

Chapter 1 - Mauritius Legal System

The Mauritian legal system is a unique hybrid, blending elements of French civil law and British common law. This dual heritage stems from the island's colonial past, first under French rule (1715-1810) and then British rule (1810-1968). The French influence is primarily seen in the substantive law, particularly the Code Napoléon, while the British influence is evident in the procedural aspects, including court structure, evidence, and language.

French Influence:

- Code Napoléon: Introduced during the French period, it forms the basis of much of Mauritius's civil law, including contract law, property law, and civil procedure.
- Code de Commerce (Commercial Code): Also introduced by the French, it governs commercial activities.
- Code Pénal (Penal Code): Defines criminal offenses and punishments, also introduced by the French.

British Influence:

- Common Law:

British common law principles were adopted, particularly in areas like procedure, evidence, and court organization.

- Anglicization of the Legal System:

The British introduced English as the language of the courts and legal documents.

- Court Structure:

The British established a court hierarchy, with the Supreme Court of Mauritius as the highest court of the island.

- Legislative Framework:

The British also introduced legislative processes and parliamentary systems.

Hybrid Nature:

- Unique Blend:

The Mauritian legal system is a unique blend of these two legal traditions, with the French civil law principles governing the substance of the law and British common law influencing the procedural aspects.

- Independent Jurisprudence:

Over time, Mauritius has developed its own jurisprudence, adapting and interpreting laws from both traditions.

- Continued Evolution:

The legal system continues to evolve with new legislation and judicial precedents, reflecting the needs of a modernizing nation.

LEGISLATION

1. **The Constitution**
2. **Primary Legislation/Secondary Legislation**

The Constitution

Constitution is also known as supreme law. Any law which is inconsistent with the constitution shall to the extent of the inconsistency be void

Any person who feels aggrieved that a provision of the Constitution has been infringed can apply to the Supreme Court to obtain redress.

Primary Legislation

Section 45(1) of the Constitution vests law-making power with Parliament; it may pass laws for the peace, order and good government of Mauritius. Acts passed by Parliament are referred to as Primary Legislation.

Secondary Legislation

Subsidiary legislation refers to those Rules or Regulations enacted by ministers, local councils or public authorities to whom law-making power has been delegated. Section 118 of the Constitution empowers the Commissions and tribunals established under the Constitution to make regulations for their proper functioning.

Example . THE LIGHT RAIL ACT 2019 Regulations made by the Minister under section 45 of the Light Rail Act 2019

The legislative Process

The Legislative process comprises of various stages.

The preliminary stage

Draft of bill

Procedures in Parliament

(i) First Reading

(ii) Second Reading

(iii) Committee stage

report stage

(iv) Third Reading

(v) Voting

(vi) Assent of President

(vii) Publication in the Government Gaze

Drafting of bill

1. Idea Generation and Drafting:

The process begins with an idea, often from a government minister, which is then developed into a draft bill by the responsible ministry.

2. State Law Office Review:

The drafted bill is referred to the State Law Office for legal scrutiny and to ensure it conforms with the Constitution.

3. Cabinet Approval:

The bill must be approved by the Cabinet before it can be introduced to Parliament.

i. First reading

The Minister responsible for the subject-matter of the Bill will move that the Bill be read for the first time. The Bill is not read in toto. The Clerk of the National Assembly simply reads the short title of the Bill.

This is a purely formal procedure since the purpose is only to bring it to the cognizance of the Members of the National Assembly. No debate takes place at this stage

ii. Second Reading

A motion is made for the Bill to be read for a second time. At this stage, the Members of Parliament will hold a general debate on the rationale and the general philosophies of the Bill. The debates should focus on the broad principles of the Bill without going into details and technicalities. No amendments take place. However, notice for proposed amendment may be given at this stage.

iii. Committee Stage

At this stage, the Bill is read thoroughly, clause by clause. A detailed examination of the Bill is carried out by a Committee of the whole House (i.e. the National Assembly) or, at times, by a committee of selected members (Select Committee).

Amendments to the Bill can take place at the Committee Stage.

Report stage – the bill whether amended or not is finally reported to the National Assembly.

iv. Third Reading

The Bill is reviewed in its final form (i.e. after amendments, if any, at the Committee Stage). Exceptionally, with the leave of the Speaker, a debate can take place on restricted issues -that debate would never be of a general nature. Debates at the "Third Reading" stage are extremely rare in Mauritius

v. Voting

By the virtue of section 53 of the constitution, the bill, just as other ordinary motions, should be voted by a majority of members of the parliament present.

Assent of the President

For a "Bill" to become an "Act" of Parliament, it must obtain the Presidential Assent. When the Bill is sent to the President for the first time for his assent, the President can withhold his assent and he is of the opinion that the Bill should be reconsidered by the Assembly. Then, he must send the Bill back to the Assembly within 21 days, along with any proposed amendments

Publication in the Government Gazette

Even after obtaining President's assent, an Act does not become enforceable until it is published in the Government Gazette.

It is the President who shall cause the Act to be published.

Separation of powers

Mauritius, a parliamentary democracy, maintains a separation of powers among its legislative, executive, and judicial branches of government, as enshrined in its Constitution. This division aims to prevent the concentration of power in any single branch and uphold democratic principles and the rule of law.

Legislative Branch:

The National Assembly, Mauritius's unicameral parliament, is the supreme legislative body. It is responsible for creating laws and is comprised of elected members, with a system that includes both direct representation and a "best loser" system to ensure diverse representation. The National Assembly also plays a role in electing the President.

Executive Branch:

The executive power is vested in the President, who is the Head of State, and the Prime Minister, who is the Head of Government and leader of the majority party in the National Assembly. The Prime Minister is assisted by a Council of Ministers, forming the executive branch.

Judicial Branch:

The judiciary is independent and headed by the Chief Justice. It is responsible for interpreting laws and ensuring their fair application. Mauritius has a single-structured judicial system with

the Supreme Court at its apex and subordinate courts below it, including the Court of Rodrigues, the Intermediate Court, and various others.

Checks and Balances:

While the branches are distinct, they also operate with a system of checks and balances to prevent any one branch from becoming too powerful. For example, the judiciary can review laws passed by the legislature, and the executive branch is accountable to the legislature. This ensures a balance of power and prevents abuse.

