WORDS, PHRASES AND CLAUSES ON SOCIAL MEDIA POSTINGS FROM LEGAL PERSPECTIVE

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ABSTRACT

The emergence of social media today has become a revolution to the fast pace of broadcasting system, and has taken over the conventional media which is seen to decrease in choosing the communication medium including the two-way communication. This issue is in liaise with the mobile technology development which becomes a means to make the two-way communication seem effortless, fast and effective. However, in passing through today's rapid wave of technology, it is undeniable that online communication provides disadvantages especially in interpreting the meaning of ambiguity i.e. vagueness or implicit meanings that create misunderstanding and lead to legal action. This study aims to prove that the use of words, phrases and clauses in the media social postings are ambiguous to an extent that they create criticism impact and lead to legal action. The data used are secondary sources obtained from Federal Court of Malaysia which were the grounds of judgement in court proceedings. The data is textual which covers the background information of the cases to the results of the cases. The details of the cases are inclusive of social media postings focusing on words, phrases and clauses that refer to libel (written defamation). In conclusion, this study helps social media users to be extra careful in choosing the words, phrases and clauses when posting them online to avoid being caught, and leads to legal action.

Keywords: words, phrases, clauses, social media postings, ambiguity

I. APPRECIATION

The writing of this paper is part of the writing of the Doctor of Philosophy thesis currently underway by the author, Any Rozita binti Abdul Mutalib (904496), with the supervisor, Associate Professor Dr. Hishamudin Isam at the School of Languages, Civilization and Philosophy of the University Utara Malaysia (UUM).

II. INTRODUCTION

Besides the use of language that provides a variety through social media postings, the aspect of meaning also often causes confusion that ultimately impacts the sender into legal action. Any posting that is vague or ambiguous is able to give implicit and explicit meanings, and if the postings are negative, they are able to give an impact on online social relationships either to the target audience or to those who indirectly read the postings that are shared. This development has also led to an action involving the legal aspect which is seen as a new phenomenon regarding the various levels of society especially among those who are famous or popular.

This study aims to give evidence on the social media postings involving linguistic aspects such as words, phrases and clauses that are clearly ambiguous and are subject to action being taken with charge under the provisions of the law through certain acts other than the civil claims and provisions under the Penal Code section.
III. SOCIAL MEDIA USE

Social media has become a popular medium of communication and a priority to today’s communication channels. Faradillah Iqmar Omar, Nor Azrilil Hassan, Iza Sharina Sallehuddin and Nor Hafizah Abdullah (2016) in their research mentioned that most youth have social media accounts. The research was done on foundation students showing that Facebook is the most popular social media chosen by the respondents as it is suitable as a technology device that has revolutionised the way humans communicate in their daily lives.

It is undeniable that social media has given a positive impact when it comes to social aspect. Faradillah Iqmar Omar and Iza Sharina Sallehuddin (2011) in their previous study explained that the use of the latest social media among university students is significant with the satisfaction that it brings such as to avoid loneliness, search for entertainment and knowledge, strengthen relationships and a means for virtual games. The findings were supported by a research conducted by Siti Ezaleila Mustafa (2016) that the ultimate activity of social media users is to build friendship through profiles either on Facebook, the latest news on Twitter, or any other sites. Che Su Mustaffa and Nan Zakiah Megat Ibrahim (2014) in their research had also listed a number of other useful reasons of Facebook such as reminiscing old memories, reluctant to be technology blind, to strengthen the relationships, for education, to release stress and a source of information and entertainment. Luqman Hakeem Frank Wilkins (2019) listed several reasons of social media usage as well such as to strengthen relationship, to generate income, as a medium to deliver knowledge, as a source of reference, knowledge and awareness of the surroundings and motivator, and a medium for entertainment.

Social media has also brought an impact on religious aspect. Faradillah Iqmar Omar, Hazlin Falina Rosli, NurZakira Afnee Zakaria and Nurainai Nabila Dundai Abdullah (2015) viewed social media as a medium that is capable of influencing the level of acceptance of da’wah (preaching of Islamic religious knowledge) messages based on the interactive features of the media. Based on this matter, the impact of the latest media has indirectly promoted cross religion understanding completely. Azarudin Awang (2015) explained that the new media has also played a vital role in the increasing number of muallaf (Muslim converters) in Terengganu.

Lenhart, Purcell, Smith and Zickuhr (2010) stated that the youth are the prolific users of social media and they spend a lot of time to interact through this new media. The Internet Users Survey 2018 by Malaysian Communications and Multimedia Commission (MCMC) showed that 26.1% of the Internet users are university students who browsed Internet for education purpose (MCMC, 2018).

