are borrowed from the British legal system including that of defamation law\(^1\).

The Defamation Act 2009 defines defamation as an untrue statement that “tends to injure a person’s reputation in the eyes of reasonable members of society.”\(^2\) As the definition suggests, what constitutes defamation differs over time across different societies. The reason for this is that the opinions of reasonable members in society are not stagnant, evolve over time and are influenced by factors such as religion and culture. An example of this is how the majority of Irish citizens previously viewed homosexual activity in a negative light. A case example of this is in that of *Reynolds v. Malocco*\(^3\). In this case, the defendant had written an article about the plaintiff calling him a “gay bachelor.” The High Court of Ireland had to conclude whether the statement made was defamatory and they eventually determined that many in Ireland found homosexual acts repugnant\(^4\). This case occurred almost 30 years ago and since then, homosexuality has become more acceptable with the legalization of same-sex marriage in 2015. Therefore, were a case like *Reynolds’* to occur in 2024, it is unlikely that it would get the same verdict. The differing views of society over time influence court judgements in cases of defamation. If the statement does not meet the standard where it can injure the person’s reputation, the statement will not constitute as defamation. Whether the person on the receiving end of the untrue statement is offended is irrelevant. Additionally, in order for a person’s untrue statement about another person to be classified as defamation, the statement must be ‘published’ or in other words, communicated to a third party. This can take place in

\(^4\) *Id.*
various forms such as orally, written, gestures and even sounds\textsuperscript{5}. This publication of a defamatory statement to a third party must be reasonably foreseeable\textsuperscript{6}.

In regard to Irish common law offences under criminal liability, defamatory libel, obscene libel which refers to sexually graphic or explicit defamation that is offensive to public decency\textsuperscript{7} and seditious libel which refers to a defamatory statement made in order to cause citizens to revolt against the government\textsuperscript{8} have been abolished\textsuperscript{9}. Interestingly, blasphemous libel has not been abolished. This is most likely an effort to protect the constitutional right to freedom of religion\textsuperscript{10}.

There are several defenses to defamation in Irish Law such as truth, absolute privilege, qualified privilege, honest opinion and apology. The defense of truth is that if the statement made by the defendant is true, they are not liable for defamation. Absolute privilege refers to when a person is absolved from the consequences of making a defamatory statement in an official position or if they are testifying such as the

\textsuperscript{6} Id.
\textsuperscript{7} Obscene libel, LSData, https://www.lsd.law/define/obscene-libel (last visited Apr 13, 2024).
\textsuperscript{8} Id.
Teachta Dála (Deputies)\textsuperscript{11}. Qualified privilege also allows one to make defamatory statements under certain conditions such as the third party who received the statement having the duty to hear it\textsuperscript{12}. Honest opinion is when one gives their viewpoint and it is sincerely held, based on claims of privileged facts and it is a matter of public interest\textsuperscript{13}.

The remedies to defamation include damages, apology, an order prohibiting the publication of a defamatory statement and aggravated and punitive damages. Damages simply refers to the compensation received by the plaintiff for the statement made against them\textsuperscript{14}. This is determined by how much damage was caused to the plaintiff’s reputation as well as the actions taken by the defendant to remedy the situation such as an apology, which is the defendant apologising for making the defamatory remark\textsuperscript{15}. An order prohibiting the publication of a defamatory statement otherwise known as an injunction, occurs when the Court issues an order that prevents a defamatory remark from being published. Aggravated and punitive damages may be applied where “the court finds the defendant liable to pay damages to the plaintiff in respect of a defamatory statement, and the defendant conducted his or her defense in a manner that furthered the injury caused to the plaintiff’s reputation by the defamatory statement.”\textsuperscript{16} By offering both remedies and defenses to defamation, it is clear that the law on defamation in Ireland aims to strike a balance between two of

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Id.
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the rights in the Irish Constitution: freedom of expression and the right to a good name\textsuperscript{17}.

