

**Datuk May Phng @ Cho Mai Sum (mendakwa sebagai pengerusi, ahli jawatankuasa dan wakil Persatuan Penganut Buddha Rumah Kechara Malaysia (Kechara House) ("Kechara House"), sebuah pertubuhan yang didaftarkan di bawah Akta Pertubuhan 1966 dan dalam kapasiti perwakilan mewakili Kechara House dan/atau semua ahli-ahli Kechara House) & 2 Ors**

**v**

**Tan Pei Pei**

**High Court, Kuala Lumpur – Suit No. 23NCvC-76-10/2015**  
Kamaludin Md Said J

May 24, 2018

*Tort – Defamation – Libel – Circulation of email contents of which as admitted by defendant, are defamatory – Presumption in law that circulation over internet is presumed to be wide publication – Onus on defendant to prove limited publication – Appropriate quantum of damages in circumstances*

The plaintiff had commenced a defamation action, claiming damages against the defendant based on an email that the defendant had sent out to four individuals. It is undisputed that the said email had been circulated to the public via the internet; that the recipients were invited to read and spread the contents thereof as widely as possible; and that the plaintiffs had been humiliated and embarrassed and their reputation tarnished by the same. The defendant admitted that the email was defamatory of the plaintiffs and offered an unqualified and reserved apology. The defendant also offered to resolve the matter by offering a sum of RM20,000 as settlement. The plaintiffs refused to accept the same on the ground that the apology was not sincere for having been made only after the issuance of a letter of demand and not at an earlier stage. It was contended that the said apology cannot therefore be relied upon to mitigate any award of damages.

#### **Issue**

The quantum of damages to be awarded to the plaintiffs for loss of reputation.

**Held**, awarding general damages of RM80,000 together with interest and costs of RM10,000 to the plaintiffs together with interest

1. Based on the defendant's admission to the plaintiff's pleaded case, it is beyond doubt that the defendant must be held accountable to the relief

- 1 sought by the plaintiffs whose reputation and goodwill have been  
seriously damaged by the defamatory email. [see p 792 para 23]
2. On the facts, the defendant had deliberately and intentionally called out to  
5 the public to widely circulate the email. Doing so proves a clear intention of  
wide publication. Following *Huth v Huth* [1915] 3 KB 32 and *Tan Ah Hong v*  
*CTOS Data System Sdn Bhd* [2016] 3 AMR 457 and in view of the fact "... that  
10 it is practically impossible to prove that any third person read it ..." such  
circulation over the internet is presumed to be wide publication and the  
onus is on the defendant to prove the limited publication as alleged.  
[see p 795 paras 41-43]
3. On the authorities as cited by the parties and considering the quantum of  
15 damages awarded therein, a global sum of RM80,000 as general damages  
together with interest at 5% per annum until full payment and costs of  
RM10,000 would be fair and reasonable in the circumstances of the instant  
20 case. [see p 797 para 54 - p 800 para 59]

#### Cases referred to by the court

- 25 *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142, HC (ref)  
*Abu Hassan b Hasbullah v Zukeri b Ibrahim* [2017] AMEJ 1321; [2017] 1 LNS 1754,  
CA (ref)  
*Binaan Sentosa Sdn Bhd v Ng In Kun & Anor* [2011] AMEJ 0367; [2012] 1 CLJ 232, HC  
(ref)
- 30 *Cheong Chark v Gammon (Malaya) Ltd* [1939] MLJ 65, HC (ref)  
*Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin* [2011] 2 AMR 295;  
[2011] 8 MLJ 608, HC (ref)  
*Dato' Mohamad Salim Fateh b Fateh Din v Nadeswaran a/l Rajah* [2012] 5 AMR 151;  
35 [2012] MLJU 391, HC (ref)  
*Dato' Seri Anwar b Ibrahim v New Straits Times Press (M) Sdn Bhd & Anor* [2010] 3  
AMR 514; [2010] 2 MLJ 492, HC (ref)  
*Datuk Harris Mohd Salleh v Datuk Mohd Shafie b Hj Apdal & 4 Ors* [2009] 1 AMR 317;  
40 [2009] 2 CLJ 682, HC (ref)  
*Datuk Seri Anwar b Ibrahim v Wan Muhammad Azri b Wan Deris* [2014] AMEJ 0794;  
[2014] 9 MLJ 605, HC (ref)  
*Datuk Seri Utama Dr Rais b Yatim v Amizudin b Ahmat* [2012] 2 AMR 266; [2012] 2  
MLJ 807, HC (ref)  
*Huth v Huth* [1915] 3 KB 32, CA (foll)  
*Keith Richard Judd v Suppayah a/l Krishnan* [2015] AMEJ 1357; [2015] 1 LNS 856, HC  
(ref)  
*Kesatuan Kebangsaan Pekerja-Pekerja Bank & 7 Ors v The New Straits Times Press*  
(Malaysia) Bhd & 5 Ors [2013] AMEJ 0005; [2013] MLJU 41, HC (ref)  
*Kok Yu Po v Wong Kui Man* [2015] MLJU 851, HC (ref)  
*Lim Guan Eng v New Straits Times Press (M) Bhd* [2017] 3 AMR 221; [2017] 9 MLJ  
622, HC (ref)

