



Supreme Court of Western Australia

[\[Index\]](#) [\[Search\]](#) [\[Download\]](#) [\[Context\]](#) [\[No Context\]](#) [\[Help\]](#)

JACKSON & ORS -v- ACP PUBLISHING PTY LTD [2002] WASC 5 (21 January 2002)

Last Updated: 22 January 2002

**JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS**

CITATION : JACKSON & ORS -v- ACP PUBLISHING PTY LTD [2002] WASC 5

CORAM : ANDERSON J

HEARD : 13 NOVEMBER 2001

DELIVERED : 21 JANUARY 2002

FILE NO/S : CIV 1965 of 1998

**BETWEEN : BRUCE JACKSON
TERRENCE ARTHUR JACKSON
JOHN CARRUTHERS RAY
KIMBERLEY BRIAN RAY
ARTHUR WILLIAM WALLIS
TIMOTHY DAVID WALLIS**
Plaintiffs

AND

ACP PUBLISHING PTY LTD
Defendant

FILE NO/S : CIV 1966 of 1998

BETWEEN : BRUCE JACKSON

TERRENCE ARTHUR JACKSON
JOHN CURRUTHERS RAY
KIMBERLEY BRIAN RAY
ARTHUR WILLIAM WALLIS
TIMOTHY DAVID WALLIS
Plaintiffs

AND

WEST AUSTRALIAN NEWSPAPERS LTD
Defendant

Catchwords:

Defamation - Pleading - Justification - *Polly Peck* defence - Form of pleading "common sting" defence of justification - Need to distinguish between first and second *Polly Peck* principles

Legislation:

Nil

Result:

Allowed in part

Category: A

Representation:

CIV 1965 of 1998

Counsel:

Plaintiffs : Mr P J Gethin

Defendant : Mr S M Davies

Solicitors:

Plaintiffs : Patrick Gethin & Co

Defendant : Edwards Wallace

CIV 1966 of 1998

Counsel:

Plaintiffs : Mr P J Gethin

Defendant : Mr S M Davies

Solicitors:

Plaintiffs : Patrick Gethin & Co

Defendant : Edwards Wallace

Case(s) referred to in judgment(s):

Case(s) also cited:

Brown v Marron, unreported; SCt of WA; Library No 980686; 1 December 1998

Bookbinder v Tebbit [1989] 1 All ER 1169

Carrey v ACP Publishing Pty Ltd [1999] 1 VR 875

Chakravarti v Advertiser Newspapers Ltd (1998) [193 CLR 519](#)

Charleston v News Group Newspapers Ltd [1995] 2 AC 65

David Syme & Co Ltd v Hore-Lacy (2000) 1 VR 667

Gordon v Amalgamated Television Services Pty Ltd [1980] 2 NSWLR 410

Gumina v Williams (No 2) (1990) 3 WAR 351

John Fairfax & Sons Ltd v Hook (1983) 72 FLR 190

Kelly v Nationwide News Pty Ltd (1998) 147 FLR 410

Khashoggi v IPC Magazines Ltd [1986] 1 WLR 1412

Lucas-Box v Associated News Group Newspapers Ltd [1986] 1 All ER 177

Moir v Flint [\[2001\] WASC 183](#)

Nationwide News Pty Ltd v Wiese (1990) 4 WAR 263

Nevill v The Fine Art & General Insurance Co Ltd [1897] AC 68

Reynolds v Nationwide News Pty Ltd [\[2001\] WASC 90](#)

Tony Sadler Pty Ltd v McLeod Nominees (1994) 13 WAR 323

Wallis & Ors v Wallis [\[2001\] WASC 134](#)

World Hosts Pty Ltd v Mirror Newspapers Ltd [1976] 1 NSWLR 712

1 **ANDERSON J:** Once again, I have before me applications in these two defamation actions with respect to the pleadings.

2 On 18 May 2001, I ordered that defence imputations in both actions be struck out, essentially because they did not truly meet the causes of action pleaded in the statements of claim: *Jackson & Ors v ACP Publishing Pty Ltd* [2001] WASC 121; *Jackson & Ors v West Australian Newspapers Ltd* [2001] WASC 121.

