

Is a Friends-Only Post Defamation by Publication (Section 328)?

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Key points

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- Sections 326 and 328, the difference in penalties
- Supreme Court Judgment No. 5276/2562, informing a particular group versus spreading to the public
- Practical implications, a post's privacy setting becomes evidence
- Comparative law, where "one person is enough for publication"
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- **Section 326** carries imprisonment not exceeding one year or a fine not exceeding twenty thousand baht, whereas **Section 328** carries imprisonment not exceeding two years and a fine not exceeding two hundred thousand baht. The maximum prison term doubles, and the maximum fine increases tenfold.
- What divides the two sections is **dissemination of the statement to the public**, which the court assesses by the nature and intent of the dissemination, not solely by the number of people who saw the post.
- **Supreme Court Judgment No. 5276/2562** held that sending messages to a LINE group was in the nature of merely informing or passing on news to the particular group of people in that group and did not go so far as to spread the news to the public. There was therefore no prima facie case of an offense under Section 328, but there was a prima facie case of an offense under Section 326. For a Facebook post set to public, by contrast, the Supreme Court imposed punishment under Section 328 (Supreme Court Judgment No. 2624/2567).
- In practice, **a post's privacy setting becomes important evidence** in the case, for both the injured person and the accused person.
- Under the English common law rule, communicating a statement to a single third person is already actionable publication, while section 1 of the Defamation Act 2013 adds a threshold: the statement must have caused or be likely to cause serious harm to reputation.
- In General Comment No. 34 (2011), the UN Human Rights Committee called on States parties to the ICCPR to consider decriminalizing defamation and stressed that imprisonment is not an appropriate penalty for this offense.

Whether a post set to “Friends only” is an offense under Section 328 of the Thai Criminal Code depends on whether the poster disseminated the statement to the public or merely informed a particular group of people, following the approach in Supreme Court Judgment No. 5276/2562. Even if the post falls short of Section 328, it can still be an offense under Section 326 if the statement reaches a third person and identifies the injured person.



Sections 326 and 328, the difference in penalties

Section 326 provides for imprisonment not exceeding one year, or a fine not exceeding twenty thousand baht, or both. Section 328, the aggravated form that applies when the offense is committed by publication, raises the penalty to imprisonment not exceeding two years and a fine not exceeding two hundred thousand baht. It is this gap that gives the question of a post's privacy setting real weight in a case.

Ordinary defamation under Section 326 carries imprisonment not exceeding one year or a fine not exceeding twenty thousand baht. But if the defamation “is committed by means of publication of a document, drawing, painting, cinematographic film, picture or letters made visible by any means, gramophone record or any other recording instruments, recording picture or recording letters, or by broadcasting or spreading picture, or by propagation by any other means” (unofficial translation), Section 328 raises the penalty to imprisonment not exceeding two years and a fine not exceeding two hundred thousand baht.¹

The reason for the heavier penalty is easy to understand: the wider a statement spreads, the deeper the damage to reputation and the harder it is to repair. The real legal question is **how far a statement must spread to count as “publication”**, is a Facebook post seen by 50 friends the same thing as a notice posted in the middle of a market?

Supreme Court Judgment No. 5276/2562, informing a particular group versus spreading to the public

Supreme Court Judgment No. 5276/2562 held that, for an offense under Section 328 of the Criminal Code, the offender must disseminate the defamatory statement to the public or to people at large. Sending messages to a LINE group was in the nature of merely informing or passing on news to the particular group of people in that group, so there was no prima facie case under Section 328, but there was a prima facie case under Section 326.



In this case, the plaintiff was a former soldier who rented land to run a restaurant beside the River Kwai in Kanchanaburi Province and was in a dispute with the lessor over the lease. The defendant sent several messages to a LINE group called “Post News Online” without naming the plaintiff. The court of first instance found no prima facie case and dismissed the case at the preliminary examination stage, and the Court of Appeal Region 7 affirmed. The Supreme Court modified the judgment, ordering that the complaint be accepted for trial only on the offense under Section 326, as set out in the abstract of the judgment:

Supreme Court Judgment No. 5276/2562 (abstract, unofficial translation)

For the offense of defamation by publication under Section 328 of the Criminal Code, the offender must disseminate the defamatory statement to the public or to people at large. The defendant’s sending of messages in the LINE application, in the Post News Online group, **was in the nature of merely an intent to inform or pass on news to a particular group of people, that is, only those in that LINE group, and did not go so far as to spread the news to the public or to people at large.** The plaintiff’s complaint therefore makes out no prima facie case of the offense under Section 328 of the Criminal Code.²