<i>Ling Wah Press (M) Sdn Bhd &amp; 3 Ors v Tan Sri Dato Vincent Tan Chee Yioun</i> [2000] 3 AMR 2991; [2000] 4 MLJ 77, FC (ref)	1
<i>MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun</i> [1995] 2 AMR 1776; [1995] 2 MLJ 493, CA (ref)	
<i>Mox-Linde Gases Sdn Bhd (formerly known as MOX Gases Sdn Bhd and prior to that as MOX Gases Bhd) v Wong Siew Yap</i> [2015] 10 MLJ 413, HC (ref)	5
<i>PP v Mohamad b Sabu</i> [2017] AMEJ 0389; [2017] 10 MLJ 273, HC (ref)	
<i>Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd &amp; 3 Ors</i> [2018] AMEJ 0056; [2018] MLJU 34, CA (ref)	10
<i>Tan Ah Hong v CTOS Data System Sdn Bhd</i> [2016] 3 AMR 457, CA (foll)	
<i>YB Hj Khalid b Abdul Samad v Datuk Aziz b Isham &amp; Anor</i> [2012] 1 AMR 376; [2011] 1 LNS 1161, HC (ref)	
<i>Yeo Ing King v Melawangi Sdn Bhd</i> [2016] 5 AMR 405; [2016] 5 MLJ 631, CA (ref)	15

### Other references

Keith R Evans, <i>The Law of Defamation in Malaysia &amp; Singapore</i> , 2nd edn	20
Justin Voon, Lee Chooi Peng and Chiam Sia Yann (Justin Voon Chooi & Wing) for plaintiffs	
Sreether Sundram (Murali B Pillai and Associates) for defendant	25
<i>Judgment received: June 11, 2018</i>	

### Kamaludin Md Said J

#### Introduction 30

[1] When I was assigned to continue this partly heard case of YA Datuk Norbee binti Arifin, it was at the stage of hearing for assessment of general damages arising from a defamation suit brought by the plaintiffs against the defendant. The record shows that during the first day of the trial on April 6, 2017 before the learned judge, the defendant had admitted and conceded to her liability in respect of the plaintiffs' claim for defamation. Judgment was obtained against the defendant in respect of the plaintiffs' claim (see the judgment dated April 6, 2017 at encl 76). 35 40

[2] At the outset, the court was informed that quantum of general damages was not agreed by the parties and the defendant had also denied her liability to pay for any aggravated and/or exemplary damages claimed by the plaintiffs.

[3] The plaintiffs contended that the subject matter of the trial herein is confined to the quantum of general damages to be awarded to the plaintiffs (as recorded in paragraph 3 of the judgment dated April 6, 2017) and the defendant's liability to pay for aggravated and exemplary damages to the plaintiffs and its quantum.

1 [4] However, perusal of the said judgment at encl 76, there are only four (4)  
orders made in the judgment as follows:

.... ON THE DEFENDANT'S ADMISSION, IT IS HEREBY ADJUDGED THAT –

- 5 (1) an injunction to prohibit the defendant from making any defamatory  
remarks and/or communicating to any party about the contents of e- mail  
dated May 17, 2014 written by the defendant in any manner;
- 10 (2) the defendant to disclose number of persons and their identification or any  
other party that she had communicated or copied the email dated May 17,  
2014 to other than the names she had forwarded to the plaintiffs by way of  
affidavit within eight days from the date of the judgment;
- 15 (3) General damages for defamation to be assessed and paid by the defendant  
to the plaintiffs respectively; and
- (4) Defendant to pay the amount of general damages at the interest of 5% per  
annum from May 17, 2014 until date of full payment.

20 [5] There was nothing stated in the judgment that aggravated and exemplary  
damages as claimed by the plaintiffs under prayers 25 (v) and (vi) of the  
statement of claim as part of the judgment.

25 [6] Therefore, *liability to pay for aggravated and exemplary damages* to the plaintiff  
and its quantum at the interest of 5% per annum until date of full payment does  
not arise.

30 [7] The court was also informed that the defendant's counterclaim was struck  
out on March 18, 2016.

[8] Therefore, the subject matter of the trial herein is confined to solely on the  
35 *quantum of general damages* to be assessed and awarded to the plaintiff (as  
recorded in paragraph 3 of the judgment dated April 6, 2017).