3 Where the plaintiff pleads that a publication contains several distinct defamatory meanings, all of which have a common sting which can be justified, the defendant is entitled to plead by way of defence that the imputations complained of by the plaintiff, although not justified, come within that common sting. The defendants did not seek to raise this form of "common sting" *Polly Peck* defence. Instead, the defendants pleaded defence imputations which were much wider than those relied on by the plaintiffs, namely that they were the only defamatory imputations which arose from the article, and sought to justify those imputations with very wide-ranging particulars. There is a limit to how far a defendant can go in choosing different meanings which he says can be justified so as to defeat the plaintiffs' case and I held that the defence imputations under consideration were not within the limits, with the consequence that the plaintiffs would be unfairly forced into a trial involving an extensive factual inquiry into their conduct, affairs, attitudes and activities which had nothing to do with the particular imputations which they raised. In short, the plaintiffs succeeded in having the pleas struck out on the "hijacking" argument:

Kennett v Farmer [1988] VR 991 at 996.

4 There was no appeal from that decision. The defendants are coming at it in another way. They now wish to amend their defences to raise "common sting" ***Polly Peck*** defences. These are the applications with which I am now dealing. In order that this judgment can stand on its own, it is necessary to go over some of the ground already covered in my earlier judgment.

5 But first I should say that I am not sure that it is always appreciated that two principles emerge from the ***Polly Peck*** case as regards the plea of justification and they are distinct in their application. They were explained by Miles CJ in ***Woodger v Federal Capital Press of Australia Pty Ltd*** (1992) 107 ACTR 1. He described what he called the "first" ***Polly Peck*** principle as follows at 23 - 24:

"Where the plaintiff alleges several distinct defamatory meanings but there is arguably a 'common sting' to them upon which the plaintiff does not expressly rely, then the defendant may seek to justify the common sting and the plaintiff is not entitled to restrict the defendant to seeking to justify the several meanings selected by the plaintiff."

6 Miles CJ described what he called the "second" ***Polly Peck*** principle as follows:

"Where the plaintiff alleges a defamatory meaning or several distinct defamatory meanings but the defendant denies the meaning or meanings alleged by the plaintiff and asserts an arguable claim that in the context of the whole publication a different defamatory meaning or several different defamatory meanings from that or those alleged by the plaintiff arise, the defendant may seek to justify that different defamatory meaning or meanings and again the plaintiff is not entitled to restrict the defendant to seeking to justify the meaning or meanings elected by the plaintiff."

7 So, in invoking the first ***Polly Peck*** principle, the defendant accepts that the defamatory imputations pleaded by the plaintiffs do arise, but asserts that they have a common sting, which is substantially true. In invoking the second ***Polly Peck*** principle, the defendant does not accept that the plaintiffs' imputations arise and instead asserts that when read as a whole, the publication has a defamatory meaning or meanings different from that or those contended for by the plaintiffs, which meaning or meanings are substantially true.

8 In this case, I think the defendant has not kept this distinction in mind, but more of that later.

The action against the publishers of Woman's Day (CIV 1965 of 1998)

9 This action concerns an article published in the Woman's Day on 13 July 1998 headed "Aussie Sect Has Our Kid". The words alleged to be defamatory are as follows:

"Until her parents broke away in February, two generations of Renee's family had lived in the bizarre world of the  **Exclusive Brethren** , a sect which boasts 10,000 members in Australia and New Zealand, many in isolated country towns.

Members must swear allegiance to a mysterious leader called 'The Man of God' and live by a punishing set of rules.

Farmer Bob Jackson and his wife Heather, who live in Dalwallinu, WA, population 800, left when ordered to lock their autistic son, Roland, 10, in a cage.

'No-one wanted to have anything to do with him ... they said he wasn't right in the head', says Heather. 'We weren't allowed to take advantage of help offered by the wider community, so we had to move away from the Church at any cost!.'

10 The plaintiffs pleaded that these words conveyed the following meanings:

- "(i) The Plaintiffs were cruel to children with disabilities;
- (ii) The Plaintiffs discriminated against persons with disabilities;
- (iii) The Plaintiffs discriminated against the parents of persons with disabilities;
- (iv) The Plaintiffs were uncaring or indifferent towards persons with disabilities."

