Legal article

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Is False Data Alone Enough? The Intent to Act "Dishonestly or Deceitfully"

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamdefamationlaw.com/en/articles/supreme-court-5764-2562-false-data-intent.html

> Short answer
>
> No. The current Section 14 (1) does not punish everyone who enters incorrect data or false news into a computer system. The prosecution must also prove that the offender had the specific intent to act **"dishonestly or deceitfully"** and that the other elements of the provision are met.

Supreme Court Judgment No. 5764/2562 therefore matters to the media, website administrators, Facebook users, and litigants alike, because it shows that the word "false" is the starting point of the analysis, not a ready-made verdict.[1]

The facts and course of the case

The facts conclusively found by the lower courts were that the defendant had posted false news on a website the defendant administered, at a time when the former Section 14 was still in force. The court of first instance convicted the defendant and imposed one year's imprisonment and a fine of 20,000 baht, with the prison term suspended for one year. The Court of Appeal affirmed.[1]

While the case was pending, the 2017 (B.E. 2560) amendment came into force and added an element of specific intent. The defendant appealed to the Supreme Court on a question of law: whether the new law was more favorable to the defendant to the extent of relieving the defendant from being an offender. The Supreme Court accepted the appeal on this issue only and was bound by the facts as determined by the Court of Appeal.

The point to read carefully is that the Supreme Court did not re-decide whether the news was true or false; that factual issue had already been settled. The question was **whether, even though the news was false, the act met the elements of the new law**.

What the current Section 14 (1) requires the prosecution to prove

As amended in 2017 (B.E. 2560), Section 14 (1) provides, in summary, that there must be an act, done dishonestly or deceitfully, of bringing distorted, forged, or false computer data into a computer system in a manner likely to cause damage to the public, and that the act must not be an offense of defamation.[2]

There are therefore at least four hurdles:

1. Is the data in fact distorted, forged, or false?
2. Did the defendant bring the data into the system, or on what other basis is the defendant responsible?
3. Did the defendant act dishonestly or deceitfully?
4. Is the act of a kind likely to cause the damage described in the provision, and is it something other than defamation?

If any one of these is missing, Section 14 (1) cannot be applied, even if the others have been proven.

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Why “dishonestly” and “deceitfully” matter

The Criminal Code defines “dishonestly” as seeking, for oneself or another person, a benefit to which one is not lawfully entitled.[3] As for “deceitfully,” one must look at the circumstances to see whether the offender purposefully used distorted, forged, or false data as a tool to mislead the recipients.

These two words mean that one must always go beyond “the news was wrong” and ask further questions, such as:

- To what extent did the person posting know, or should they have known, that the data was untrue?
- What did the person intend others to believe or do?
- Was there any benefit, money, property, right, or other advantage that the person posting was seeking?
- Were evidence, web pages, accounts, or supporting messages created to make the story believable?
- How did the person posting verify the data, and did they correct it on learning of the error?

Specific intent can be proven from the surrounding circumstances; a confession is not required. A court should not, however, infer specific intent merely because the data ultimately proved to be untrue.

How the Supreme Court decided

The Supreme Court held that the new law adds an element, namely the specific intent to act dishonestly or deceitfully. The facts settled by the Court of Appeal showed only that the defendant had posted false news on a website the defendant administered; **no such specific intent was shown**. The act was therefore not an offense under the new Section 14 (1).[1]

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> Supreme Court Judgment No. 5764/2562 (key passage, unofficial translation)
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> There must be the specific intent to act "dishonestly or deceitfully" for the act to qualify as an offense.[1]
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> Thai original: ต้องมีเจตนาพิเศษ "โดยทุจริตหรือโดยหลอกลวง" จึงจะเข้าเกณฑ์เป็นความผิด

Because the later law was more favorable to the defendant, Section 2, paragraph two, of the Criminal Code required the new law to be applied. The Supreme Court reversed the judgment and dismissed the case.

The more-favorable-later-law principle is not a minor technicality

The principle of *lex mitior*, under which a later law more favorable to the offender applies, prevents a person from being punished under an old law that still penalizes more broadly than the new law intends. In this case, the new law did not merely reduce the penalty; it added an element of the offense. If the facts do not support the added element, the act is no longer an offense.[3]

This principle differs from using a new law to create an offense retroactively: criminal law prohibits applying a law that is unfavorable to the offender retroactively, but allows a later law that is favorable to the offender to be applied.

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Incorrect data, false news, and deception are not the same thing

Type	Illustrative example	Issues to examine
Incorrect data published in good faith	Reporting an inaccurate figure because an outdated document was used	Knowledge, sources, verification steps, and correction
False news damaging a person's reputation	Publicly accusing a person of cheating	Sections 326/328, the exemptions, and proof of truth; Section 14 (1) excludes defamation
False data used to obtain a benefit by deception	Creating a fake shop or investment scheme to induce money transfers	Dishonest or deceitful intent, damage, the injured persons, and the offense of fraud
False news causing public panic	Reporting a serious danger that does not exist	Section 14 (2) and the impact on the public

This table shows that the everyday term "fake news" may lead to different legal bases, and that some cases may not be a criminal offense at all.