Three observations follow from this decision:

- **Technology is not the deciding factor**, using an online application does not automatically make a message “publication”. The court considers whether the statement was disseminated to the public or was merely a matter of informing a particular group of people.
- **The court’s wording emphasizes the nature and intent of the dissemination**, the court used the words “in the nature of merely an intent to inform or pass on news to a particular group of people” (unofficial translation), so the question is whom the sender meant the message to reach, not merely how many people saw it.
- **Falling short of Section 328 does not mean escaping liability**, the Supreme Court found a prima facie case of an offense under Section 326, because those who read the messages in the group could understand that they referred to the plaintiff, even though the messages did not name the plaintiff.



On the other hand, where a statement was posted on a Facebook account open to the public, Supreme Court Judgment No. 2624/2567 found that this “was a dissemination of the statement to the public or to people at large” (unofficial translation) and punished the defendant under Section 328. Supreme Court Judgment No. 7256/2567, for its part, took into account in sentencing the fact that the Facebook account on which the post was made “was not a closed group” (unofficial translation) and could be accessed by the general public. A friends-only post therefore sits between these two lines of cases. No judgment directly deciding the friends-only setting has yet been found in the Supreme Court judgment database (checked 27 September 2026), so the courts are likely to decide on the facts of each case, such as the number and type of the poster’s friends and conduct showing an intent for the statement to spread.

Practical implications, a post’s privacy setting becomes evidence

Because the line between Section 326 and Section 328 lies in the intent to disseminate the statement to the public, a post’s privacy setting becomes a fact that must be proved. The injured person should record who could access the post from the outset, while the accused person may raise the setting as a defense on the issue of the aggravated form of the offense.

The approach in the judgments above gives a post’s “audience setting” (Public / Friends / Specific friends / Only me) direct legal significance. Both sides of a case should pay attention to this issue from the evidence-gathering stage.

- **For the injured person**, when taking screenshots of a post, always make sure the audience-setting icon is captured too (globe icon = Public, two-person icon = Friends), because it is a decisive fact in whether a case can be brought under Section 328, along with the number of shares and whether outsiders could see the post.
- **For the accused person**, a friends-only setting is a fact that can be raised in defense on the Section 328 issue, by analogy with the approach in Supreme Court Judgment No. 5276/2562. Do not forget, however, that the offense under Section 326 still stands in full, and changing the setting after the event may be seen as conduct aimed at concealing evidence.



A word of caution

This approach is not a ready-made formula that “a friends-only post can never be an offense under Section 328”, if the poster has tens of thousands of friends, allows public followers, or encourages others to share the post, the facts differ from the LINE group in that case, and the court may find an intent to spread the statement to the public. The assessment is always made case by case.

Comparative law, where “one person is enough for publication”

At English common law, communicating a statement to just one third person is already actionable publication. Section 1 of the Defamation Act 2013 adds a threshold: the statement must have caused or be likely to cause serious harm to reputation. The size of the audience therefore affects the assessment of harm, unlike in Thailand, where it goes to the offense itself under Section 328.

Thailand’s two-tier structure (ordinary defamation / defamation by publication) is not the only approach used around the world. Comparing it with advanced legal systems shows more clearly where Thai law stands.

England, publication to one person is actionable, but there must be serious harm

English common law has long held that communicating defamatory words to **just one third person** is already “publication” giving rise to civil liability. There is no Thai-style split between ordinary defamation and defamation by publication, because England has abolished the criminal offense of defamation through section 73 of the Coroners and Justice Act 2009, with effect from 12 January 2010.³ What plays a role similar to the Thai dividing line is the “serious harm” threshold in section 1 of the Defamation Act 2013, the claimant must prove that the statement has caused or is likely to cause serious harm to reputation, and the size and nature of the audience are important factors in that assessment.⁴ A post seen within a circle of a few dozen friends may therefore fall below the serious harm threshold and not be actionable at all in England, an outcome similar to Section 328 being excluded from a Thai case, but by an entirely different mechanism.



Of particular interest for social media cases is the UK Supreme Court’s judgment in *Stocker v Stocker* [2019] UKSC 17, a case about a Facebook post between former spouses. The court held that words on Facebook must be interpreted from the perspective of **the ordinary Facebook reader** who scrolls through quickly, not parsed the way a lawyer would with a dictionary in hand.⁵ This idea, that the context of the platform determines how a statement is read, is consistent with the way the Thai Supreme Court, in Supreme Court Judgment No. 5276/2562, examined how the defendant actually disseminated the messages (sending them to members of a LINE group), rather than assuming across the board that online means public.