Court structure

The Judiciary, one of the three pillars of our sovereign democratic State along with the Executive and the Legislature, is vested with the power to administer justice in the Republic of Mauritius. It aims to maintain an independent and competent judicial system which upholds the rule of law, safeguards the rights and freedom of individual and commands domestic and international confidence. The independence of our Judiciary, apart from being vital for the functioning of our democratic system of Government, empowers our Courts to act as guardian of the fundamental rights entrenched in our Constitution, whilst ensuring and enforcing good governance.

Our single-structured judicial system consists of two tiers namely, the Supreme Court and Subordinate Courts. The Supreme Court is a Superior Court of Record and has unlimited jurisdiction to hear and determine any civil or criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with necessary powers and authority to exercise its jurisdiction as a Court of Equity. It also exercises supervisory jurisdiction over Subordinate Courts and is composed of various divisions such as the Master's Court, Family Division, Commercial Division, Criminal Division and Mediation Division. The Subordinate Courts consist of the Intermediate Court; Industrial Court; District Courts; Bail and Remand Court and the Court of Rodrigues. The final Court of Appeal of Mauritius is the Judicial Committee of the Privy Council in London as provided for under the Constitution.

CHAPTER I – THE STATE AND THE CONSTITUTION

1 The State

2 Constitution is supreme law

CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3 Fundamental rights and freedoms of the individual

4 Protection of right to life

5 Protection of right to personal liberty

6 Protection from slavery and forced labour

7 Protection from inhuman treatment

8 Protection from deprivation of property

9 Protection for privacy of home and other property

10 Provisions to secure protection of law

11 Protection of freedom of conscience

12 Protection of freedom of expression

13 Protection of freedom of assembly and association

14 Protection of freedom to establish schools

15 Protection of freedom of movement

16 Protection from discrimination

17 Enforcement of protective provisions

17A Payment of retiring allowances to Members

18 Derogations from fundamental rights and freedoms under emergency powers

19 Interpretation and savings

CHAPTER I – THE STATE AND THE CONSTITUTION

1. Mauritius shall be a sovereign democratic State which shall be known as the Republic of Mauritius.
2. This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void

CHAPTER II – PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. Fundamental rights and freedoms of the individual
 - (a) the right of the individual to life, liberty, security of the person and the protection of the law;
 - (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and
 - (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation
4. Protection of right to life
 - (a) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.
5. Protection of right to personal liberty

No person shall be deprived of his personal liberty save as may be authorised by law

 - execution of the sentence or order of a court
 - upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
 - preventing the spread of an infectious or contagious disease;
 - upon reasonable suspicion of his being likely to commit breaches of the peace
6. Protection from slavery and forced labour
7. Protection from inhuman treatment
8. Protection from deprivation of property
9. Protection for privacy of home and other property
 - Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises
 - in the interests of defence, public safety, public order, public morality, public health,
 - for the purpose of protecting the rights or freedoms of other persons
 - the search of any person or property by order of a court or the entry upon any premises by such order,
10. Provisions to secure protection of law

Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law

11. Protection of freedom of conscience (freedom of thought and of religion)
12. Protection of freedom of expression (freedom to hold opinions and to receive and impart ideas and information without interference)
13. Protection of freedom of assembly and association
14. Protection of freedom to establish schools
15. Protection of freedom of movement
 - freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius
 - imposition of restrictions on the movement or residence within Mauritius of any person in the interests of defence, public safety, public order, public morality or public health;
 - imposition of restrictions, by order of a court
 - expulsion from Mauritius of any such person
 - removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius
16. Protection from discrimination
 - race, caste, place of origin, political opinions, colour, creed sex disabilities

Part II, VI and VII

Separation of powers

Mauritius, a parliamentary democracy, maintains a separation of powers among its **legislative, executive, and judicial branches** of government, as enshrined in its Constitution. This division aims to prevent the concentration of power in any single branch and uphold democratic principles and the rule of law

PART II – LEGISLATION AND PROCEDURE IN NATIONAL ASSEMBLY

The National Assembly, Mauritius's unicameral parliament, is the supreme legislative body. It is responsible for creating laws and is comprised of elected members, with a system that includes both direct representation and a "best loser" system to ensure diverse representation. The National Assembly also plays a role in electing the President

Sect. 45 Power to make laws

(1) Subject to this Constitution, Parliament may make laws for the peace, order and good government of Mauritius

Sect. 46 (3) Where the President assents to a Bill that has been submitted to him in accordance with this Constitution, the Bill shall become law and the President shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

CHAPTER VI – THE EXECUTIVE

The executive authority of Mauritius is vested in the President. There shall be a Prime Minister and a Deputy Prime Minister who shall be appointed by the President

CHAPTER VII – THE JUDICATURE

The judiciary is independent and headed by the Chief Justice. It is responsible for interpreting laws and ensuring their fair application. Mauritius has a single-structured judicial system with the Supreme Court at its apex and subordinate courts below it, including the Court of Rodrigues, the Intermediate Court, and various others

Sect. 76 Supreme Court

There shall be a Supreme Court for Mauritius which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

Checks and balances

While the branches are distinct, they also operate with a system of checks and balances to prevent any one branch from becoming too powerful. For example, the judiciary can review laws passed by the legislature, and the executive branch is accountable to the legislature. This ensures a balance of power and prevents abuse.

Court structure

The Judiciary, one of the three pillars of our sovereign democratic State along with the Executive and the Legislature, is vested with the power to administer justice in the Republic of Mauritius. It aims to maintain an independent and competent judicial system which upholds the rule of law, safeguards the rights and freedom of individual and commands domestic and international confidence.

Our single-structured judicial system consists of two tiers namely, the Supreme Court and Subordinate Courts. The Supreme Court is a Superior Court of Record and has unlimited jurisdiction to hear and determine any civil or criminal proceedings. It has a similar original jurisdiction as the High Court of England and is vested with necessary powers and authority to exercise its jurisdiction as a Court of Equity.