\textbf{American Defamation Law}

The United States of America is divided into 50 states and these states have their respective laws. Like Ireland, these laws have been heavily influenced by America’s former colonizer, Great Britain. This includes the law of defamation. Although the law on defamation is relatively identical in concept across America, there may be some varying differences in how the law is applied depending on the state. There are landmark cases that have caused defamation law to be applied so similarly across America such as the Supreme Court case of \textit{New York Times v. Sullivan}\textsuperscript{18}. In this case, there was an advertisement during the civil rights movement that criticized several public officials for infringing on the rights of Black Americans\textsuperscript{19}. This caused a defamation suit to be brought forward. The Supreme Court held that in order for statements made about public officials to be determined as defamatory, they must be both false and made with actual malice, meaning with “reckless disregard” for the veracity of the statements made\textsuperscript{20}. This placed the burden of proof on the public officials and was done in order to protect the First Amendment right to free speech\textsuperscript{21}.

Furthermore, defamation in America has an identical definition of defamation to that in Ireland: a false statement that has been published

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  \item \textsuperscript{18} New York Times v. Sullivan, (1964).
  \item \textsuperscript{20} Id.
  \item \textsuperscript{21} Id.
\end{itemize}

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(i.e. to a third person) and injures a person’s reputation. Interestingly, in American defamation law, the defendant can be held liable for a plaintiff’s self-publication of a defamatory statement or “self-defamation” under exceptional circumstances. For example, if the plaintiff was obligated to tell a third party the defamatory statement and it was reasonably foreseeable to the defendant that the plaintiff would have to do so. Similarly, in Ireland if there is an accidental publication of a defamatory statement, the courts must ask if it was reasonably foreseeable that the statement could be accidentally published. This is seen in Paul v Holt where the defendant addressed a letter containing defamatory statements to a “Mr. Holt.” However, the plaintiff’s brother lived at the same address and opened the letter. The court held that it was reasonably foreseeable that the brothers would open the letter, assuming that it was addressed to him. This is where we see Irish defamation law and American defamation law intersect by reason of the principle of reasonable foreseeability in the publication of defamatory statements that are made.

Moreover, the defences as well as the remedies to defamation in Ireland and America are also quite identical. One intriguing exception to defamation in American defamation law, specifically that of Indiana’s common law, is found in the case of Leonard v. Whetstone. This case established that a defamatory statement made by a family member about their relative’s potential partner may be excused if they truly believed the statement to be true and said it with good intentions. This

22 Defamation, Legal Information Institute, https://www.law.cornell.edu/wex/defamation (last visited Apr 13, 2024).
24 Id.
25 Id.
is known as conditional privilege. This defense of conditional privilege is similar to Ireland’s defense of honest opinion.

Another way that the respective laws differ, is that in Ireland, the burden of proving an alleged defamatory statement to be true falls on the defendant whereas in America, the plaintiff must prove that the statement is false. Therefore, it may be argued that Irish defamation law favors the protection of an individual’s right to a good name over their right to free speech when compared to that of American defamation law.

Another major difference is that Irish defamation law is solely a civil suit not a criminal one, unlike some states in America, such as Florida, where criminal libel is still recognized. Florida defamation law also classifies a false statement of a woman being unchaste as defamatory, unlike Irish defamation law. This is fascinating as many citizens of Florida would view this statute as being outdated which would counteract the legal requirement for a statement to constitute as defamation, which is that the statement must injure the person’s reputation.

https://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=1352&context=cklawreview.


29 Constitution of Ireland, Irish Statute Book,

30 The Law on Defamation in Ireland, The Law on Defamation in Ireland,

31 The Florida Senate, Chapter 836 - 2011 Florida Statutes - The Florida Senate,

32 Id.
Conclusion

Overall, American defamation law is nearly identical to Irish defamation law. This is understandable given both Ireland and America are former British colonies and have borrowed much of Britain’s laws. Therefore, it is a given that there would be many similarities. Ireland has the more cohesive law on defamation given that the one statute is applied to the entire country, whereas in America, each state has their own legislation on how defamation cases should be judged, with some applications better than others. Due to the differences in how various states apply the law on defamation, some states may judge defamation cases in a way that exceeds its application in Ireland. America is a much larger country than Ireland in both size and population and therefore, more defamation suits are brought forward. This allows America to see a larger variety of defamation cases with varying circumstances that can inform how the law is applied at a much faster rate than Ireland. Therefore, it is likely that from a common law stance, the American law on defamation may be more effective in bringing about a fairer verdict as time passes.