

Chapter 1

Brazil

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Introduction to the Brazilian Legal System

The Brazilian legal system is derived from traditional civil law theories and is guided by the Brazilian Federal Constitution, which was drafted in 1988. The “new” system has significantly streamlined a Brazilian system that was infamous for having an excessive number of laws. The current judicial system has two branches, a federal branch and a state branch. There are two levels of federal courts in Brazil. Federal districts, composed of states and municipalities, each have their own court, called the Federal District Court. The second level of the federal branch is the Supreme Court of Justice, the highest federal court in the country. The state system is composed of states and municipalities within each state. Each state has its own uniquely organized judicial system, and each state’s courts, judges, and jurisdiction are determined by a state constitution. State legal powers are limited by the federal constitution, but are otherwise unhindered. Municipalities have constitutional equivalents, called organic law, but no court system, and must obey all federal constitutional laws.

Brazilian Civil Code and Media Law

Persons producing content subject to Brazilian law are advised to familiarize themselves briefly with the structural framework of Brazil’s legal system and its approach to media law. Article 5 of the Constitution of Brazil (CB, in force since 1988) and Brazil place a high value on freedom of the press; however, the CB also provides citizens with the inviolability of privacy and private life. Therefore, the various constitutional guarantees must be weighed against each other in any given case. In addition, certain restrictions on press freedom have been established via legislative means. The Brazilian Civil Code (BCC), which was passed in 2002, introduced changes in the area of personality rights, including the right to private life. The BCC provides that the private life of natural persons is inviolable and that the courts, on application by an interested party, may adopt such measures as may be necessary to prevent any act contrary to the inviolability of private life or to cause such acts to cease.

1. What is the locally accepted definition of libel?

The CB guarantees both freedom of the press and the right to privacy. Provision is made for the freedom of artistic and scientific expression and communication which is free from censorship or restriction. On the other hand, the CB also states that “honor, dignity, image, and the right to privacy are all inviolable rights,” breach of which gives rise to an entitlement to damages. Libel is both a criminal offense and a civil wrong in Brazil. Chapter 3(Capítulo III) of the Press Law sets out the offenses arising from abuse of the right to freedom of thought and information using communication/information media. The term media, in this context, covers newspapers and periodical publications, radio transmission, and other news services. Media crimes are divided into two classes: on the one hand, public order offenses or the divulging of state secrets, and on the other, defamation (“crimes against reputation”). Depending on the conduct of the agent, libel (in

a broad definition) can take, according to Brazilian law, three different forms: calumny (calúnia), defamation (difamação), and injury to dignity or decorum (injúria). These three crimes are defined as follows:

Calumny: To falsely accuse someone of committing a criminal act (punishable by six months' to three years' imprisonment plus a fine ranging from one to twenty minimum salaries). In the offenses of calumny (art. 20) and defamation (art. 21), the publisher alleges a provable fact. In the former (calumny), the publisher must have knowledge of the falsity prior to publication. It is important to note, however, that in certain circumstances the defendant accused of the crime of calumny or defamation may rely on the defense of truth. This defense is generally available in calumny (art. 20) but only in limited circumstances in defamation (art. 21), and not at all for injury to dignity (art. 22). The defense of truth, where applicable, is an absolute defense, whereby the defendant avoids conviction.

Examples of calumny include the following: The unproven allegation that a judge, in the city of Canoinhas, had committed the offense of threatening behavior (which constitutes a crime) against the owners of a publishing company, saying that if the editor in chief did not stop writing about the mayor of the city, he would be severely punished, with payment of fines and, additionally, imprisonment. The publisher published such threats. The truth of the allegedly calumnious statement was not proved and, for this reason, the owners of the company were convicted. In a city in the State of São Paulo, a public agent was accused of manipulating the results of a public contest and making false representations. The court decided that such a statement would constitute a crime of calumny.

The following statements were found not to constitute calumny: A news report was published of a charge of manslaughter filed against a medical practitioner. Because the charges had in fact been brought, the court found the statement justified by truth and held there was no crime of calumny. A journalist authored an article in which he referred to the plaintiff as a drug dealer, for being criminally convicted and currently on conditional release. However, the court decided that libel was not present, once the defendant had established his fact-finding on the animus narrandi ("willing to tell").

Defamation: To allege that someone has performed a disreputable act (punishable by three to eighteen months' imprisonment plus a fine of between two and ten minimum salaries). In the lower-level offense of defamation, the act which the victim is stated to have performed is not a criminal act, but is nonetheless conduct that is detrimental to the victim's reputation (disreputable). An individual's reputation is the person's "standing in society." The law seeks to uphold and protect the esteem in which a person is held by society—objective dignity.

Examples of defamation include: Blaming the mayor of a municipality for improper accounting procedures at City Hall, saying he had "never been transparent" in his accounting and that the "public authorities were reluctant to publish the accounts" because of fear of reprisals. In another case, an article referred to the mayor of a certain

city as “mentally disordered.” The court understood this conduct as defamatory, and no public interest was present in the context of this statement. For this reason, the statement was not supported by the principle of freedom of speech in the Brazilian Constitution.

The following statements were found not to constitute defamation: A newspaper reported the filing of administrative proceedings against an educational institution. The court held that the aim of the report was to inform the community of an issue of public interest. The journalist’s intention was not to defame the legal entity referred to or its partners. In another case, a journalist published a satire *animus jocandi* (“willing to make fun”) that alleged provable facts. Because they were true, the way they were published was considered a legal form of expression by the journalist.

Injury: To offend someone’s dignity or decorum (punishable by one to twelve months’ imprisonment or a fine of between one and ten minimum salaries). The offense of injury (art. 22) involves making statements which simply offend the subjects’ “decorum and dignity.” Decorum (in Portuguese *dignidade*) refers to a person’s moral attributes, whereas dignity (in Portuguese *decoro*) refers to the individual’s physical and intellectual attributes. The mere use, to describe a person, of words which express a negative concept or image and which offend “subjective” honor (the victim’s self-image, as opposed to that person’s image in society) constitutes grounds for prosecution for this offense.

Examples of injury include: An article describing one of the candidates standing for presidency of a municipal legislative assembly (City Hall) as a “hypocrite,” “false moralist,” and “a man of limited cultural resources” was held to show a clear intention of offending the individual’s dignity and decorum rather than making a criticism based on public interest. In another instance, a newspaper published an article stating that the mayor of a city in the State of Rio de Janeiro was a “scoundrel” and his behavior was harmful to the poor population. The court understood that the use of the word “scoundrel” constituted a violation of the subjective honor of the mayor and the newspaper was convicted.

The following examples found that injurious publications had not been committed: A politician was called “selfish” and a “political opportunist” by his political opponent. The court decided that such conduct did not characterize injury because it constitutes (legitimate) criticism. The case of a person named to a public function and who was called “incompetent” and “unable to exercise such function” was adjudicated not injurious because the court held that the expressions were used not to offend the individual but in order to instigate the public opinion against the politician’s appointment.