11 By its defence, the defendant denied that these imputations arose and in the alternative pleaded justification. By par 6, the defendant pleaded a *Polly Peck* defence seeking to invoke the second *Polly Peck* principle as follows:

"6 Further and alternatively ... the defendant ... says that the only defamatory imputations that arise from the article [are] that:

- (a) the plaintiffs were insensitive to the needs of others; and
- (b) the plaintiffs were unchristian."

The defendant then pleaded those imputations were true and gave a welter of particulars. There were 25 paragraphs of particulars justifying the imputation that the plaintiffs "were insensitive to the needs of others" and five paragraphs of particulars justifying the imputation that "the plaintiffs were unchristian". The first of the five paragraphs incorporates by reference the 25 paragraphs of particulars of the justification of the imputation that "the plaintiffs were insensitive to the needs of others". Hence, there are 25 particulars in justification of one imputation and 29 particulars in justification of the second imputation. The plaintiffs contended that this was embarrassing.

12 I ordered pars 6, 7, 8 and 9 of the defendant's defence to be struck out on the basis that the imputations pleaded by the defendant, namely, that the plaintiffs are "insensitive" and "unchristian", would lead to factual inquiries into a completely different and much wider area than is covered by the plaintiffs' claim. For example, in particularising its plea of justification of the imputations that the plaintiffs are insensitive and unchristian, the defendant pleads that the plaintiffs ordered a member of  **the Brethren**  to get rid of his pet dogs, because members were not permitted to own animals as pets; threatened to punish the member unless he did so; required a member to break up an association between that member's daughter and a non-member; punished a family within  **the Brethren**  for ordering a set of encyclopaedias, and so on. These allegations are wholly unrelated to the kind of wrongdoing contained in the imputations relied on by the plaintiff. I decided it would be unfair to compel the plaintiffs to take part in a trial about incidents in which they may have been concerned, but which have no bearing whatever on their conduct towards disabled people and their parents.

13 Counsel for the defendant informed me that the defendant now wishes to plead its *Polly Peck* defence so as to plead a "common sting" defence. The proposed pleading is as follows:

"6. Further and alternatively, as to paragraph 9 of the amended statement of claim the defendant says that:

6.1 The words complained of in paragraph 9 of the amended statement of claim are part only of an article containing other words and published on pages 18 and 19 of the defendant's magazine under the headline 'Aussie Sect Has Our Kid' ("the article"). The Article is attached hereto and marked with the letter 'A'.

6.2 The defendant intends to refer to the Article in its entirety for the full context in which the words complained of in paragraph 9 of the amended statement of claim were published.

6.3 In their context within the article the words complained of in paragraph 9 of the amended statement of claim convey the following imputations, which share a common sting with the imputations conveyed by the article in its entirety, namely

(a) the plaintiffs' insensitive treatment of its members leads to the division of families;

(b) the plaintiffs are inhuman."

14 It is proposed then to set out (as particulars of these two imputations) a total of 11 matters said to justify the imputation that the plaintiffs' "insensitive treatment of its members leads to the division of families" and those same matters plus 18 additional matters said to justify the imputation that the

plaintiffs are "inhuman". To a very large extent, these particulars cover the same ground as the particulars ordered to be struck out of the earlier defence.

15 There is a problem with the form of pleading in par 6.3 of the minute which was not the subject of argument, and I mention it only to show that it has been noticed. It may yet give rise to difficulties. As I have already mentioned, I understand the law to be that a defendant who invokes the first *Polly Peck* principle, ie, the common sting defence, which is now what this defendant wants to do, is required to plead that all of the imputations pleaded by the plaintiff share a common sting or stings which is or are substantially true, even although the narrower imputations pleaded by the plaintiff cannot themselves be justified, whereas a defendant who invokes the second *Polly Peck* principle is required to plead a contextual imputation or imputations, ie, that the publication as a whole carries a meaning different from the meanings contended for by the plaintiff and which is substantially true. The pleading in par 6 seems to me to be an attempt to conflate the first and second of the *Polly Peck* principles. The consequence is that it is not entirely clear whether the defendant is saying that, read as a whole, the article means what is pleaded in par 6.3(a) and (b), not what the plaintiff says it means (the second *Polly Peck* principle) or whether the defendant is saying that the imputations which the plaintiff pleads have as a common sting the two imputations pleaded in par 6.3(a) and (b). The distinction between the two lines of defence is important. They cannot be run together.