United States, audience size affects damages, not liability

US tort law, as set out in Restatement (Second) of Torts § 577, defines publication as communication, intentionally or by a negligent act, to even a single third person.⁶ Wide dissemination is not an element of liability; its effect shows up instead in the damages assessed by the jury. American scholarship points out that this structure suits the internet era because it adjusts flexibly to the actual harm, Professor Lyrrisa Lidsky (an expert on online defamation law) argued in her classic article “Silencing John Doe: Defamation and Discourse in Cyberspace” in the Duke Law Journal that online defamation suits are often used as a tool to silence individual critics rather than to remedy actual harm, so courts must weigh the free speech of ordinary internet users with care.⁷

Germany, the same two-tier structure as Thailand

Among developed countries, the German Criminal Code (StGB) has the structure closest to Thailand’s Sections 326/328. Section 186 provides one level of penalty for asserting a fact about another person that damages their reputation, and a higher penalty where the act is committed **publicly (öffentlich) or by disseminating content**, which, since the 2021 amendment, clearly covers dissemination over the internet.⁸ German courts interpret “publicly” to mean that the statement can be perceived by a large number of people who cannot be individually identified, a closed conversation among acquaintances does not meet that test. This is close to the way the Thai Supreme Court distinguished a “particular group of people” from “the public” in Supreme Court Judgment No. 5276/2562.



International standards and academic views

At the international level, the UN Human Rights Committee, which oversees the International Covenant on Civil and Political Rights (ICCPR), to which Thailand is a party, stated in **General Comment No. 34 (2011)** that States parties should consider decriminalizing defamation and that, in any case, **imprisonment is never an appropriate penalty for defamation.**⁹ Leading comparative studies such as *Comparative Defamation and Privacy Law* (Cambridge University Press, 2016) and the standard text on online defamation, *The Law of Defamation and the Internet* (Oxford University Press), both point to the same trend: liberal democracies are gradually moving the protection of reputation from criminal law to more proportionate civil mechanisms.¹⁰ Seen against these standards, the Thai Supreme Court’s strict interpretation of Section 328, which does not stretch the word “publication” to cover every online post, represents a direction consistent with the principle that criminal punishment should go only as far as is necessary and proportionate.



Issue	Thailand	England	United States	Germany
Minimum threshold for publication	A third person learns of it = offense under Section 326	One third person = publication, but the serious harm threshold must be met	One third person = publication	A third person learns of it = offense under §186
Effect of wide dissemination	Raised to Section 328: imprisonment not exceeding two years and a fine not exceeding two hundred thousand baht, the statement must be disseminated to the public (Supreme Court Judgments Nos. 5276/2562 and 2624/2567)	Adds weight to serious harm and to damages	Increases damages; does not affect liability	Higher penalty when committed “publicly” (öffentlich)
Friends-only post	No Supreme Court ruling directly on point yet; a message in a LINE group was not publication, but there was a prima facie case under Section 326 (Supreme Court Judgment No. 5276/2562)	May fall below the serious harm threshold and not be actionable at all	Actionable, but damages are low	A closed circle of acquaintances: not committed “publicly”, base-level penalty
Status of criminal penalties	Retained (imprisonment of up to 2 years under Section 328)	Abolished (effective 12 January 2010)	Almost never enforced	Retained, but fines predominate in practice



Practical advice

Restricting who can see a post reduces only the risk of the aggravated form under Section 328; it does not remove liability under Section 326. The poster therefore still needs to consider whether the statement identifies any particular person. Injured persons, for their part, should keep a record of the post, the comments, the list of people who saw it and how the post could be accessed, before the statement is deleted or the setting is changed.

- **Social media users**, Restricting who can see a post may bring the facts closer to the LINE group case in Supreme Court Judgment No. 5276/2562 than to the case of a public post, but it is not a license to make imputations against anyone. The criminal offense and civil liability under Section 423 of the Civil and Commercial Code remain fully in place.
- **Injured persons who intend to take legal action**, Always check and record the post's audience setting first. If it is a public post, if it has been shared onward, or if the account owner has a large number of followers, these facts are the basis for a case under Section 328. If it is a friends-only post, the case should be assessed as one under Section 326 from the outset, so that the offense charged in the complaint matches the evidence.
- **Both sides**, Do not forget that offenses under Sections 326 and 328 are compoundable offenses, that the time limit for lodging a criminal complaint is three months from the day the injured person learns of the offense and the identity of the offender, and that many cases end in mediation, an apology and removal of the post before they reach judgment.¹¹

Frequently asked questions (FAQ)

This section brings together common questions about friends-only posts: the line between Section 326 and Section 328, the penalties under the two sections, the evidential weight of a post's privacy setting, and the position of English law together with the recommendations of the UN Human Rights Committee.