#### The trial

40 [9] The documents before this court for purposes of reference are as follows:

- |       |  |   |    |
|-------|--|---|----|
| (i)   | Ikatan Pliding Terpinda                      | - | A  |
| (ii)  | Isu-Isu Untuk Dibicarakan B                  | - | B  |
| (iii) | Fakta-fakta yang dipersetujui                | - | C  |
| (iv)  | Ikatan Dokumen Bersama (Part B -<br>Jilid 1) | - | D  |
| (v)   | Ikatan Dokumen Bersama (Part B -<br>Jilid 2) | - | D1 |
| (vi)  | Ikatan Dokumen Bersama (Part C)              | - | D2 |

(vii)	Ikatan Dokumen Tambahan Plaintif	-	D3	1
(viii)	Ikatan Dokumen Tambahan (2) Plaintif	-	D4	
(ix)	Ikatan Dokumen Defendan	-	D5	5
(x)	Ikatan Dokumen Tambahan (3) Plaintif	-	D6	
(xi)	Ringkasan Kes Plaintif	-	E	10
(xii)	Ringkasan Kes Defendan	-	F	

[10] The witnesses who gave evidence during the trial and their respective witness statements are marked as follows: 15

*Plaintiff's witnesses*

(i) PW1: Datuk May Phng @ Cho Mai Sum 20

The plaintiff's witness statement: WSPW1

The plaintiff's additional witness statement: WSPW1 (A)

The plaintiff's additional witness statement (2): WSPW1 (B) 25

(ii) PW2: Kok Yek Yee

The plaintiff's witness statement: WSPW2 30

(iii) PW3: Ooi Seang Huat (Henry)

The plaintiff's witness statement: WSPW3

(iv) PW4: Thong Jiunn Perng 35

The plaintiff's witness statement: WSPW4

(v) PWS: Koo Carmen 40

The plaintiff's witness statement: WSPWS

(vi) PW6: Phng Li Kim

The plaintiff's witness statement: WSPW6

The plaintiff's additional witness statement: WSPW6 (1)

The plaintiff's additional witness statement (2): WSPW6 (2)

*Defendant's witness*

(i) DW1: Tan Pei Pei

The defendant's witness statement: WSDW1

1 [11] The trial completed on January 25, 2018 and parties have filed in their  
written submissions.

**Salient background facts**

5 [12] The plaintiff filed a defamation suit against the defendant based on an email  
dated May 17, 2014 at D1/730 ("the said email"), which was sent by the defendant  
to at least four recipients as displayed in the said email, i.e. "Dar Cell Kwok",  
10 "Audrey Tan", "Cheph Chaang" and "HP Lake".

10 [13] The said email dated May 17, 2014 written by the defendant is as follows:

It is about the Kechara House – the monster master, Burcha/Tsim Tulku, the  
unbeatable con-man in town.

15 I am going to be in the High Court Stand from 2151 to 23rd May at Malaysia High  
Court, waiting to hear how bullshitting & liars this case is going to be. Basically it's  
about 3 phases of documentary shooting job that this Monster Master had  
20 assigned Catwalk Productions and AP Films to produce - 9 years ago and the had  
cancelled it! Unbelievable. ..PHANG LI KIM, Kechara House's new CEO has filed  
the case till High Court Malaysia, but then now asking us for mediation - twice!  
Nevertheless, twice also had turned down by me even I am only 2ND  
25 DEFENDANT. I told them let's meet in court because I want JUSTICE. This is  
really not about me and my case but it is about many-many-many Ex members  
that I have met and seen, how torture and suffer they are during they were in the  
organization until they left - still - they got threaten by the Monster Master! A few  
of them had even reached the stage of "mentally unstable". ..

30 The fact that they had cancelled the job 2 days before the actual shooting, because  
the monster master failed to show up at the shooting location. With black and  
white contract all parties had signed, cancellation within 7 days - no refund  
because we have whole production crew and expensive equipment to pay. Well,  
35 the new CEO, Phang Li Khim who doesn't know head and tale is now trying to sue  
us to get back the money, because one day the monster master threw the dices on  
the floor then telling her to bring up the case to sue us and he guaranteed them  
that they could win, and money would give to her to host her new season of  
40 Panorama Zone!

How ridiculous. ....

*ALL VICTIMS* wish to share their truth, bitter experiences all their youth, wealth,  
hard earn-savings that they had lost to the Kechara Organization during the years  
being students to this Monster Master, Tsim Tulku. Thank God I have never  
become his student although many times he had tried to convince me to be one.

All of us need public to know and hear *THE TRUTH*.

*MOST IMPORTANTLY WE NEED TO ALERT THE PUBLIC SO THAT NO NEWER VICTINS FALLS INTO THE CULT.* 1

Please join is to listen to the trial if you can spare sometime - 10 am onward, please support. 5

Thank you.