It also exercises supervisory jurisdiction over Subordinate Courts and is composed of various divisions such as :

- The Family Division where it administers all family related cases like divorce, judicial separation, alimony and maintenance or custody or guardianship of minors.
- The Commercial Division administers all cases related to companies, disputes, trademarks, exchange, offshore business and patents.
- The Master's Court administers legal heir provisions of Mauritian laws.
- The Mediation Division disposes all civil suit, action or cause of common agreement

The Subordinate Courts consist of the Intermediate Court; Industrial Court; District Courts; Bail and Remand Court and the Court of Rodrigues.

Intermediate Court:

Civil Division of the Intermediate Court

- The Intermediate Court has jurisdiction in all civil cases where the claim or matter in dispute does not exceed Rs 2,000,000. The Bench of the Intermediate Court is constituted by one or more Magistrates, as may be decided by the President.

Criminal Division of the Intermediate Court

- The Intermediate Court has jurisdiction to hear and determine serious criminal offences referred to it by the Director of Public Prosecutions. It has power to inflict penal servitude on convicted offenders for a period not exceeding fifteen years and imprisonment for a period not exceeding ten years. However, for persistent offenders, the Intermediate Court may increase the sentence to twenty years' penal servitude. The Intermediate Court is also empowered to inflict a higher sentence for offences under the Dangerous Drugs Act and certain specific offences, for example, rape and money laundering offences.

District Court

Civil Jurisdiction

- A District Court has jurisdiction in all cases where the sum or matter in dispute does not exceed the prescribed amount (Rs 250,000) (Section 104 of the Courts Act).

(ii) Criminal Jurisdiction

- A District Court has criminal jurisdiction to try all offences except those mentioned in section 116 of the Courts Act. It shall not award against any person imprisonment with

or without hard labour not exceeding 5 years and a fine not exceeding Rs 100,000 (Section 114 of the Courts Act).

Industrial Court

The Industrial Court was established by section 3 of the Industrial Court Act. It has exclusive civil and criminal jurisdiction to try any matter arising out of the enactments set out in the 1st schedule of the Act or of any regulations made under those enactments (which relate to labour laws).

Bail and Remand Court

The Bail and Remand Court (BRC) is a specialized court that handles bail applications for individuals held in custody, particularly those in jail or when the court sits as a Week-End Court. It ensures individuals have access to justice even outside of regular court hours, especially during weekends.

The final Court of Appeal of Mauritius is the Judicial Committee of the Privy Council in London as provided for under the Constitution

Topic 3: Law of Tort and Criminal law

The law of tort is a civil law framework dealing with

- wrongful acts or omissions
- that cause harm, loss, or injury to an individual's person, property, or reputation.

Its primary goal is to shift the burden of loss from the victim to the person at fault, usually by awarding monetary compensation (damages).

Criminal law is the body of rules that defines

- crimes,
- sets up procedures for charging and trying suspects, and
- fixes punishments for convicted offenders.

It treats wrongful acts as offenses against the public or the state rather than simple private disputes.

Criminal law is a body of law that deals with crime and the legal consequences of committing crimes. It defines what actions are considered criminal and outlines the procedures for investigating, prosecuting, and punishing those who break the law. It differs from civil law, which addresses disputes between individuals, by focusing on offenses against society as a whole and involving potential punishment like imprisonment.

Key aspects of criminal law:

- **Defining Crimes:**

Criminal law specifies which acts or omissions are considered criminal offenses.

- **Criminal Procedure:**

It outlines the steps involved in investigating, charging, and trying individuals accused of crimes.

- **Punishments:**

It establishes the penalties for various crimes, which can include fines, imprisonment, or other sanctions.

- **Purpose:**

Criminal law aims to deter crime, rehabilitate offenders, provide retribution for victims, and protect society.

Examples of criminal law in action:

- **Investigating a crime:**

Police investigate a suspected robbery, gathering evidence and interviewing witnesses.

- **Charging an offender:**

Topic 3: Law of Tort and Criminal law

Prosecutors decide whether to file criminal charges against someone based on the evidence.

- **Trial process:**

The accused person has the right to a fair trial, where evidence is presented and a judge or jury decides guilt or innocence.

- **Sentencing:**

If found guilty, the person is sentenced to a penalty determined by the law.

In essence, criminal law is the foundation for maintaining order and safety in a society by defining what is considered unacceptable behavior and establishing a system for addressing it

Mauritian criminal law is a blend of French civil law and English common law, with its foundation in the Criminal Code (Code Pénal) and the Criminal Procedure Act. This framework is further shaped by constitutional principles, international human rights standards, and various other statutes and case law.

Key Sources of Law:

- **Criminal Code (Code Pénal):**

This is the primary piece of legislation defining criminal offenses and their corresponding penalties.

- **Criminal Procedure Act:**

This act outlines the procedures for investigating, prosecuting, and adjudicating criminal cases.

- **Other Statutes:**

Various other laws address specific types of crimes or related areas, such as financial crimes, cybercrime, and drug offenses.

- **Case Law:**

Judicial decisions play a significant role in interpreting and applying the law, shaping the development of criminal law in Mauritius.

Examples of Specific Laws:

- **Criminal Code:**

Covers a wide range of offenses, including those related to theft, fraud, violence, and public order.

- **Financial Crimes Commission Act:**

Establishes the FCC, which investigates and prosecutes financial crimes such as corruption, money laundering, and fraud.

- **Defamation Act 2009:**

Governs defamation, defining defamation as the communication of a false statement that harms the reputation of an individual or entity.

Law of Tort

A tort is a civil wrongdoing—whether intentional or negligent, where an individual suffers a loss or harm, which results in legal liability for the person who causes it. Tort law aims to redress the wrongdoing and compensate the victim(s), typically by awarding monetary damages.

Tort law requires those who are found to be at fault for harming others to compensate the victims. Typical harms include the loss of past or future income, payment of medical expenses, and payment for pain and suffering.

Tort law is a body of law that provides remedies for individuals who have suffered harm from the wrongful acts of others.

It's a civil wrong, distinct from criminal law, where the focus is on compensating the injured party rather than punishing the wrongdoer. Essentially, it deals with situations where one person's actions (or inactions) cause injury or loss to another, and the law provides a mechanism for the injured party to seek redress.

Examples:

- A landlord suing a tenant for unpaid rent.
- A person suing for injuries sustained in a car accident.
- A company suing another for breach of contract.