Is a Facebook post always defamation by publication?

Not always. The court considers whether the statement was disseminated to the public or was merely informing a particular group of people. For a Facebook post set to public, the Supreme Court imposed punishment under Section 328 (Supreme Court Judgment No. 2624/2567). For messages sent only to the members of a LINE group, however, the Supreme Court held that this was not yet publication, but that there was a prima facie case under Section 326 (Supreme Court Judgment No. 5276/2562).

What if the post is set to public?

A public post that members of the general public can access is highly likely to be held to be publication under Section 328, especially when combined with other circumstances, such as a large number of followers or encouraging people to share it.

If a friends-only post is shared onward by friends until it spreads widely, who is liable?

Each act must be considered separately. The original poster is liable according to the nature of their own dissemination, while a person who shares the post widely may in their own right become a person who disseminates the defamatory statement, and if they share it publicly, they themselves risk liability under Section 328.

Does insulting someone in a closed LINE group with only a few members count as publication?

Supreme Court Judgment No. 5276/2562 held that sending messages to the LINE group was in the nature of merely informing or passing on news to the particular group of people in that group, so there was no prima facie case under Section 328, but there was a prima facie case under Section 326, because the members of the group were third persons who had already received the statement. Read more in the article “Is insulting someone in a LINE group an offense?” (Thai)

Do other countries imprison people for online defamation?

England and Wales abolished the criminal offense of defamation with effect from 12 January 2010, and the United States hardly ever enforces it. The UN Human Rights Committee states in General Comment No. 34 that imprisonment is never an appropriate penalty for this offense. By



comparison, Thailand therefore falls among the countries whose criminal penalties remain relatively heavy. Social media users in Thailand should check their wording carefully before posting.

Footnotes

1. Criminal Code, Section 326 and Section 328 (defamation by publication)
2. Supreme Court Judgment No. 5276/2562 (Criminal Code, Sections 326 and 328). The Supreme Court modified the judgment so that the complaint for the offense under Section 326 was accepted for trial, and held that there was no prima facie case for the offense under Section 328. Read with Supreme Court Judgment No. 2624/2567 (a Facebook post set to public; punishment under Section 328 for multiple separate offenses, 9 counts) and Supreme Court Judgment No. 7256/2567 (a Facebook account that was not a closed group, taken into account in sentencing). Source: Supreme Court judgment database, deka.supremecourt.or.th (checked 27 September 2026)
3. Coroners and Justice Act 2009, s.73 (England & Wales), in force on 12 January 2010 under s.182(2), that is, at the end of two months from the day on which the Act was passed (12 November 2009)
4. Defamation Act 2013, s.1(1) (England & Wales); for its interpretation, see *Lachaux v Independent Print Ltd* [2019] UKSC 27
5. *Stocker v Stocker* [2019] UKSC 17 (UK Supreme Court), the principle that a Facebook post is read through the eyes of the ordinary user, who reads it quickly in passing
6. Restatement (Second) of Torts § 577 (American Law Institute, 1977)
7. Lyrisa Barnett Lidsky, “Silencing John Doe: Defamation & Discourse in Cyberspace”, 49 *Duke Law Journal* 855 (2000)
8. Strafgesetzbuch (StGB) § 186, the offense of üble Nachrede and the increased penalty where it is committed öffentlich or by disseminating content (Verbreiten eines Inhalts), as amended in 2021
9. UN Human Rights Committee, General Comment No. 34: Article 19 (Freedoms of opinion and expression), CCPR/C/GC/34 (2011), para 47, “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.”
10. Andrew T. Kenyon (ed.), *Comparative Defamation and Privacy Law* (Cambridge University Press, 2016); Matthew Collins, *The Law of Defamation and the Internet* (3rd ed., Oxford University Press, 2010)
11. Criminal Code, Section 333 (compoundable offense), read with Section 96 (three-month time limit for lodging a complaint), and Civil and Commercial Code, Section 423 (wrongful act against reputation)