Humbly

A.P Tan 10

[14] The said email is defamatory to the plaintiffs because it has been admitted by the defendant and adjudicated upon in the judgment dated April 6, 2017. Despite the admission and in the submission, attempt was made by the defendant to contend that the main thrust of this email is aimed at Burcha/Tsim Tulku, who is not a plaintiff in this suit. In my view the issue raised is misconceived and it is too late at this stage for the defendant to argue that the email is aim at Burcha/Tsim Tulku. The said email referred to a blog titled "<http://insidethecompany.wordpress.com>" and the defendant started the said email by stating that "It is about Kechara House – the monster master, Burcha/Tsim Tulku, the unbeatable con-man in town". Burcha/Tsim Tulku i.e. HE Tsem Tulku Rinpoche is the founder and spiritual advisor of Kechara House. It is known to the public and members of Buddhist practitioners that any reference to HE Tsem Tulku Rinpoche is also reference to Kechara House. 15  
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[15] The said email was sent by the defendant a few days before the trial of another civil suit, i.e. Kuala Lumpur Civil Suit No. 22NCvC-1511-12/2012 ("the said 1511 suit") filed by the second plaintiff against Chan Lai Ming and AP Films (the defendant here is the sole proprietor of AP Films) for return of money held on trust. 30

[16] It is trite that the email must be read in its whole context. It is an established principle of law that the publication must be examined as a whole and the context in which the words are used, the nature of the publication and the emphasis placed on any particular words must be examined in assessing whether the said email is defamatory. 35  
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[17] In *Public Prosecutor v Mohamad bin Sabu* [2017] AMEJ 0389 at p 81; [2017] 10 MLJ 273 at 303-304 it was held that:

[33] It is my view that generally in an action for defamation; be it civil or criminal, the publication must be examined as a whole.

[18] In Keith R Evans, *The Law of Defamation in Malaysia & Singapore*, 2nd edn, it is provided as follows:

In considering whether such ordinary inferences arise from the words, the whole publication must be examined, including among other things, the context in

1 which the words are used, the nature of the publication and the emphasis placed  
on any particular words.

[19] Thus in *Binaan Sentosa Sdn Bhd v Ng In Kun & Anor* [2011] AMEJ 0367; [2012]  
5 1 CLJ 232, See Mee Chun JC (now J) held as follows:

[11] *I am mindful too that in determining whether the words complained of are defamatory  
one must take into account not only the actual words but the context in which they were  
used. This is because there may be other words which take away the sting. Refer to  
10 Soh Chun Seng v CTOS-Emr Sdn Bhd* [2004] 5 CLJ 46... (Emphasis added.)

[20] Be that as it may in the present case, the defendant had admitted liability  
that the said email is defamatory. of the plaintiffs. By such admission of liability  
15 means the said email is defamatory of the plaintiffs and it follows that the e- mail  
had tarnished the reputation of the first plaintiff and the founder of the first  
plaintiff, i.e. HE Tsem Tulku Rinpoche thus, the said email also made defamatory  
statements against the second and third plaintiffs, where clear reference was  
made to the said 1511 suit filed by the second plaintiff and the third plaintiff was  
20 also named in the said email.

[21] At paragraphs 9 to 11 of the plaintiffs' statement of claim, the plaintiffs  
pleaded that the contents of the email written by the defendant are defamatory to  
25 the plaintiffs which had tarnished the image and reputation of the plaintiffs and  
lowered the plaintiffs in the estimation of the right thinking members of society  
that the plaintiffs inter alia:

- 30 1. led by a "monster master" i.e. a "monster" and or "an aggressive person".
2. led by "unbeatable conman" a person who is an expert in cheating people.
3. is a "cult" i.e. an organisation with extreme or dangerous religious beliefs.
- 35 4. "bullshitting & liars" in Suit 1511.
5. had caused "torture", "suffering", "threaten" until members ran away.
- 40 6. members become "mentally unstable".
7. members become "victim" where their "youth", "wealth", "savings" will  
"disappear" to the plaintiffs or "Kechara Organisation" when they  
become students of Tsem Tulku.
8. "ridiculous" i.e. being the very unreasonable man and acted without  
cause.
9. involved in "cult" activities that "members of the public" must be  
informed of the dangerous activities.



[22] The defendant further encouraged the recipients of the said email to attend court during the trial of the said 1511 suit and also to further disseminate the said email to other members of the public. 1

[23] Therefore, it is beyond doubt that the defendant's admission to the plaintiffs' pleaded case, the defendant must be held accountable to the reliefs claimed by the plaintiffs in the statement of claim. The defendant's defamatory email had seriously damaged the reputation of the plaintiffs and the goodwill of the first and second plaintiffs. 5  
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### The law on damages for defamation

[24] It is trite law that a *libel is actionable per se*. Therefore, the *damages* caused to the plaintiffs is *presumed in law* and the plaintiffs do not have to show any proof that the said email has caused any damages to the plaintiffs in order to claim for any damages from the defendant. See *Yeo Ing King v Melawangi Sdn Bhd* [2016] 5 AMR 405 at 432; [2016] 5 MLJ 631 at 661 where it was held that: 15

[178] Libel is actionable per se, that is to say, *there is no need to prove actual damage for "the law presumes that some damage will flow in the ordinary course of things from the mere invasion of his absolute right to reputation"*: *Gatley on Libel and Slander* (10th edn) at p 983. (Emphasis added.) 20