Ali Salman, Mohammad Agus Yusoff, Mohd Azul Mohamed Salleh and Mohd Yusof Abdullah (2018) viewed social media as a means to gain political support in Malaysia. The findings in their research stated that social media has become an information democracy agent. Today’s society is more comfortable to access social media for any news regarding politics and is aware of anything posted especially when it comes to the current politics. Besides, the study has also shown that social media has lifted the image of the candidates as well as the political party indirectly. In addition, the study has also suggested that the sharing of political information should be observed to avoid sedation and defamation that could lead to the breach of unity among the society.

Critically, it can be concluded that social media has become a part of the community’s life, and that observation on its use must be made to curb some aspects that can have a negative impact. This is because, social media does not only function as a medium to share information but it can also be manipulated as a medium that might taint the public’s opinion regarding the postings made. This issue gives negative effects if it is unlawfully used by posting and sharing false information or defamation that might bring someone down through the word choice of the postings.

It can be concluded that the use and the importance of social media can influence today’s society based on the studies by previous researchers. It has proven that the use of social media is a must and that will brings an impact to the society as a whole. Consequently, this can be associated with the society who allocates more of their time with social media, and this has opened up the space for them to voice out anything that they want to write, to talk about, to interact with the other users, and to respond to the postings; be it opinion or idea (Ahmad Fuad
Mat Hassan et al. 2020). This particular space has also exposed them to the use of words, phrases or clauses that are capable to leave an impact to the written discourse made through the postings that might lead to legal action.

IV. METHODOLOGY

This study used qualitative method with document analysis approach (Cresswell, 2014). The analysis began by identifying and listing some examples of words, phrases and clauses that contain the elements of libel obtained from two documents which are Grounds of Judgment (Civil no. BA-A52NCVC-580-10/2018) and (Civil no. JA-22NCVC-162-08/2018). Only word, phrases and clauses on social media postings are taken out from the documents which are the grounds of judgement, as an evidence that the linguistic elements could be charged of legal action if they are misused or misconstrued. Qualitative approach is used since it is a research procedure that places the researcher as the main instrument in data collection in forms of words or pictures. The analysis is done inductively, focusing on the meanings and are able to be developed using a variety of methods and founded on philosophical hypothesis to obtain an overall picture about a phenomenon or the problem being studied (Hishamudin Isam, & Norsimah Mat Awal, 2011; Othman Lebar, 2015).

In data collection process, the data is identified through the form of text i.e. the grounds of judgement that have gone through court proceedings for cases involving social media. Observations are made on data based on the facts and the judicial review of the case. Based on the process, the proof of the use of words, phrases and clauses that are ambiguous or vague can be referred as interpretations containing defamatory elements (Hishamudin Isam, & Norsimah Mat Awal, 2012; Anita Kanestion et al. 2016; Manvender Kaur et al. 2016). By using qualitative method, the meaning of a certain phenomenon and experience is emphasised on the linguistic elements found in the data. This includes an emphasis on understanding the social realm that produces a type of knowledge that argues based on the basic nature of each paradigm.

V. ANALYSIS AND DISCUSSION

In the legal system, the use of linguistic elements in postings on social media involving charges can be proven and detailed by looking at the emphasis in the aspects of words, phrases and clauses in a post made in addition to holistically viewing the entire text. This is detailed in the facts of the case that explain the whole course of a case. In cases involving social media, claims made by plaintiffs are indemnity to the effect of the post that is made through social media whether the post has a clear meaning so as to give a personal impact like slanting and public hatred to the plaintiff or the effect of ambiguity that gives various perceptions among readers. Through summons and statement of claim, the plaintiff either claims general damages and/or special damages, and/or exemplary damages against the defendant as a result of reputation loss arising from the defendant's alleged statement containing defamatory elements.

Based on the facts of the case, the defendants who made postings on Facebook as the first or third party, can conclude that the use of linguistic elements can be charged of legal action if it is misinterpreted or the meaning is clearly conveyed which is capable of bringing down an individual. This paper presents three (3) proofs involving the use of words, phrases and clauses each, in social media postings that are ambiguity, thus impacting condemnation and leading to legal action.