Key Concepts:

Civil Wrong:

A tort is a civil wrong, meaning it's a violation of a private right or duty that causes harm to an individual.

Remedies:

Tort law aims to provide remedies, most commonly monetary damages, to compensate the injured party for their losses.

Causation:

There must be a causal link between the defendant's actions and the plaintiff's injuries.

Damages:

These are the monetary amounts awarded to the injured party to compensate for their losses

Types of Torts:

Intentional Torts:

These involve deliberate actions that cause harm. Examples include assault, battery, false imprisonment, and defamation.

Negligence:

This is the most common type of tort, and it arises when someone's careless actions cause harm to another. It requires proving a duty of care, breach of that duty, causation, and damages.

Strict Liability:

In some cases, liability is imposed regardless of fault, such as in cases involving defective products or abnormally dangerous activities.

Articles 1382 through 1384 of the Mauritian Civil Code form the basis of tort law in Mauritius, focusing on fault-based liability and the obligation to repair damages caused by one's actions. These articles establish that if someone causes harm to another through their fault, they are liable to compensate for the damage.

Key aspects of Articles 1382

- **Article 1382:**

This article is the cornerstone of tort liability in Mauritius. It states that any act by a person that causes damage to another obliges the person at fault to repair that damage.

- **Conditions for Liability:**

To establish liability under these articles, three key conditions must be met:

- **Harm:** There must be actual harm or damage suffered by the victim.
- **Causal Link:** A direct causal link must exist between the harmful event and the damage.
- **Fault:** The person causing the harm must be at fault (negligent, reckless, or intentional).

Topic 3: Law of Tort and Criminal law

In Mauritius, criminal law and tort law are distinct legal systems addressing different types of wrongs. Criminal law deals with offenses against the state and society, aiming to punish offenders and deter future crime. Tort law, on the other hand, focuses on civil wrongs that cause harm to individuals, seeking to compensate the victim for their losses.

Criminal Law:

- **Focus:** Public wrongs, harmful acts against society as a whole.
- **Purpose:** To punish offenders, deter future crime, and maintain public order.
- **Parties Involved:** The state (prosecutor) brings charges against the accused (defendant).
- **Remedies:** Fines, imprisonment, community service, or other penalties.
- **Examples:** Murder, theft, assault, drug offenses.

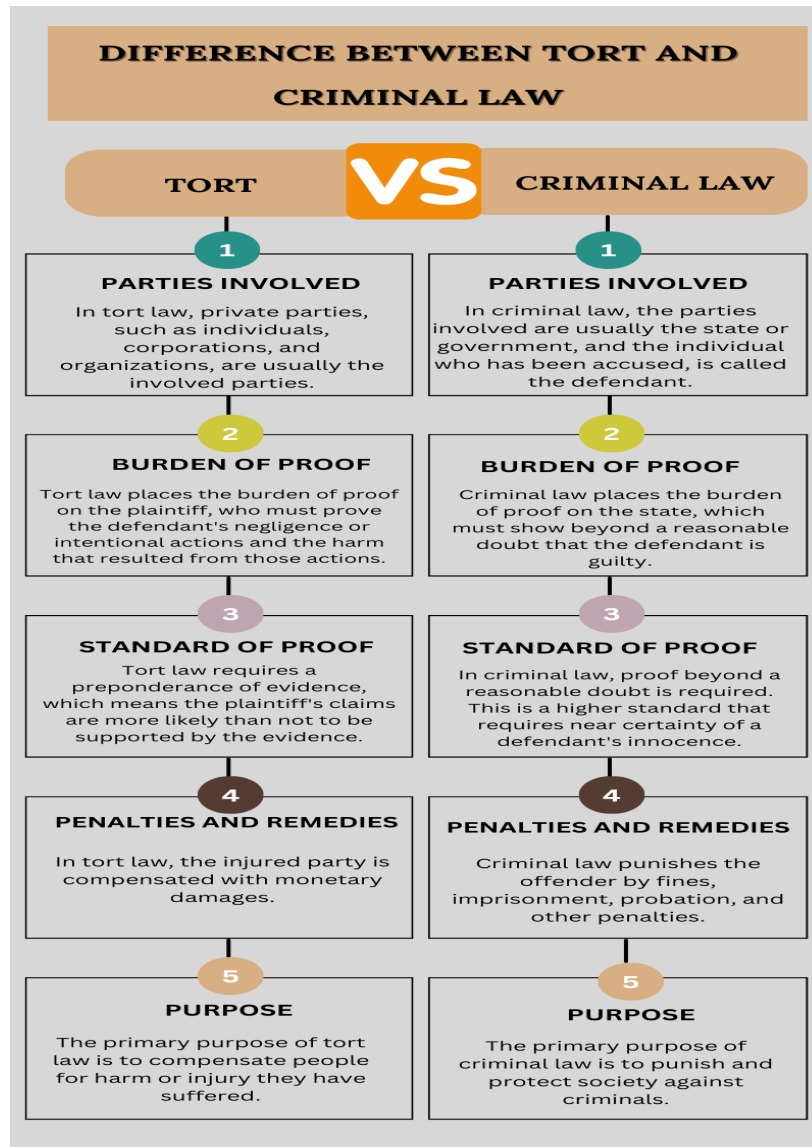
Tort Law:

- **Focus:** Private wrongs, causing harm or injury to an individual's person, property, or reputation.
- **Purpose:** To compensate the victim for their losses and restore them, as much as possible, to their pre-injury state.
- **Parties Involved:** The injured party (plaintiff) sues the wrongdoer (defendant).
- **Remedies:** Damages (monetary compensation), injunctions (to prevent future harm).
- **Examples:** Negligence (car accidents), defamation, trespass, product liability.

Key Differences:

- **Nature of the Wrong:**
Criminal law addresses wrongs against society, while tort law addresses wrongs against individuals.
- **Objective:**
Criminal law seeks to punish and deter, while tort law seeks to compensate.
- **Parties:**
Criminal cases are initiated by the state, while tort cases are initiated by the injured individual.
- **Remedies:**
Criminal law offers penalties, while tort law offers compensation.