[25] The plaintiffs must be compensated and the next question is how much would be the quantum of damages for the loss of reputation. In *Datuk Seri Utama Dr Rais bin Yatim v Amizudin bin Ahmat* [2012] 2 AMR 266; [2012] 2 MLJ 807, it was held that a particular libel case cannot be equated with other libel cases. Each libel case is unique and has its own particular and peculiar facts. 25  
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[26] In *Kesatuan Kebangsaan Pekerja-Pekerja Bank & 7 Ors v The New Straits Times Press (Malaysia) Berhad & 5 Ors* [2013] AMEJ 0005; [2013] MLJU 41, it was held that the tort of libel has been recognised as actionable per se. Thus where a personal plaintiff proves publication of a false statement damaging to his reputation without lawful justification, he need not plead or prove special damage in order to succeed. (See also *Cheong Chark v Gammon (Malaya) Ltd* [1939] MLJ 65.) 35

### General damages 40

[27] In assessing the quantum of damages, it is trite law that the court takes into account inter alia the following factors:

- (i) The position and standing of the plaintiff;
- (ii) The gravity and seriousness of the libel;
- (iii) The mode and extent of publication;
- (iv) Humiliation and embarrassment caused to the plaintiff;

1 (v) The conduct of the defendant from the time of the publication of the libel;  
and

(vi) Absence of correction, retraction or apology.

5 See *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun* [1995] 2 AMR 1776; [1995] 2  
MLJ 493 at 524; *Dato' Mohamad Salim Fateh bin Fateh Din v Nadeswaran a/l Rajah*  
[2012] 5 AMR 151; [2012] MLJU 391; *Dato' Dr Tan Chee Khuan v Chin Choong Seng*  
10 *@ Victor Chin* [2011] 2 AMR 295; [2011] 8 MLJ 608; *Datuk Seri Utama Dr Rais b Yatim*  
*v Amizudin b Ahmat* [2012] 2 AMR 266; [2012] 2 MLJ 807.

15 [28] The evidence shows that the plaintiffs are well-known, have a good  
reputation and high standing in the society. The first plaintiff (Kechara House) is  
a Buddhist organisation founded in year 2000. At the date of the said email, the  
first plaintiff had been in establishment for about 14 years with an excellent track  
record of religious and charitable work and had attained good reputation. It is an  
20 established organisation and active in producing news articles on the charity  
work done by the first plaintiff (see D/11-18 and the first plaintiff's magazines  
which were published by the second plaintiff and at D/19-162, D/163-294 and  
D/295-370).

25 [29] The evidence also shows that the second plaintiff is the publishing arm of  
the Kechara Organisation established in year 2001. At the time when the said  
email was published, the second plaintiff had been in establishment for about 13  
years and had edited and/or published extensive articles, books, magazines and  
publications as seen in D1/397-729 and D2/816-835. The second plaintiff had  
30 also published DVDs and CD as seen in D3/14-17 and also the co-producer to the  
series "The Paranormal Zone", wherein a DVD of Seasons 1 and 2 of the same can  
be found at D/391-396. The second plaintiff is the "voice" of the first plaintiff and  
both are entities under the Kechara Organisation.

35 [30] The third plaintiff is a graduate and a celebrity host for the popular TV series  
called "The Paranormal Zone" which has completed its fourth season. The third  
plaintiff has received wide coverage on the media as seen at D/384-390 and the  
40 "Paranormal Zone" is a popular TV series with high viewer's ratings and aired  
across South East Asia regions including Malaysia, Singapore, Hong Kong,  
Taiwan, Philippines, Thailand and Indonesia. The audience profile and the  
graphs showing the number of viewers of "The Paranormal Zone" can be found  
at D2/861-862, D2/863-869, D2/870-871.

[31] In defamation cases, the pertinent point is always that whether the  
impugned remarks or words complained of in their natural and ordinary  
meaning and/or by way of inference were defamatory of the plaintiffs. The test  
whether the words complained of in the Article were capable of being, and were  
in fact, defamatory of the plaintiff was whether such words were calculated to  
expose him to hatred, ridicule or contempt in the mind of a reasonable man or

would tend to lower him in the estimation of right thinking members of society generally (see *Abdul Rahman Talib v Seenivasagam & Anor* [1965] MLJ 142). 1

[32] From a reading of the said email, I found the contents of it are highly libelous and the gravity and seriousness of the words used are, amongst others, the worst words that can possibly be used against the first plaintiffs, in particular, which is a charitable and religious organisations that depended on sponsor to operate. 5

[33] The defendant submitted that the evidence failed to established that there was drop in the number of members following the email or sponsorship was adversely affected following the email or that Kechara house suffered a depreciation in the numbers of members or became less popular or suffered any loss of revenue or support whether financial or otherwise as a result of the email. 10