16 I do not think one can properly speak of an article or publication as having a common sting. It is the several imputations which are sought to be inferred from the publication which may have a common sting. Thus, to speak in terms of imputations "which share a common sting with the imputations conveyed by the article in its entirety" strikes me as being meaningless. However, as I say, this was not argued and the sufficiency of par 6.3 as to its form can perhaps be left for another day. For present purposes, and in an attempt to see this case progress, I will treat par 6.3 as a plea that the imputations pleaded by the plaintiff have (as a common sting) the meanings pleaded in par 6.3(a) and (b).

17 So, the first question is whether the first defence imputation (that the plaintiffs' insensitive treatment of its members leads to the division of families) is the common sting in the imputations pleaded by the plaintiffs, ie, that the plaintiffs practise cruelty and discrimination against the children of its sect members who have disabilities and discriminate against members who are parents of those children.

18 In my opinion, a charge of cruelty and discrimination towards disabled children and their parents is a charge which carries a sting quite different from the sting contained in a charge of insensitive treatment of members leading to the division of families. A group of plaintiffs the subject of a publication containing both imputations, or sets of imputations, is surely entitled to regard an untrue charge of cruelty and discrimination against disabled children and their parents as a defamation separate and distinct from the defamation (if there is one) in a charge of insensitivity towards members generally and to sue on one but not the other.

19 I would not have allowed the amendments in par 6.3(a) of the minutes of amended defence if this

was the only "common sting" imputation sought to be pleaded by the defendant.

20 I am satisfied that the imputations pleaded by the plaintiffs arguably have to them the common sting that the plaintiffs are brutal and that the plaintiffs are, in that sense, "inhuman". Arguably, the imputations contended for by the plaintiffs and upon which the plaintiffs sues, namely, that the plaintiffs are cruel to and discriminate against children with disabilities and their parents, have to them the same sting as an imputation that the plaintiffs are inhuman in the sense referred to.

21 For present purposes, I take the principle to be that where the plaintiffs' imputations have a common sting to them, they are not to be regarded as separate and distinct defamatory statements, but as one imputation conveying the common sting, which the defendant is entitled to say by way of defence is, in substance, true: *Polly Peck (Holdings) Plc v Trelford* [1986] QB 1000 at 1032.

22 On this basis, I would be prepared to allow the amendment proposed in par 6.3(b) of the minute.

23 Returning now to the imputation of insensitivity in par 6.3(a) of the minute, the general rule appears to be that the defendant is entitled to have the court of trial consider the combined effect of all of the imputations pleaded by the defendant, if the combined effect of them all on the plaintiffs' reputation is such that the narrow imputations selected by the plaintiffs, and which are not justified, do not further injure the plaintiffs' reputation: *Hepburn v TCN Channel Nine Pty Ltd* (1984) 1 NSWLR 386 per Hunt J at 399. In my opinion, however, a charge of insensitivity leading to the break-up of families is entirely subsumed within a charge of inhumanity. It is not a case of combined effect at all. The mischief in allowing both imputations to be pleaded is that the plea by the defendant of an imputation of insensitivity will prejudice the fair trial of the action by allowing the defendant to produce evidence of all matters indicative of insensitivity, when the plaintiffs do not complain about such an imputation. I think that would be a hijack and unfair to the plaintiffs.

24 I would therefore disallow the amendment proposed in par 6.3(a), but allow the amendment proposed in par 6.3(b).

25 There may be a question as to whether all of the particulars sought to be pleaded as particulars of the imputation that the plaintiffs are inhuman are proper particulars of that imputation. I did not hear argument on this and my decision to allow the amendment proposed in par 6.3(b) of the minute should not be taken as approving of the particulars. The plaintiffs should have liberty to apply to strike out particulars which they consider bad.

26 I should say that I am not to be taken as deciding that the plea in par 6.3(a), which I have disallowed, is otherwise a proper imputation plea. My provisional view is that it is not. It is the compendious expression "the plaintiffs' insensitive treatment of its members leads to the division of families" that is the problem. If the imputation on which the defendant relies is that the plaintiffs treat their sect members insensitively, I think the words "leads to the division of families" are irrelevant and unnecessary. If the imputation on which the defendant relies is that the plaintiffs break up families, the

reference to insensitive treatment of members is irrelevant, unnecessary and/or mere evidence. If the defendant relies on both imputations, they should be pleaded in separate paragraphs to avoid uncertainty.