Topic 3: Law of Tort and Criminal law



Overlap:

It's important to note that some actions can be both a crime and a tort. For example for assault, tort law focuses on providing compensation to the individual harmed, while criminal law focuses on punishing the offender

<https://courses.lumenlearning.com/suny-monroe-law101/chapter/general-law-of-torts/>

Topic 4 : ICT Act / Regulations and Standards

The Information and Communication Technologies (ICT) Act 2001 is the primary legislation governing the ICT sector in Mauritius.

It establishes the ICT Authority (ICTA) as the regulatory body, responsible for licensing, regulating, and promoting the sector. The Act covers various aspects, including licensing of operators, setting technical standards, ensuring quality of service, and addressing cybersecurity and content regulation.

Key aspects of the ICT Act and related regulations:

- **Establishment of the ICT Authority:**

The Act establishes the ICTA as the national regulatory body for the ICT sector.

- **Licensing and Regulation:**

The ICTA is responsible for licensing operators of ICT networks and services, including telecommunications.

- **Technical Standards:**

The ICTA sets technical standards for telecommunication networks and equipment to ensure interoperability and quality of service. This includes standards related to electromagnetic interference and public health issues.

- **Content Regulation:**

The Act empowers the ICTA to regulate and curtail harmful and illegal content online.

- **Data Protection:**

The Act addresses data security and privacy, and the ICTA regulates the security of data.

- **Cybersecurity:**

The Act covers cybersecurity aspects, including monitoring of services for national security reasons and ensuring protection of privacy of communication.

46. Offences

(1) Any person who –

(f) forges a message or transmits or otherwise makes use of a message knowing that it has been forged;

(g) knowingly sends, transmits or causes to be transmitted a false or fraudulent message;

(ga) uses a telecommunication equipment, an information and communication service, a telecommunication service or information and communication technologies to send, transmit, transfer, post, publish, deliver, show or otherwise communicates by means of the telecommunication equipment a message which is obscene, indecent, offensive, abusive, threatening, menacing, false or misleading, which is likely to cause or causes harm to a person;

(ha) uses a telecommunication equipment, an information and communication service, a telecommunication service or information and communication technologies to impersonate, or by any other means impersonates, another person which is likely to cause or causes harm to that person;

(ka) wilfully tampers or causes to be tampered the International Mobile Station Equipment (IMEI) of any mobile device;

(l) establishes, maintains or operates a network or service without a licence or in breach of the terms or conditions of a licence;

(m) without the prior approval of the Authority, imports any equipment capable of intercepting a message;

(n) discloses a message or information relating to such a message to any other person otherwise than -

(i) in accordance with this Act;

(ii) with the consent of each of the sender of the message and each intended

recipient of the message;

(iii) for the purpose of the administration of justice, or

(iv) as authorised by a Judge;

(na) knowingly provides information which is false or fabricated;

(o) except as expressly permitted by this Act or as authorized by a Judge, intercepts,

authorises or permits another person to intercept, or does any act or thing that will

enable him or another person to intercept, a message passing over a network;

shall commit an offence.

47. Penalties

(1) Any person who commits an offence under this Act, shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees and to penal servitude for a term not exceeding 10 years.

Regulation

ICT Act: 48. Regulations

Regulations made by the Minister, after consultation with the Information and Communication Technologies Board, under section 48 of the Information and Communication Technologies Act

ICT Act - 18. Functions of the Authority

(1) The Authority shall –

(j) regulate the registration of SIMs;

Example 1 of a Regulation — SIM Card registration

Unauthorised sale

No person shall sell –

- (a) a pre-activated detachable SIM;
- (b) a device which is embedded with a pre-activated embedded SIM;
- (c) a SIM or an M2M SIM to a child;
- (d) an M2M SIM to a tourist.

Application for registration of SIM or M2M SIM

Any person who wishes to buy a SIM or an M2M SIM from an operator or authorised agent shall –

- (a) in the case of a citizen of Mauritius, submit to the operator or authorised agent –
 - (i) a copy of his National Identity Card or a copy of the personal details of his passport; and
 - (ii) a copy of his recent utility bill or any other proof of address;

Example 2 - ICT Regulation 2025

(Registration of SIM) Regulation 2023 is revoked

**THE INFORMATION AND COMMUNICATION
TECHNOLOGIES ACT**

**Regulations made by the Minister, after consultation with the
Information and Communication Technologies Board,
under section 48 of the Information and
Communication Technologies Act**

1. These regulations may be cited as the Information and Communication Technologies (Registration of SIM) (Revocation) Regulations 2025.
2. In these regulations –
“operator” has the same meaning as in the revoked regulations;
“revoked regulations” means the Information and Communication Technologies (Registration of SIM) Regulations 2023 revoked under regulation 3.
3. The Information and Communication Technologies (Registration of SIM) Regulations 2023 are revoked.
4. Every operator shall, not later than 14 January 2025, destroy the photograph of every person kept in its database for the purposes of the Information and Communication Technologies (Registration of SIM) Regulations 2023.
5. Every operator shall, not later than 23 January 2025, submit a report to the Information and Communication Technologies Authority certifying the destruction of the photographs kept in its database.
6. An operator that fails to comply with regulation 4 or 5 shall commit an offence and shall, on conviction, be liable to a fine

Standards

ICT (Information and Communication Technology) standards are specifications and guidelines that ensure interoperability, quality, and security within the ICT industry. They cover a wide range of areas, from network infrastructure and data security to software development and digital accessibility. These standards are essential for enabling different systems and devices to work together seamlessly, fostering innovation, and providing consumers with wider choices.

Under section 18 (1) (n) of the Act, the Authority must “ensure the safety and quality of every information and communication services including telecommunication service and, for that purpose, determine technical standards for telecommunication network, the connection of customer equipment to telecommunication networks.”

- Pursuant to the above the main duties of the Authority are to:
 - Ensure industry compliance with mandatory standards, including standards covering electromagnetic interference and health issues such as exposure to electromagnetic radiation;
 - Perform homologation of telecommunication and radio communication apparatus;

- Determine appropriate technical standards where necessary to:
 - Avoid disruption to telecommunications networks
 - Ensure interoperability of the standard telephone service
 - Minimise radiocommunications interference and
- Protect public health and safety.

Key Areas of ICTA Standards and Regulations:

- **Telecommunication Standards:**

The ICTA determines technical standards for telecommunication networks and the connection of customer equipment to these networks.