Words

For word, murderers is used on a Facebook posting which has been the main charge in the fact of the case until it leads to a charge in Court.
This case is allowed to be charged by the Court after taking into account some basis that a written statement sent via Facebook has led to a defamatory statement that has personally affected the plaintiff i.e. involving a hollow or negative view of society in addition to inciting public hatred to the plaintiff. The plaintiff also claimed that as a result of the statement, he was exposed to scorn and ridicule, and allowed the public to cause further defamation. The Court sees that the statement clearly refers to the plaintiff and is published to a third party. However, the Court had to decide that the defendant's disputed statement led to defamatory imputation. Based on the situation, the linguistic role as a proof is vital so that the case can be viewed thoroughly.

In the fact of the case, it is stated that the use of the word *murderers* in the Malay language is considered 'murderers' that has no ordinary meaning but refers to the use in a medical context. As a result of the post, an action to file a compensation claim was made. This has led to a bad reputation for the plaintiff, resulting in the impact of criticism among those who read the post. Based on the posting, the word *murderers* in ‘Murderers... Smiling at the death of mothers and babies. A failure of our healthcare system’ can give an impact that leads to the plaintiff's accusations as a murderer. The emphasis on *murderers* is also seen as the use of word that can be described as someone who commits a murder. However, the word also appears to have a defamatory element when the plaintiff proves that it is not the cause of death of the newborn.

Based on the sentence, the word that emphasises the proof of libel is the word *murderers*. The post was made on a third party site along with a photo with another person. The post refers to both individuals in the photograph with reference to the word *murderers*. The defendant explained that the word in its common and natural meanings meant "murderers" and agreed with the plaintiff's solicitor's suggestion that the word *murderer* itself was a heavy word to use.

However, the defendant stated that the word *murderers* used did not mean murderers in a normal sense but in the context of medical word. In the fact of the other case, it is explained that the defendant argued that the word "murderer" should be seen from the whole fact instead of its literal sense alone. The defendant also compared the meaning of "murderer" in the context of such actions to the intention of the murderer as a drug dealer. He argued that the meaning of *murderers* in that context would be understood by the reader not as a common murder crime. He further argued that his intention to call the plaintiff "murderer" was in Medicine and medical context solely, and not literally.

However, the defendant did not produce any document as evidence to support the opinion that the meaning of *murderers* intended by the defendant is referred to Medicine and medical context. This explains the situation that the word *murderer* means someone who murders in terms of common sense rather than the *murderer* understood from Medicine and medical context that needs evidence from the Court. The Court is fundamentally of the opinion that the meaning of the word should be determined by the common and natural meaning of the word. This can be seen in the case of *Lewis versus Daily Telegraph* [1964] AC 234 (HL) in which the court stated that:

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**Table 1:** Ambiguity in the use of word

<table>
<thead>
<tr>
<th>Word Sample</th>
<th>Effect/Charge</th>
<th>Court Decision/Case Facts</th>
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<tbody>
<tr>
<td>Murderers</td>
<td>Summons and claims statements i.e. general damages, special damages and exemplary damages for the use of words or emphasis of words/phrases/clauses/sentences that lead to charges resulting in the loss of reputation due to statements alleged to contain libel through Facebook social site.</td>
<td>The court found that the plaintiff had successfully proven, on the balance of probability, the plaintiff's case against the defendant. The court therefore decides that the plaintiff's claim against the defendant is permissible.</td>
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</tbody>
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“There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of world affairs”.

In this case, the Court opined that the defendant has failed to discharge the burden of proof through evidence during trial to prove that the word “murderer” that has been published by the defendant is commonly and naturally means murderer in Medicine and medical context.

In conclusion, the evidence of a word is clearly important to emphasise the meaning contained in a word. However, the Court sees a certain word that has a naturally vivid meaning as a context understood by the public, and is able to be related to the public. In this matter, it leads to defamation that is capable of bringing down someone publicly, and simultaneously become an ongoing libel among those who read it on social media. Hence, any use of ambiguous or direct meaning of a word can be convicted of a charge or legal action as long as its meaning can be argued in various contexts.