The action against the publishers of The West Australian newspaper (CIV 1966 of 1998)

27 This action concerns several articles published in The West Australian newspaper on 5 June 1998. The articles are grouped into three sets of publications for the purpose of pleading the innuendos and it is necessary to deal with them separately.

28 The first set of publications is pleaded in par 9(i) and (ii) and par 10 of the statement of claim as follows:

"9. On the front page of the State edition of The West Australian for 5th June 1998, the Defendant:

(i) in an article headlined 'Death of a friend leads to breakaway', published the following words defamatory of each of the Plaintiffs:-

← **When brethren** → leaders told 23-year-old stockman Cameron Wallis that he was breaking the rules by keeping a sheepdog, he ignored them. "I needed the dog for work and things were hard enough - I needed a friend", he said. But one day, he found his dog dead. "When I got home I found the dog had been locked up in a cage and it had been shot to pieces", he said. "It broke my heart". Mr Wallis ← **said Brethren** → leaders were concerned that he would begin to idolise the dog and it would take the place of God in his mind. "I begged them to let me keep that dog, but it wasn't to be", he said. Mr Wallis was the first member of his family to leave ← **the Brethren** →. "I just had enough", he said. "I get sick and tired of them publicly running down my friends and relatives and making people cry". Since leaving the sect, Mr Wallis has bought two German shepherd puppies, which he plans to train as sheepdogs. "No one is going to take them away from me", he said'; and

(ii) in the caption to a photograph of one Cameron Wallis holding two German shepherd pups, published the following words defamatory of each of the Plaintiffs:

'NEW LIFE: Cameron Wallis plans to train his German shepherds Kyra and Rachel as sheepdogs. He left ← **the Brethren** → when his previous dog, which he used for his work as a stockman, was shot. He was the first

member of his family to break with the sect'.

10. The said words pleaded in paragraph 9(i) and 9(ii) hereof were further published on page 7 of the Metro edition of The West Australian on 5 June 1998, under the headlines 'Death of his friend led to break'."

29 The plaintiffs pleaded in par 15 that these words meant that:

"(i) the Plaintiffs were involved in the unlawful shooting and killing a dog belonging to Cameron Wallis;

(ii) the Plaintiffs used violent means to compel members of  **the Brethren**  to follow their directions and teachings;

(iii) the Plaintiffs were cruel to animals;

(iv) the Plaintiffs engaged in the killing of animals without justification or good reason;

(v) the Plaintiffs were violent people;

(vi) the Plaintiffs engaged in or otherwise authorised or requested the slaughter of a pet animal in furtherance of their religious beliefs;"

30 By its defence, the defendant denied that these imputations arose and in the alternative pleaded justification, giving lengthy particulars of justification.

31 By par 10, the defendant pleaded a *Polly Peck* defence as follows:

"10. Further and alternatively ... the defendant says that the only defamatory imputations which arise from the words contained in paragraphs 9(i) and (ii) and 10 of the amended statement of claim is that the plaintiffs were:

10.1 inhuman; or

10.2 insensitive to the needs of others."

32 In pars 11 and 12 of the defence, it was pleaded that the defence imputations were true and by way of particulars all of the particulars relied on in justification of the plaintiffs' imputations were repeated and another 22 particulars were added. Included amongst the additional particulars were such particulars as that the two parents of an autistic child were refused permission by the plaintiffs to take respite from caring for the child; the plaintiffs had never offered respite care to the child; the plaintiffs placed pressure on the parents of a young woman to "divide an association" between that woman and a non-member; the plaintiffs penalised a member for buying a set of encyclopaedias; the plaintiffs sublimated

"eternal salvation" to the detriment of the family unit and the plaintiffs discouraged tertiary education.

33 It can be seen immediately that these matters have nothing to do with the charge in respect to which the plaintiffs seek redress; that is, the charge that they were violent people, cruel to animals and implicated in the shooting to death of a pet dog.

34 Once again, the defendant did not plead a common sting form of defence.

35 For the same reasons that I ordered the *Polly Peck* plea in CIV 1965 of 1998, to be struck out, I ordered pars 10, 11 and 12 of the defence to be struck out.