- **Radiocommunication Standards:**

Standards are set for radiocommunication networks to ensure they operate safely and effectively, including the use of radio frequencies.

- **Spectrum Management:**

The ICTA manages the allocation and use of the radio frequency spectrum, a national resource for wireless services.

- **Import Clearance:**

Importers of ICT equipment must obtain clearance from the ICTA to ensure the equipment meets the required standards and is safe for public use.

- **Dealer Licensing:**

Dealers selling or renting telecommunication and radiocommunication apparatus need a license from the ICTA and must ensure their products meet the required standards.

- **SIM Card Registration:**

The ICTA has regulations in place for the registration of SIM cards, including requirements for personal details and proof of address.

- **Security Measures:**

The ICTA also provides guidelines on security measures for telecommunication networks, particularly in the context of 5G and the convergence of technologies.

- **International Standards:**

The ICTA monitors international standards and practices, particularly those of the International Telecommunication Union (ITU), and represents Mauritius in international telecommunications conferences.

Examples of ICTA Standards:

- i. **5G Implementation:**

The ICTA has issued decisions on the use of specific frequency bands (2500-2690 MHz and 3400-3600 MHz) for 5G networks.

Frequency Bands		Technical Standards currently in use	Technology
<i>Uplink (Base Station Receive / Mobile Device Transmit) (MHz)</i>	<i>Downlink (Base Station Transmit / Mobile Device Receive) (MHz)</i>		
832 – 862	791 – 821	FDD-LTE	4G
880 – 915	925 – 960	GSM, UMTS and FDD-LTE	2G, 3G, 4G
1710 – 1785	1805 – 1880	GSM and FDD-LTE	2G, 4G
1920 – 1980	2110 – 2170	UMTS and FDD-LTE	3G, 4G
2500 – 2600		NR TDD	5G

ii. Import of ICT Equipment:

Guidelines are provided on the process of obtaining clearance for importing ICT equipment.

*Government Notice No. 164 of 2019***THE INFORMATION AND COMMUNICATION
TECHNOLOGIES ACT****Regulations made by the Minister, after consultation with
the ICT Board, under section 48 of the Information
and Communication Technologies Act**

1. These regulations may be cited as the Information and Communication Technologies (Clearance to Import ICT Equipment) Regulations 2019.

2. In these regulations –

“CE marking” means the marking affixed on the packaging of an ICT equipment, as well as on the equipment itself, indicating conformity of the equipment to the essential requirements defined in the European Directive 2014/53/EU and is the visible consequence of the conformity assessment process under that Directive;

“declaration of compliance” means a declaration made by a licensed dealer to certify that the ICT equipment he wishes to import meets the standards as determined by the Authority;

Topic 5 - Data Protection Act

Data Protection is a fundamental component of today's society and the development of good data protection practices contributes to fostering public trust. Though we are living in an era of rapid technological and social change, we must ensure that our privacy rights and entitlements are properly protected.

The demands of public security, efficient administration, economic development and the ever-rapid growth of new communications devices which integrate information and communications technologies must not jeopardize our privacy rights. Data Protection, which strikes the right balance between the concerns of Government and businesses, whilst respecting the fundamental rights of people, is the guiding principle of the Data Protection Office.

The key principle underpinning data protection is to ensure that people know to control how personal information about them is used or, at the very least, to know how others use that information. Data controllers are people or organisations holding information about individuals and they must comply with the data protection principles in handling personal data, and "data subjects" are individuals who have corresponding rights.

The object of the DPA is to provide for the protection of the privacy rights of individuals in view of the developments in the techniques used to capture, transmit, manipulate, record or store data relating to individuals.

The Data Protection Act has come into force on 15 January 2018.

The Data Protection Act (DPA) in Mauritius is the primary legislation governing the processing of personal data, ensuring individuals' privacy rights are respected. It outlines the responsibilities of data controllers and processors, providing a framework for handling personal information fairly and lawfully. The DPA also grants data subjects various rights, including the right to access, rectify, and erase their data.

Key Aspects of the Data Protection Act:

- **Scope:**

The DPA applies to the processing of personal data, regardless of whether it's automated or manual.

- **Data Protection Principles:**

The Act is built upon several key principles, including:

- **Lawfulness, fairness, and transparency:** Data must be processed in a way that is lawful, fair, and transparent to the individual.
- **Purpose limitation:** Data should only be collected for specified, explicit, and legitimate purposes.
- **Data minimization:** Only the necessary data should be collected and processed.
- **Accuracy:** Data must be accurate and kept up to date.
- **Storage limitation:** Data should not be kept longer than necessary.
- **Security:** Appropriate security measures must be taken to protect data.
- **Rights of data subjects:** Individuals have the right to access, rectify, and erase their data.

- **Data Controllers and Processors:**

The DPA distinguishes between data controllers (those who determine the purposes and means of processing) and data processors (those who process data on behalf of the controller).

- **Data Subjects' Rights:**

The Act grants individuals several rights, including the right to:

- **Access:** Request information about the data held about them.
- **Rectification:** Request correction of inaccurate data.
- **Erasure:** Request deletion of their data (under certain circumstances).
- **Object:** Object to the processing of their data.
- **Data portability:** Request their data in a commonly used format.

- **Data Protection Office (DPO):**

The DPO is the regulatory body responsible for enforcing the DPA and promoting data protection practices in Mauritius.

- **Compliance:**

Organizations processing personal data must comply with the DPA's requirements, including implementing appropriate security measures and respecting individuals' rights.

- **International Standards:**

The DPA aims to align with international standards, including the EU's GDPR.

- **Fees:**

Specific regulations, like the Data Protection (Fees) Regulations 2020, outline the fees associated with registration, renewal, and other aspects of data protection compliance.

23. Collection of personal data

Subject to section 44, a controller shall not collect personal data unless –

- (a) it is done for a lawful purpose connected with a function or activity of the controller; and
- (b) the collection of the data is necessary for that purpose.