**Phrases**

In the examples of selected phrases, one of the phrases that has an emphasis on defamatory elements is the phrase ‘memang sah’ (as proven), used in the post that is seen to affect the plaintiff’s reputation. The post has a basis for assessing the legal action taken against the defendant likewise in the sentence below:

*Doula who is associated with the particular teaching is “as proven” to be Doula Masyitah. This is indeed her operational area.*

<table>
<thead>
<tr>
<th>Sample of Phrase</th>
<th>Effect/Charge</th>
<th>Court Decision/Case Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>…memang sah (…as proven)</td>
<td>Exemplary indemnity claims for defamatory submissions and damages the plaintiff’s reputation.</td>
<td>The Court is of the opinion that the statements made by the defendants have initiated public impressions by their postings and provided a platform for that purpose. The Court decided a payment of RM100,000 by the defendant in general and exemplary damages in addition to submitting an apology within seven days of the court decision being made.</td>
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Based on the sample of the phrase ‘as proven’, it shows that there is ambiguity in defining the phrase based on facts. The phrase can mean the validity of a thing or the obvious truth of a fact. In this case, the authenticity indicates that there is an element of accusation about the truth of a fact that may not exist and can be doubted. Therefore, the use of phrase ‘as proven’ in the posting can be made as a case fact to be charged due to the elements of defamation found in the sentence. Regarding the sentence “*Doula who is associated with the particular teaching is “as proven” to be Doula Masyitah. This is indeed her operational area*”, it is clear that the emphasis is placed on the phrase ‘as proven’, followed by the plaintiff’s name which leads to people believing in the fact and having misconception about this phrase. Consequently, this is capable in bringing down that person’s reputation and her name is tainted.

In determining defamatory actions, the court needs to determine that the linguistic elements really give the meaning of libel. The court also needs to ensure that the linguistic elements are considered libel by conducting a test towards the particular statement that burdens the plaintiff. This statement indeed contains negative opinion, although nobody seems to believe it and it contains an attack towards the plaintiff’s morale. This particular test of meaning
used in evaluating the interpretation of the word depends on whether the word has a natural meaning or a normal
meaning that might lead to behavioural offense, motive, disrespect or doubtful integrity. The next process is to
identify the point of view of the statement that can be misinterpreted or evaluated.

Based on the evaluation by House of Lords in Lewis versus Daily Telegraph Ltd [1964] AC 234, it is stated that
there is no doubt in the act of defamatory if the words are conveyed to ordinary people and read or interpreted
based on their general knowledge and experience. The statement gives the impression that if the words are
conveyed even without any specific knowledge of its interpretation naturally but have a fundamental reference to
the plaintiff's claims, then the words can be interpreted as accusations with basic interpretation.

In the case of Jones versus Skelton [1963] 3 All ER 952, it is stated that the natural and the common meanings of
a word can be either implicit or explicit. It can also be a meaning that is concluded or indirect which does not need
any support from a particular fact outside the general knowledge. Instead, it is sufficient if the words have a
meaning that is able to give an effect to the language used.

Clauses

In the example of clauses, the clause “… looks like you have no time for Maghrib prayer…” is chosen because
there is an element of ambiguity that can be defined as defamation. This clause is part of the text used as a case
fact in the accusation likewise found in the previous sample of phrases.

Table 3: Ambiguity in the use of clause

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<tr>
<th>Sample of Clause</th>
<th>Effect/Charge</th>
<th>Court Decision/Case Facts</th>
</tr>
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<tbody>
<tr>
<td>…entah-entah solat maghrib pun tak sempat…</td>
<td>Exemplary indemnity claims for defamatory submissions and damages the plaintiff's reputation.</td>
<td>The Court is of the opinion that the statements made by the defendants have initiated public impressions by their postings and provided a platform for that purpose. The Court decided a payment of RM100,000 by the defendant in general and exemplary damages in addition to submitting an apology within seven days of the court decision being made.</td>
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For the above example of clause, lawsuit is permissible based on the previous cases such as the case of Ayob Saud versus TS Sambanthamurthi [1989] 1 CLJ 152; [1989] 1 MLJ 315, in which by proving the elements of the libel case, the plaintiff must show that the statement is defamatory and it refers to or affects the plaintiff. In addition, the statement should be published to a third party by the defendant. Another reference is also made likewise the case from the Court of Appeal of Chok Foo Choo @ Chok Kee Lian versus The China Press Pt. Ltd.[1999] 1 MLJ 371; [1999] 1 AMR 753, in reference with the case of Tun Datuk Pattinggi Haji Abdul Rahman Ya’kub versus Bre Sdn Bhd & Ors [1996] 1 MLJ 393 and JBJeyayaratnam versus Goh Chok Tong [1985] 3 MLJ 334 which was stated by Gopal Sri Ram JCA (at that moment).

Based on studies of past cases, it can be explained that common meanings or natural meanings may include implications or conclusions that have reasonable elements with general knowledge without being bound by the rule of law through the construction of words or from the words themselves for use as a case fact against a charge. Thus, any word associated with a general knowledge of its basic meaning, and understood with general understanding can be associated with libel and can be convicted against it.

