

## Red Spot Question

### **Definitions:**

**Actionable per se** - If a legal case is actionable per se, no proof of damage or loss is required in order to take the case to court. The action alone is punishable. Or in another way to explain it, such a tort is actionable simply because it happened. For example, libel is actionable per se.

**Case law: DATUK SERI ANWAR BIN IBRAHIM v UTUSAN MELAYU (M) BHD & ANOR.**

Anwar filed the suit in January 2012, seeking RM50 million in damages and an injunction to stop Utusan from repeating statements accusing him of being a gay rights proponent. Also named as defendant was its group editor-in-chief Datuk Abdul Aziz Ishak. In January 2013, then High Court judge Datuk VT Singham found Utusan Malaysia liable for defaming Anwar in the two articles. The trial judge said the newspaper had "distorted" the opposition leader's words to suggest he backed the lesbian, gay, bisexual and transgender (LGBT) movement. Singham said the daily did not practise responsible journalism, in addition to disregarding a golden opportunity to correct itself after Anwar sent a legal notice asking for clarification. The judge said it was "crystal clear" that Anwar did not say that LGBT activities should be legalised in his BBC interview, and the Utusan articles had suggested that Anwar was unfit to hold public office and be the opposition leader. During trial, Anwar told the court that he agreed that homosexuals should be discriminated against to protect the sanctity of marriage, but pointed out that archaic laws should be reviewed to prevent innocent people from being punished. The Court of Appeal subsequently dismissed Utusan's appeal against Singham's decision. The High Court awarded Datuk Seri Anwar Ibrahim RM200,000 in damages after the publisher of the Utusan Malaysia daily was found liable of defaming the former opposition leader. Judge Hue Siew Kheng awarded Anwar RM100,000 in general damages and another RM100,000 in aggravated damages. She also ordered Utusan Melayu (Malaysia) Bhd to pay RM8,000 in costs.

**Non actionable per se** – Non actionable per se is basically the opposite of actionable per se. It needs a proof of damage in order to claim the damages. Slander is an example of non actionable per se.

**Case law: HISHAM BIN TAN SRI HALIM V THE FARIDAH BT AHMAD NORIZAN & ANOR.**

The Plaintiff's main claim against the first and second Defendants, the Plaintiff's aunt and ex-wife's mother is for verbal defamation or known as 'slander'. Around June 2017, the Plaintiff received a call from a PDRM officer informing him that his ex-wife had filed a police report, alleging that her eldest son had been sexually assaulted by a driver who worked with the Plaintiff's family. Around July 2017, the Plaintiff went to Sg Buloh Hospital with his younger brother and his sharia lawyer. The plaintiff met with the hospital director, PDRM officers and Welfare Department officers. After the meeting, the incident that took place in the pediatric

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**KJ Lindholm-Leary**



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