Where a controller collects personal data directly from a data subject, the controller shall, at the time of collecting the personal data, ensure that the data subject concerned is informed of –

- (a) the identity and contact details of the controller and, where applicable, its representative and any data protection officer;
- (b) the purpose for which the data are being collected;
- (c) the intended recipients of the data;
- (d) whether or not the supply of the data by that data subject is voluntary or mandatory;
- (e) the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;
- (f) the existence of the right to request from the controller access to and rectification, restriction or erasure of personal data concerning the data subject or to object to the processing;
- (g) the existence of automated decision making, including profiling, and information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject;
- (h) the period for which the personal data shall be stored;
- (i) the right to lodge a complaint with the Commissioner;
- (j) where applicable, that the controller intends to transfer personal data to another country and on the level of suitable protection afforded by that country; and

(k) any further information necessary to guarantee fair processing in respect of the data subject's personal data, having regard to the specific circumstances in which the data are collected

31. Security of processing

A controller or processor shall, at the time of the determination of the means for processing and at the time of the processing –

(a) implement appropriate security and organisational measures for –

- (i) the prevention of unauthorised access to;
- (ii) the alteration of;
- (iii) the disclosure of;
- (iv) the accidental loss of; and
- (v) the destruction of, the data in his control; and

(b) ensure that the measures provide a level of security appropriate for – (i) the harm that might result from – (A) the unauthorised access to; (B) the alteration of; (C) the disclosure of; (D) the destruction of, the data and its accidental loss; and (ii) the nature of the data concerned.

(2) (a) The measures shall include – (i) the pseudonymisation and encryption of personal data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. (b) The Office may lay down technical standards for the requirements specified in paragraph (a).

(3) In determining the appropriate security measures referred to in subsection (1), in particular, where the processing involves the transmission of data over an information and communication network, a controller shall have regard to – (a) the state of technological development available; (b) the cost of implementing any of the security measures; (c) the special risks that exist in the processing of the data; and (d) the nature of the data being processed.

(4) Where a controller is using the services of a processor – (a) he or it shall choose a processor providing sufficient guarantees in respect of security and organisational measures for the purpose of complying with subsection (1); and (b) the controller and the processor shall enter

into a written contract which shall provide that – (i) the processor shall act only on instructions received from the controller; and (ii) the processor shall be bound by obligations devolve

42. Unlawful disclosure of personal data

(1) Any controller who, without lawful excuse, discloses personal data in any manner that is incompatible with the purpose for which such data has been collected shall commit an offence.

(2) Any processor who, without lawful excuse, discloses personal data processed by him without the prior authority of the controller on whose behalf the data are being or have been processed shall commit an offence.

43. Offence for which no specific penalty provided

Any person who commits an offence under this Act for which no specific penalty is provided or who otherwise contravenes this Act shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

Regulation

Regulations made by the Minister, after consultation with the Commissioner, under section 55 of the Data Protection Act 2017

SCHEDULE

[Regulations 3, 4, 5, 6 and 7]

FEES

	(Rs)
1. Fees payable under section 16(2) of the Act for the issue of a registration certificate upon registration as a controller or processor having –	
(a) not more than 5 employees	1,000
(b) not less than 6 nor more than 25 employees	1,500
(c) more than 25 employees	2,500
2. Fees for the issue of a new registration certificate under section 18(2) of the Act for renewal of registration as a controller or processor having –	
(a) not more than 5 employees	1,000
(b) not less than 6 nor more than 25 employees	1,500
(c) more than 25 employees	2,500
3. Certified copy of, or an extract from, an entry in the register under section 20(3)(b) of the Act	100
4. Fee under section 37(7) of the Act	100
5. Appeal under section 52(4) of the Act	500

Topic 6: Privacy Issues / Digital Defamation

Privacy refers to an individual's fundamental right to control their personal information, to be free from unwanted intrusion or interference, and to keep their personal matters from public.

Protecting people's privacy ensures their safety, dignity, and other fundamental rights and freedoms such as freedom of thought and expression. Using personal data through digital technologies provides social and economic benefits, but it can also compromise privacy

Privacy in Mauritian laws

Mauritius primarily addresses privacy issues through the Data Protection Act 2017 , and aims to protect personal data, as well as the Constitution and Civil Code.

- **Constitution:** Article 9

The right to privacy is enshrined in the Constitution, particularly regarding the protection of one's home and property.

- **Other law:**

Other law also provides for the respect of private life, though the DPA 2017 provides a more specific and robust framework for data protection.

Key issues include ensuring data minimization, lawful processing, transparency, and data subject rights like access and rectification.

Data Protection Act 2017

- **Purpose:**

To strengthen data subjects' control and autonomy over their personal data and to align Mauritius' framework with international standards like the GDPR.

- **Scope:**

Applies to the processing of personal data in all sectors.

- **Data Subject Rights:**

- **Right to access:** To receive a free copy of their personal data and information on its usage.
- **Right to rectification:** To correct any inaccurate personal data.

- **Right to erasure:** To have data deleted when it's no longer relevant or consent is withdrawn.
- **Right to object:** To object to automated decision-making.
- **Enforcement:**

The Act provides enhanced enforcement powers for the Data Protection Commissioner.
- **Data Breach Notification:**

Requires controllers to notify the Data Protection Commissioner and data subjects in the event of a personal data breach.
- **International Alignment:**

It incorporates key principles and concepts from the EU's GDPR, such as data protection impact assessments.

Challengers

While Mauritius has robust data protection laws aligned with international standards like the GDPR, significant privacy issues remain in balancing individual rights with state authority. The main challenges involve broad exemptions for national security (sec 44), limited judicial interpretation of constitutional privacy, and the use of technology for mass surveillance.

Broad exemptions for national security

- The Data Protection Act (DPA) of 2017 contains provisions that allow the government to override privacy protections in the interest of national security.
- Government data sharing: The DPA does not apply to the exchange of information between government ministries, departments, and public agencies when it is considered necessary on a "need-to-know" basis. This exemption could lead to the unmonitored sharing of citizens' data across public bodies.

Concerns over digital surveillance

The increasing use of technology for public security raises specific concerns about mass surveillance and its impact on privacy.

- Expanded surveillance technology: Initiatives to address issues like drug trafficking have led to the expanded use of CCTV cameras in public spaces. Civil society has raised concerns that this data could be misused for other purposes.
- Targeted versus mass surveillance: Mauritian law permits targeted surveillance with judicial approval under specific circumstances (e.g., antiterrorism), but a widespread surveillance without clear legal backing is unconstitutional.