Examples of such clauses have a particular emphasis on strengthening defamatory accusations i.e. the use of
'...looks like you have no time for Maghrib prayer...' was published without any basic evidence of such statements. Based on the review of the judgment, the post containing the clause not only disparaging the plaintiff but also
expressing a vivid accusation. The plaintiff is of the opinion that the post when read in its entirety with the selection of words based on context has led to defamation against him. The Court also considers the charge by looking at the entire text to understand the reasonable meaning of the general understanding. However, in legal perspective, the defendant should be given a defence with proof of the objective basis or the motive of the post made apart from looking at the question with bad intentions whether it was successfully posted or not. The defendant also has the right to defend the truth by displaying material statements in the words expressed through the post made. This includes proving that the statements through the post are true assumptions or conclusions by taking proven facts. The matter is stated in Section 103 of the Evidence Act 1950 (Evidence Act). In contrast, the defendant must also prove that the posting is a comment instead of a factual statement. Besides, he needs to prove that the reason for the comments made is for public concern and the assumptions of the facts are made to support that the comments are relevant and true. This matter is related to the defence of ‘a fair comment’ as explained in the case of Dato Seri Mohammad Nizar Bin Jamaluddin versus Sistem Televisyen Malaysia Bhd & Anor; [2014] 4 MLJ 242 which mentioned that the comments made must be based on true facts included in the publication or wholly mentioned with the basis of true facts. If the defence is failed to be proven as true, then, the accusation is a failure.

In conclusion, based on the evidence stated in the review of the judgement, provision in the act of defamatory action can be made if the words used on social media can be proved of its general meaning and understanding. The meaning of the word can also generate a general negative view and assumptions that lead to clear accusations or libel so as to damage the reputation of the person being spoken. The words used on the postings also allow the public to add replies or comments that have no basis for the truth or the actual facts of the situation. Such matters may expose the public to conviction in charge through the use of linguistic elements that are ambiguity based on the general basic knowledge of its meaning in the use of a language.

**The Effects Of Using Words, Phrases And Clauses That Are Ambiguous**

Based on the evidences stated in the data taken from the Grounds of Judgement, it is clear that the plaintiffs are successful in proving that the use of words, phrases and clauses on social media postings have brought negative impacts to the plaintiffs especially in terms of their reputation and the public view towards them. The public view is inclusive of exposing the plaintiffs to an ongoing attack that leads to defamation. Therefore, the court has approved for the case to proceed with the claim and ends with the defendant having to pay general damages, special damages, exemplary damages and an apology made to the plaintiffs within seven days from the date the case decisions are issued.

**VI. CONCLUSION**

The phenomenon of suing each other because of the postings on social media has become a common action among people due to feeling dissatisfied towards the postings made. This is because the postings are readable and seen in the virtual world by community with no boundaries. The role that linguistic plays especially the semantic in identifying the meaning of speech, helps in assisting the process of law either for exemplary damages, losses, apologies and more. The law also provides for acts that can be used to protect society in various aspects including cyberbullying, defamation, affecting reputation and embarrassing, countersuits and others as deemed appropriate.

In linguistic aspect, the speech made can be seen semantically by looking at its denotative or connotative meanings that are able to be used as the case fact. The denotative meaning is seen through the use of words, phrases or clauses that has literal meanings regarding the speech being delivered. This is able to make the meanings understood clearly as they do not have any implicit meaning. However, from the legal aspect, every action has a right of denial supported by arguments that are relevant with the action made. Based on this, each case fact is necessary to be proved based on the balance of probabilities besides seeing the effects faced by the plaintiff. The claims must also be assessed for malicious intention that exposes the plaintiff to a space that provides the impact of continuous criticism, ridicule, slander and libel. Based on the evidences listed in this case, the Court has made jurisdictions that there is a defamatory imputation through the words, phrases and clauses used. The Court is also of the opinion that the words should be defined by either the common meaning or the clear meaning understood generally in the community of a certain language. Accordingly, the selection of appropriate words without
doubting the meaning, objectives and motives should be given attention to prevent the public from being exposed to legal action.

In conclusion, this study has provided some evidences saying that the selection of words used on social media is vital so as to avoid any implication towards the legal action, and simultaneously, it is a loss. This study also proves that the elements of linguistics in the field of Law give effects and they are very important in assisting the court proceedings especially in cases involving the use of words, phrases and clauses. In addition, it can be seen in sentences that are not only derived from the social media but on other types of media as well that might affect the third party to an extent that it gives an impact to the public perceptions especially the negative perspectives.

REFERENCES