36 The second set of publications complained of in The West Australian newspaper of 5 June 1998 are pleaded in par 11 of the statement of claim. In that paragraph it is pleaded as follows:

"11. On 5th June 1998 on the front page of the metro edition of The West Australian in an article headlined 'Nobody else would help us: mother', the Defendant published the following words defamatory of the Plaintiffs:-

'Bob and Heather Jackson have cared for their autistic son, Roland, on their own for all of his 10 years because fellow members of the  **Exclusive Brethren**  refused to help. But last year, Mrs Jackson, who has nine other children decided she was tired of being treated like a second-class citizen because one of her children had been born with a disability. The couple decided to leave  **the Brethren**  but Mr Jackson said the move caused a big rift in the tight-knit family'.

12. On the page 7 of the State edition of The West Australian for 5th June 1998 in an article headlined 'No one would help us: mother', the defendant published the following words defamatory of the Plaintiffs:-

'Bob and Heather Jackson have cared for their autistic son, Roland, alone for the whole of his 10 years because fellow members of the  **Exclusive Brethren**  refused to help. But last year, Mrs Jackson, who has nine other children decided she was tired of being treated like a second class citizen because one of her children had been born with a disability. "No one wanted to have anything to do with him because he is not right in the head", she said. "They didn't understand how much help he needs and they wanted us to lock him up in a cage. They would not give us any help to look after him and we weren't allowed to take advantage of help offered by the wider community'."

37 With respect to this article, the plaintiffs' imputations as pleaded in par 16 were:

"(i) The Plaintiffs were cruel to children with disabilities;

(ii) the Plaintiffs discriminated against persons with disabilities;

(iii) the Plaintiffs discriminated against the parents of persons with disabilities."

38 By par 9 of its defence, the defendant denied that these imputations arose and in the alternative pleaded justification, repeating most, if not all, of the particulars given in support of the plea of justification with respect to the first set of publications. By par 14, the defendant pleaded a *Polly Peck* defence as follows:

"14. Further and alternatively ... the defendant says that the only defamatory imputations which arise from the words contained in paragraphs 11 and 12 of the amended statement of claim is that the plaintiffs were:

14.1 insensitive to the needs of others; or

14.2 unchristian."

39 By way of particulars in support of the justification of those imputations, the defendant repeated all of the particulars pleaded in support of the plea of justification of the plaintiffs' imputations and all of the particulars pleaded in support of the justification of the defence imputations ("that the plaintiffs were inhuman") in the first cause of action; that is, the cause of action relating to the first publication. Again, the defendant did not attempt to plead a common sting form of defence.

40 For the same reasons given for striking out the *Polly Peck* pleas already dealt with, I ordered the *Polly Peck* plea in respect of this cause of action to be struck out; that is, pars 14, 15 and 16.

41 The third article published in The West Australian on 5 June 1998, upon which the plaintiffs sue is pleaded in par 13 of the statement of claim as follows:

"13. On page 7 of the Metro edition of The West Australian on 5th June 1998 in an article headlined 'I fear for my son, says angry father', the Defendant published the following words defamatory of the Plaintiffs:-

'Mrs Jackson said  **the Brethren**  had a twisted view of their autistic son, Roland. 'They didn't understand how much help he needs and they wanted us to lock him up in a cage', she said'."

42 The imputations said by the plaintiffs to be carried by these words were that:

"(i) the Plaintiffs discriminated against persons with disabilities;

(ii) the Plaintiffs were insensitive to persons with disabilities;

(iii) the Plaintiffs were uncaring or indifferent towards persons with disabilities;

(iv) the Plaintiffs were uncaring or indifferent to the parents of persons with children who suffer a disability;

(v) the Plaintiffs were cruel to children with disabilities."

43 By its defence, the defendant denied that those imputations arose and in the alternative pleaded justification. The particulars of justification already given in respect to the imputations pleaded in the first two causes of action were repeated. By par 18, the defendant pleaded a *Polly Peck* defence to this cause of action as follows:

"18. Alternatively ... the defendant says that the only defamatory imputation which arises from the words pleaded in paragraph 13 of the amended statement of claim complained of is that the plaintiffs were inhuman."