- Leaked communications: In 2024, reports of leaked private phone conversations involving journalists and other public figures raised suspicions of illegal wiretapping and broad surveillance.

Regulatory and enforcement gaps

The implementation and enforcement of data protection laws still face challenges, including delays and public reluctance to report violations.

- Enforcement delays: Although the Data Protection Office (DPO) can hear complaints and impose penalties, procedural delays in enforcing these actions remain a challenge.
- Lack of public reporting: A UN expert noted in 2023 that there is a reluctance among the public to report data breaches to the DPO, potentially due to a lack of awareness.
- Uncertainty for new technologies: While the DPA regulates online privacy generally, it lacks specific provisions for emerging technologies like cookies and automated decision-making. The DPO recommends best practices for these areas, but a lack of specific legal requirements creates uncertainty for both businesses and citizens.

Does Mauritius have the right to privacy?

Privacy enshrined in Constitution: Mauritius protects the right to privacy of home and other property in Article 9 of the Constitution.

DPA legislation: Mauritius was among the first movers in the data privacy space in Africa, and as such, its regulations are robust, and in line with international standards

Is it legal to record a conversation in Mauritius?

(a) The listening/recording of telephone calls without the consent of the parties involved is illegal unless authorized by a court ruling; and

(b) Any manipulation or dissemination of such illegally obtained data; constitutes an offense under DP Act

What is Section 12 of the Constitution of Mauritius?

Article 12.(1) Except with his own consent, no person shall be hindered in the enjoyment of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

What is Section 17 of the Constitution of Mauritius?

Section 17(1) of the constitution entitles any person to apply to the Supreme Court for redress when he or she alleges that any of sections 3 to 16 of the constitution (those sections deal with fundamental rights) has been, is being or is likely to be, contravened, in addition to any other remedy that may be lawfully

Defamation

Defamation is the communication of a false statement that harms a person's reputation, requiring the statement to be published to a third party. It includes written or published defamatory statements (libel) and spoken defamatory statements (slander).

Legal provision on Defamation

Sec 288 of the Criminal Code

288. Interpretation of "defamation"

(1) Any imputation or allegation of a fact prejudicial to the honour, character or reputation of the person to whom such fact is imputed or alleged is a defamation.

(2) Any imputation or allegation concerning the honour, character or reputation of a deceased person is a defamation where it is calculated to throw discredit on or be hurtful to the feelings of the family or relatives of the deceased.

(3) Any person who, by any of the means specified in section 206, is guilty of defamation shall be liable to imprisonment for a term not exceeding 5 years and a fine not exceeding 50,000 rupees.

Digital defamation

Digital defamation, or internet defamation, is the publication of false statements online that harm someone's reputation. It includes both written (cyber-libel) and spoken

forms (cyber-slander) made on platforms like social media, blogs, and forums. To prove digital defamation, the statements must be false, made to a third party, and cause harm to the victim's reputation, similar to traditional defamation laws.

Key elements of digital defamation

- **False statement of fact:** The statement must be a factual assertion that is untrue, not an opinion.
- **Publication to a third party:** The false statement must be communicated to someone other than the person being defamed.
- **Harm to reputation:** The statement must damage the subject's reputation.

Common examples

- **False accusations:**
Spreading rumors or making untrue claims on social media about someone's personal life, like infidelity or criminal activity.
- **Fake reviews:**
Posting dishonest or fabricated negative reviews for a business on sites like Yelp or Google
- **Misleading content:**
Sharing misleading information or creating fake content, such as manipulated images or videos, that negatively portrays an individual or organization.

Challenges in the digital age

- **Speed and reach:**
Digital content can spread rapidly and reach a vast global audience, amplifying the potential harm.
- **Anonymity:**
The anonymity of online users can make it difficult to identify the responsible party, complicating legal action.
- **Jurisdictional issues:**
Identifying the correct jurisdiction for a defamation case can be challenging due to the global nature of the internet.

Legal recourse

- **Court orders:** Victims can seek court orders to identify anonymous users from platforms or internet service providers.
- **Restraining orders:** In cases of harassment or intimidation, individuals may obtain restraining orders in criminal court.

Common digital defamation scenarios

Digital defamation can take many forms across various online platforms:

- **False reviews:** A disgruntled customer or competitor posts a fake negative review on a site like Google, Yelp, or industry-specific platforms.
- **Social media posts:** False and damaging accusations are made in posts, comments, or shared content on platforms like Twitter, Facebook, or Instagram.
- **Blogs and forums:** Websites and online forums are used to spread false rumors or malicious content about a person or business.
- **Manipulated media:** Digitally altered images or videos are used to misrepresent an individual's actions or character.
- **Cyber-smearing:** Spreading derogatory or defamatory statements about a company, its executives, or products online to harm its goodwill and market standing.

Legal and practical remedies

If you have been a victim of digital defamation, several options are available:

- **Preserve evidence:** Take screenshots, save URLs, and document any financial or emotional harm caused by the defamatory content.
- **Report to the platform:** Many websites and social media platforms have terms of service that prohibit defamatory content. Reporting the material may lead to its removal.
- **File a lawsuit:** If other methods fail, a victim can file a defamation lawsuit to seek compensation for damages and a court order to remove the content. Even if the defamer is anonymous, a court can issue a subpoena to the platform to reveal their identity.

Key Legislative Frameworks

- **General Defamation Law:**

There isn't a specific statute for "digital defamation," so traditional defamation laws apply. These laws require a defamatory statement to be false, and the defendant bears the burden of proving its falsity.

- **Constitution of Mauritius:**

Article 12 of the Constitution guarantees the freedom of expression. However, this right is not absolute and can be limited, especially in cases of defamation.

- **Cybersecurity and Cybercrime Act:**

This act criminalizes offenses like the illegal recording or manipulation of private data, which could be relevant in cases of digital defamation if illegal data is used.

Digital defamation in Mauritius falls under general defamation law, which is governed by common law and statutory provisions, including the Computer Security and Cybercrime Act.

To prove digital defamation, you must show that a false statement was published online, it identified you, and it injured your reputation.

Remedies can include

- i. monetary damages,
- ii. court orders for content removal,
- iii. apologies,
- iv. while the ICTA can also entertain consumer complaints and take steps to curtail harmful online content.