[34] Be that as it may, further, by reading the whole of the said email and looking at the context in which the word "cult" is used, *it is clear that the defendant had used the word "cult" as a negative connotation to link that the first plaintiff as "evil" as the defendant had referred the first plaintiff and the founder of the first plaintiff, i.e. HE Tsem Tulku Rinpoche as "Monster", "Unbeatable con--man" and stated that the first plaintiff had purportedly tortured and threatened its members. In this case, the word "cult" must be read in the negative context of a "religious cult" and calling a religious organisation a "cult" is very damaging and implies that the said organisation is involved in negative aspects of religion and/or false teachings.* 15  
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[35] Therefore, it is obvious from the said email that the gravity of the words used in the said email is *highly damaging, scandalous and vicious.* 30

[36] It is not disputed that the said email has been circulated among the public via the internet to as many people as possible and also inviting the recipients to read and to spread its contents as widely as possible. 35

[37] In the case of *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] AMEJ 0794; [2014] 9 MLJ 605, the court took *judicial notice that internet is used worldwide and publication on the internet means wide publication* and we refer to the following paragraphs: 40

[45] In our case the defamatory statements were published in the website *www.papagomo.com* i.e. *in the internet and the people all over the world can get access to the website meaning that there was a wide publication of the defamatory statements.*

[46] It is a *judicial notice that the internet is used worldwide.*

[38] In this present case, I agree with the plaintiffs that the said email wasn't an ordinary email directed to one person but the said email was written in the context to address the public, to have the said email widely circulated among the public. Therefore, in my opinion, the said email had been widely circulated and/or presumed to be so.

1 [39] It is also my opinion that even in the case of the defendant attempted to  
prove that the email *was sent only to the four individuals named therein or five*  
*individuals as a whole as contemplated by the plaintiffs.* i.e. to "Dar Cell Kwok" or  
Monique Kwok Mei Yuen, it does not change the scenario or fact that such  
5 publication in the internet via email is deemed to be 'wide circulation because the  
defendant intended the wide circulation of the said email based on her  
statements in the said email where the defendant *requested the public to circulate*  
*the said email.* The words used is "All of us need public to know and hear *THE*  
10 *TRUTH. MOST IMPORTANTLY WE NEED TO ALERT THE PUBLIC SO THAT*  
*NO NEWER VICTIMS FALLS INTO THE CULT*".

[40] It was very unfortunate that the defendant had "lost control" over how the  
said email was circulated and to whom the said email was sent. The email could  
15 have been read by other people as well.

[41] In the Court of Appeal case of *Huth v Huth* [1915] 3 KB 32, it was held at p 39  
that:

20 It has been laid down – I think rightly – that *the court will take judicial notice of the*  
*nature of the document.* i.e., that it is a post-card, and will presume, in the absence of  
evidence to the contrary, *that others besides the person to whom it is addressed will read*  
*and have in fact read what is written thereon. That is the presumption of fact which arises*  
25 *as a matter of law.* If, even in such a case as that, the defendant could establish that  
the post-card never was read by a single person – although it is very difficult to  
conceive that the proof could be given – he would, notwithstanding the  
presumption, succeed in that action, because *he would have proved that there was no*  
30 *publication. The fact that it is practically impossible to prove that any third person read it*  
*is the reason why the law takes judicial notice of the nature of the document, and says that*  
*the mere fact that the words are written on a post-card which is posted must be taken as*  
*some evidence that a third person will read it, or has read it. That is clear law and is quite*  
35 *beyond dispute.*

[42] In fact, the contents of the said email proved that there was clear intention of  
wide publication by the defendant. In the Court of Appeal case of *Tan Ah Hong v*  
*CTOS Data System Sdn Bhd* [2016] 3 AMR 457 at 462, the court held that "the fact  
40 that the respondent had deliberately and intentionally loaded onto its database  
the information to be accessed by third parties indicates a clear intention of  
publication".

[43] Similarly, in the present case, the defendant had deliberately and  
intentionally "called out" to the public to widely circulate the said email which  
proves a clear intention of wide publication. Therefore, based on the above clear  
law which is beyond dispute, it is practically impossible to prove exactly to  
whom the said email had been circulated, there is a presumption by law that such  
circulation over the internet is presumed to be wide publication and the onus is  
on the defendant to prove the limited publication as alleged.

[44] In this case, it is not disputed that the said email had caused humiliation and embarrassment to the plaintiffs. Words and phrases like "monster", "con-man", "torture", "suffer", "threaten", "mentally unstable", "bitter experiences", "youth", "wealth", "hard earn-savings that they had lost to the Kechara Organization" and "cult" appearing in the said email greatly tarnished the plaintiffs' image and reputation and lowered the plaintiffs in the estimation of the right thinking members of the society. 1  
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[45] On the other hand, the evidence also shows that by way of letter dated April 5, 2017 at p 6, bundle D4, the defendant had offered an unqualified and unreserved apology to the plaintiffs and on the same day also sent Whatsapp messages to the third plaintiff which inter alia, showed remorse for issuing the email and implored the plaintiff to "Please forgive my ignorance and stupidity". (See pp 7 to 9, bundle D4.) 10  
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[46] On April 6, 2017 the defendant had offered to resolve the matter by an offer of a sum of RM20,000, and an apology as a settlement offer to the plaintiffs but this was rejected. 20