44 The defendant repeated all of the particulars earlier pleaded in support of the justification of the same imputation pleaded in their *Polly Peck* defence with respect to the first two causes of action.

45 For the same reasons given for striking out the *Polly Peck* defences earlier pleaded, I ordered this *Polly Peck* plea to be struck out; that is, pars 18 and 19.

46 The defendant now wishes to amend its defence to plead in respect to each publication a common sting *Polly Peck* defence.

47 As regards the first publication, the defendant wishes to amend its defence to add the following plea:

"10. Further and alternatively, as to paragraph 9 of the amended statement of claim the defendant says that:

10.1 The words complained of in paragraph 9 of the amended statement of claim are part only of an article containing other words and published on pages 1, 6 and 7 of the State edition of the defendant's newspaper under a main heading 'Christian Sect Splits Families' ('the State Edition Article'). The State Edition Article is attached hereto and marked with the letter 'A'.

10.2 The defendant intends to refer to the State Edition Article in its entirety for the full context in which the words complained of in paragraph 9 of the amended statement of claim were published.

10.3 In their context within the State Edition Article the words complained

of in paragraph 9 of the amended statement of claim convey the following imputations, which share a common sting with the imputations conveyed by the State Edition Article in its entirety, namely:

(a) the plaintiffs' insensitive treatment of its members leads to the division of families;

(b) the plaintiffs are inhuman."

48 Concerning the second publication, the defendant seeks to amend by adding a common sting *Polly Peck* plea in the following terms:

"17. Further and alternatively, as to paragraph 11 of the amended statement of claim the defendant says that:

17.1 The words complained of in paragraph 11 of the amended statement of claim are part only of the Metro Edition Article.

17.2 The defendant will refer to the Metro Edition Article in its entirety for the full context in which the words complained of in paragraph 11 of the amended statement of claim were published.

17.3 In their context within the Metro Edition Article the words complained of in paragraph 11 of the amended statement of claim convey the following imputations which share a common sting with the imputations conveyed by the article in its entirety, namely:

(a) the plaintiffs' insensitive treatment of its members leads to the division of families;

(b) the plaintiffs are inhuman."

49 As regards the third publication, the defendant seeks to amend its defence by adding a common sting *Polly Peck* plea in the following terms:

"24. Further and alternatively, as to paragraph 13 of the amended statement of claim the defendant says that:

24.1 The words complained of in paragraph 13 of the amended statement of claim are part only on the Metro Edition Article.

24.2 The defendant will refer to the Metro Edition Article in its entirety for the full context in which the words complained of in paragraph 13 of the

amended statement of claim were published.

24.3 In their context within the Metro Edition Article the words complained of in paragraph 13 of the amended statement of claim convey the following imputations, which share a common sting with the imputations conveyed to the Metro Edition Article in its entirety, namely:

(a) the plaintiffs' insensitive treatment of its members leads to the division of families;

(b) the plaintiffs are inhuman."

50 All I said earlier in this judgment in relation to the form of the plea of a common sting defence in CIV 1965 of 1998, I now repeat in respect of the form of the plea contained in pars 10.3, 17.3 and 24.3 of the minute of amended defence in this action.

51 As I did in CIV 1965 of 1998, I will take it that what is intended is a plea that the imputations pleaded by the plaintiffs have the common stings pleaded in the defence paragraphs referred to; that is, (a) that the plaintiffs' insensitive treatment of its members leads to the division of families and (b) that the plaintiffs are inhuman.

52 For the same reasons that I declined to allow the amendment in the form of par 6.3(a) of the minute of amended defence in CIV 1965 of 1998, I would not allow an amendment in the form of pars 10.3(a), 17.3(a) or 24.3(a), but I would allow amendments in the form of pars 10.3(b), 17.3(b) and 24.3(b) of the minute of amended defence in this action.

53 I have noted that the defendants were guilty of some few days' delay in complying with the timetable laid down by the Registrar and counsel for the plaintiffs, Mr Gethin, formally took the point that the application for leave to amend in both actions was out of time and ought to be dismissed on that basis. There is affidavit evidence which gives what I regard as a satisfactory explanation for the short delay. I do not consider the plaintiffs have been prejudiced by the delay and, to the extent that I have allowed the application, I have done so notwithstanding the defendants' breach of the Registrar's timetable.