Comparison with Judgments 2778/2561 and 2211/2566

The three judgments can be read together as successive checkpoints under Section 14 (1).

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Judgment	Checkpoint at issue	Legal effect
2778/2561	The act is defamation	The same act is excluded from Section 14 (1)[4]
5764/2562	No specific intent is shown	Falsity alone does not satisfy Section 14 (1)
2211/2566	The words "likely to cause damage to the public"	The law sets no minimum number of viewers. Where the data is directed at the public in a system that members of the general public can access, a single actual viewer still satisfies paragraph one[5]

For the combined test, see Is an insulting or defamatory Facebook post both defamation and a Computer-related Crime Act offense? (Thai)

What this judgment does not establish

1. **It does not say that false news is never an offense under the Computer-related Crime Act**, if specific intent and the other elements are proven, the outcome will differ.
2. **It does not say that a website administrator who claims ignorance is automatically acquitted**, the court considers all the evidence and circumstances.
3. **It does not displace Section 14 (2)**, false news affecting public safety or causing panic is subject to a separate set of elements.
4. **It does not rule out liability for defamation, fraud, or under other laws**, these must be distinguished according to the content and the purpose of the act.
5. **It does not lower journalistic standards**, an error may still lead to civil liability, professional ethics proceedings, or corrections and remedies, even if Section 14 (1) is not satisfied.

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Evidence of intent worth examining

For the accusing party

- Messages before and after the post that reveal a deceptive purpose
- The trail of money or benefits received by the person posting
- The creation of fake accounts, web pages, documents, or images
- Continuing to assert or republish the data after being told it was false
- A pattern of repeated conduct against several injured persons

For the accused party

- The sources that existed before publication
- Records of verification and of requests for comment
- The original version and the times it was edited
- Evidence of how the error occurred
- Corrections, retractions, or notices to readers on learning new facts

None of this evidence produces an automatic result, but it helps the court assess the offender's state of mind and purpose from tangible facts, see also how to preserve digital evidence.

About the author

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Accused of posting false data? Do not answer the case with “I didn’t mean it” alone

Specific intent must be proven from the actual circumstances. Deleting a post, rushing to explain, or sending replies without a plan may change the shape of the case and the evidence. **If you face a problem of this kind, Eksiam Defamation Law will be glad to review** the source data, the purpose of the publication, the conduct before and after it, and the correct charges.

> This article is general information, not an opinion on the facts of any particular case.

Frequently asked questions

If the data is clearly false, is that already an offense under Section 14 (1)?

Not yet. It must also be proven that the data was brought into a computer system, that there was the intent to act dishonestly or deceitfully, that the act was of the kind likely to cause the damage described, and that the act is not an offense of defamation.

Does “dishonestly” simply mean intending to post?

No. Intending to post is intent as to the act itself, whereas “dishonestly” is a specific intent concerning seeking, for oneself or another person, a benefit to which one is not lawfully entitled.

If I quickly correct the news, does that mean I am definitely not liable?

Not definitely. A transparent correction may, however, be one of the circumstances taken into account in assessing intent, damage, and remedies. Keep the original and the evidence before making the correction.

For false news about a person, should one sue under Section 14 (1) or for defamation?

If the substance is an imputation that damages reputation, start by examining Section 326 or 328 of the Criminal Code; the current Section 14 (1) excludes acts that amount to defamation from this subsection.

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Footnotes

1. Supreme Court Judgment No. 5764/2562, Supreme Court Black Case No. Or. 487/2562, Supreme Court judgment database. The key passage is an unofficial translation.

2. Computer-related Crime Act (No. 2) B.E. 2560 (2017), Section 8, amending Section 14, Royal Gazette. Quotations of Section 14 (1) are unofficial translations.
   Thai original: พระราชบัญญัติว่าด้วยการกระทำความผิดเกี่ยวกับคอมพิวเตอร์ (ฉบับที่ 2) พ.ศ. 2560 มาตรา 8 ซึ่งแก้ไขมาตรา 14, ถ้อยคำในมาตรา 14 (1): “โดยทุจริต หรือโดยหลอกลวง”

3. Criminal Code, Section 1 (1) and Section 2, paragraph two; Judicial Law and Academic Affairs Office, Court of Justice.

4. Supreme Court Judgment No. 2778/2561, Supreme Court judgment database.

5. Supreme Court Judgment No. 2211/2566; Office of the Judiciary, *Dika InTrend Ep.159*, COJ Channel.

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