[47] On the stand the defendant continued to show the same sense of remorse when she sent the whatsapp messages of abject apology to the third plaintiff on April 5, 2017, when one of the first things she said on the stand was: 25

First of all, I apologise that I write this kind of email and at that times I have a first law suit, so I was quite upset and then when these people, Ex member of Kechara, they aware of I have this case and like Peter Khoo, Jamie Khoo, Tan Sio Chang they called me and told me the, their bitter experience inside there. And I, can only say that I, believe that times and, but when I call them now to come to court, they, everyone don't want to get involved, so I can say that I was being used so, I would like to apologise to the plaintiff that I wrote email like that. 30

[48] From the plaintiffs' point of view, the defendant's apology is not a sincere apology because according to the plaintiffs it was not given at the earlier stage but after the plaintiffs have issued a letter of demand dated December 31, 2014 and the defendant, in reply to the plaintiffs' letters of demand maintained that the content of the said email is true. The plaintiffs also contended that the said apology was only made one day before the trial on April 6, 2017 when the defendant sent a whatsapp message to the plaintiff (D4/7-9) and at the same time, the defendant's solicitors has issued a letter dated April 5, 2017 (D4/6) to the plaintiff's solicitors, alleging that "she is willing to offer an unqualified and unreserved apology to your clients in the manner and *on the terms to be agreed* by parties". 35  
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[49] The plaintiffs claim that there were no "terms" discussed nor agreed and that the defendant's solicitor's letter dated April 5, 2017 does not qualify as an effective apology at all as it is merely an "offer to offer an apology" and there was no full and frank withdrawal of the libel contained in the said email and neither

1 was it a complete and unqualified apology or a fair retraction. Therefore, the  
alleged apology cannot be relied upon to mitigate any award of damages.

5 [50] Having read the defendant's letter of apology dated April 5, 2017, my  
assessment of the words used in the said letter, it is not a qualified apology. The  
words used is "willing to offer an unqualified and unreserved apology" speaks  
for itself that it is full and frank apology. The defendant's solicitor also requested  
whether the plaintiffs are agreeable to the defendant's proposal. The defendant  
10 sent a whatsapp message to the plaintiff (D4/7-9) at the same time shows her  
conduct that the offer for an apology is genuine and sincere. It does not matter if  
it is in the whatsapp form, it was still an apology offered by the defendant. It is  
not disputed that on the next day i.e. on the April 6, 2017, the defendant admitted  
liability of her defamatory remarks found in the said e-mail. It further shows that  
15 the apology is bona fide and the defendant's true intention to be accountable to  
the defamatory email sent to the plaintiffs. The missing point here in my view is  
that even though the defendant had offered an unqualified and unreserved  
apology to the plaintiffs in the manner and on the terms to be agreed by parties  
20 and whether the plaintiffs are agreeable to the defendant's proposal, the proposal  
was never taken or adhered to by the plaintiffs or for plaintiffs to state what are  
the plaintiffs' terms if the proposal is to be accepted including retraction of the  
email or any other form of apology set by the plaintiffs.

25 [51] Therefore, as far as this court is concerned, there was apology from the  
defendant which this court can consider before awarding damages to the  
plaintiffs.

### 30 **Trend in awarding damages**

35 [52] The defendant is liable for her action. The plaintiffs claim against the  
defendant for general, aggravated, exemplary damages and an injunction  
restraining the defendant from further publishing the defamatory remarks.  
However, in this case the judgment dated April 6, 2017 only allows assessment  
for general damages.

40 [53] The plaintiff must be compensated and the next question is how much  
would be the quantum of damages for the loss of reputation. In *Datuk Seri Utama  
Dr Rais b Yatim v Amizudin b Alimat* [2012] 2 AMR 266; [2012] 2 MLJ 807, it was  
held that a particular libel case cannot be equated with other libel cases. Each  
libel case is unique and has its own particular and peculiar facts. (See also the  
Federal Court case of *Ling Wah Press (M) Sdn Bhd & 3 Ors v Tan Sri Dato Vincent  
Tan Chee Yioun* [2000] 3 AMR 2991 at 3002-3003; [2000] 4 MLJ 77 at 81-82.)

