

Contents

| | |
|---|----|
| Acknowledgements | ix |
| Introduction | 1 |
| one Digital Advancements and Threats to Reputation | 5 |
| Introduction | 5 |
| I. Technological advancements and threats to reputation | 7 |
| a. A beginning: the rise of cloud computing | 7 |
| i. Cloud computing and threats to reputation | 9 |
| b. The birth of social media | 11 |
| ii. Social media and threats to reputation | 13 |
| c. Wide availability of technology | 15 |
| iii. Affordable technology and threats to reputation | 18 |
| d. The ‘Metaverse’ and online worlds | 21 |
| iv. Online worlds and threats to reputation | 24 |
| e. Augmented reality | 26 |
| v. Augmented reality and threats to reputation | 27 |
| f. Artificial intelligence | 28 |
| vi. Artificial intelligence and threats to reputation | 31 |
| Conclusion for Chapter 1 | 33 |
| two Searching for a Theoretical Basis of Defamation Law | 36 |
| Introduction | 36 |

DEFAMATION IN THE DIGITAL AGE

| | |
|---|----|
| Part I: The theory | 38 |
| I. 'Dignity' as justifying defamation law | 39 |
| a. The history of dignity | 39 |
| b. Conceptualizing dignity | 40 |
| c. Issues with dignity | 42 |
| i. Definitional difficulties | 42 |
| ii. Dignity and balancing rights | 44 |
| d. 'Rival' theories to reputation as dignity | 46 |
| i. Defamation law as protecting honour | 46 |
| ii. Personality rights as property | 48 |
| II. The looking-glass self theory | 50 |
| III. Defamation law as protecting human sociality and relationships | 53 |
| a. Strong and weak ties | 57 |
| IV. Concluding remarks for Part I | 58 |
| Part II: The scenarios | 60 |
| I. The <i>defamation by social media</i> scenario | 60 |
| II. The <i>third-party poster</i> scenario | 61 |
| III. The <i>defamation by AI tool or virtual world</i> scenario | 62 |
| IV. The <i>repetition of statements online over a year later</i> scenario | 63 |
| V. Concluding remarks for Part II | 64 |
| three How Online Defamation Cases Are Decided | 65 |
| Part I: Difficulties for claimants posed by the Defamation Act 2013 | 66 |
| I. Online publication and the 'serious harm' threshold | 67 |
| a. Background to the reform | 67 |

CONTENTS

| | | |
|----------|---|-----|
| b. | Interpretive difficulties: what exactly is the new s 1 ‘serious harm’ threshold? | 70 |
| c. | How does one evidence serious harm caused or likely to be caused by an online post? | 75 |
| d. | What is the significance of viewership and engagement metrics to s 1? | 79 |
| e. | Is there a different approach to s 1 where the internet is concerned? | 83 |
| f. | Section 1’s introduction in the context of the codified defences in the 2013 Act | 86 |
| II. | Concluding remarks about s 1 and online defamation | 92 |
| III. | The introduction of the single publication rule in s 8 Defamation Act 2013 | 94 |
| a. | Background to s 8 | 94 |
| b. | Thin justifications | 98 |
| c. | What is republication in ‘substantially the same’ form? | 101 |
| d. | A mitigating factor: s 32A of the Limitation Act 1980 | 103 |
| IV. | Concluding remarks for Part I | 105 |
| Part II: | Liability of host websites and defamation by an AI tool | 106 |
| I. | The defence for operators of websites under s 5 Defamation Act 2013 | 107 |
| a. | A new defence | 107 |
| b. | Potential issues | 110 |
| c. | Approach of the Strasbourg Court | 112 |
| II. | Defamation by an AI tool | 120 |
| a. | A rising threat | 120 |
| b. | The nature of the threat | 123 |
| c. | Who should be responsible for an AI tool’s defamatory speech? | 125 |

| | | |
|------|---|------------|
| | d. Deepfakes and defamation | 131 |
| | III. Concluding remarks for Part II | 136 |
| | Conclusion for Chapter 3 | 137 |
| four | Routes to Remedy? The ‘Right to Be Forgotten’ as an Alternative Route to Redress | 139 |
| | Introduction | 139 |
| | Part I: What is the right to be forgotten? | 141 |
| | I. Background context | 141 |
| | II. Article 17 GDPR | 145 |
| | Part II: Can the ‘right to be forgotten’ provide a more effective remedy than English defamation law? | 149 |
| | I. Accessibility of redress | 149 |
| | II. Hurdles to making a claim | 153 |
| | III. Decision making | 160 |
| | IV. <i>Ex post</i> remedies | 167 |
| | V. The ‘right to be forgotten’ and the <i>data-dissemination</i> scenarios | 168 |
| | VI. Future of the ‘right to be forgotten’ in UK and European law | 170 |
| | Conclusion for Chapter 4 | 180 |
| | Conclusion | 182 |
| | Index | 184 |