[54] The defendant submitted that even public figures such as Lim Guan Eng  
and Dato' Seri Anwar bin Ibrahim in the cases of *Lim Guan Eng v New Straits Times  
Press (M) Bhd* [2017] 3 AMR 221; [2017] 9 MLJ 622 and *Dato' Seri Anwar bin Ibrahim  
v New Straits Times Press (M) Sdn Bhd & Anor* [2010] 3 AMR 514; [2010] 2 MLJ 492  
were only awarded RM300,000 as general and aggravated damages and

RM100,000 as compensatory damages respectively where obviously the circulation was much wider. Therefore, it was submitted that the award for compensatory composite damages should not exceed the sum of RM20,000. The defendant also quoted the case of *Kok Yu Po v Wong Kui Man* [2015] MLJU 851 where the court allowed the global sum of RM50,000 as general and aggravated damages. 1  
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[55] On the other hand, the plaintiffs submitted the following cases as guidelines for the court to grant a substantial general damages and aggravated and/or exemplary damages against the defendant based on the circumstances of the present case herein: 10

- (i) *Keith Richard Judd v Suppayah a/l Krishnan* [2015] AMEJ 1357; [2015] 1 LNS 856 15

The defendants (who was the Secretary of a Management Council) have sent about 16 emails to various residents in the said apartment which is defamatory of the plaintiff (who was the Chairman of the Management Council). The emails were not published by the defendant to outsiders or to parties not entitled to receive the said e mails. 20

The court held that the defendant is liable for defamation and has awarded a general damage for the sum of RM200,000 to the plaintiff. 25

- (ii) *Mox-Linde Gases Sdn Bhd (formerly known as MOX Gases Sdn Bhd and prior to that as MOX Gases Bhd) v Wong Siew Yap* [2015] 10 MLJ 413 30

In this case, the first plaintiff was an industrial gas supplier in Malaysia and a subsidiary of an international gas and engineering company and the second plaintiff was the first plaintiff's managing director. 35

The plaintiffs claim that there was defamation based on three defamatory emails which were circulated by the defendant to various parties and institutions both within Malaysia abroad and to companies I organisations which are directly and/or indirectly linked or connected to the first plaintiff and/or the Linde Group. 40

The court has awarded the plaintiffs RM150,000 as general damages and RM50,000 as aggravated damages taking into account that "[36] ... the plaintiffs are entitled to receive an award for aggravated damages so as to send a strong message against the defendant who is in a position to disseminate information widely through the internet that she must exercise a proper degree of care and diligence not to injure others".

- (iii) *Abu Hassan b Hasbullah v Zukeri b Ibrahim* [2017] AMEJ 1321; [2017] 1 LNS 1754

1 In this case, the plaintiff was a senior academician/lecturer and also the  
Dean of a Faculty in the University Malaysia Kelantan, whereas the  
defendant was a lecturer on probation in the said Faculty.

5 The defendant had authored two offensive emails and caused the same to  
be published to various groups of people, including all academic staff and  
administrators of the faculty and the defendant was ordered damages in  
the sum of RM70,000 to the plaintiff.

10 (iv) *Raub Australian Gold Mining Sdn Bhd v Mkini Dotcom Sdn Bhd & 3 Ors*  
[2018] AMEJ 0056; [2018] MLJU 34

15 In this case, the appellant is the company operating gold mining  
operations in Raub Pahang, whereas the first respondent is a company  
that owns and operates an online news portal known as Malaysiakini and  
the second to fourth respondents are the assistant news editor, senior  
journalist and intern of the first respondent.

20 The appellant's claim for defamation arose out of three articles and two  
videos published by the first respondent on its online news portal which  
was false and defamatory of the appellant.

25 Despite that the appellant could not locate 17 articles out of the 80 articles  
that were republished and also cannot confirm that 70 articles out of the 80  
articles that were republished to have been visited by readers, the Court of  
Appeal still awarded a general damage for the sum of RM200,000 to the  
30 appellant for loss of goodwill and for vindication of the appellant's  
reputation.

[56] The plaintiffs submitted that the global sum of RM500,000, i.e. general  
35 damages for the sum of RM300,000 and aggravated damages and/or exemplary  
damages for the sum of RM200,000 to each of the plaintiffs is reasonable and  
justified to vindicate the plaintiffs in this case and the defendant ought to be  
ordered to pay these damages.

40 [57] I have considered the quantum of damages awarded in the above cited cases  
by the plaintiffs and the defendant. Other cases which come to my mind where  
the plaintiffs are former deputy prime minister, chief minister and member of  
parliament, the court awarded the damages as follows:

*Dato' Seri Anwar b Ibrahim v New Straits Times Press (M) Sdn Bhd & Anor*  
[2010] 3 AMR 514; [2010] 2 MLJ 492 – the court awarded the sum of  
RM100,000.

*Datuk Harris Mohd Salleh v Datuk Mohd Shafie b Hj Apdal & 4 Ors* [2009] 1  
AMR 317; [2009] 2 CLJ 682 – the court awarded the sum of RM50,000.



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*YB Haji Khalid bin Abdul Samad v Datuk Aziz bin Isham & Anor* [2012] 1 AMR 376; [2011] 1 LNS 1161 – the court awarded the sum of RM60,000. 1

[58] Based on the authorities cited above, this court allows the general damages for the global sum of RM80,000 to all the plaintiffs and interest of 5% from May 17, 2014 until full payment thereof. The amount awarded is fair and reasonable. 5

[59] Costs of RM10,000 to the plaintiffs. 10

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