The Observer
Defamation law

Heard v Depp: dueling defamation claims embroil actor and her ex in court battle

Legal experts question the wisdom of alleged domestic abusers suing their accusers

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Amber Heard: "I felt the full force of our culture's wrath for women who speak out." Photograph: Hannah McKay/Reuters

In December 2018, actor Amber Heard published a column in the Washington Post that was a clarion call for providing more support to women who speak about domestic violence. Heard, now 35, described personal experience in arguing for change.

"Like many women, I had been harassed and sexually assaulted by the time I was of college age. But I kept quiet - I did not expect filing complaints to bring justice. And I didn't see myself as a victim," Heard wrote. "Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out."

"Friends and advisers told me I would never again work as an actress - that I would be blacklisted. A movie I was attached to recast my role. I had just shot a two-year campaign as the face of a global fashion brand, and the company dropped me," Heard continued. "Questions arose as to whether I would be able to keep my role of Mera in the movies 'Justice League' and 'Aquaman.'"

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Heard did not mention her alleged abuse by name, but the timing of this piece indicated that she was talking about her ex-husband, Hollywood star Johnny Depp. Heard had publicly accused Depp of domestic abuse in 2016.

Depp filed a $50m defamation lawsuit against Heard in March 2019, arguing: "The op-ed's clear implication that Mr Depp is a domestic abuser is categorically and demonstrably false." Depp's suit alleged that Heard's piece left his reputation and career in tatters, so much so that he was dropped from the role of Captain Jack Sparrow in Disney's wildly popular Pirates of the Caribbean franchise.

Depp not only denied Heard's allegations, but claimed that she abused him. Heard has since filed counterclaims against Depp, alleging that he defamed her.

It has been an immense legal battle between the pair that has generated a slew of headlines and kept both of them in the media spotlight regardless of their work onscreen. But now their made-for-tabloid legal battle will reach a crescendo on 11 April, when the case goes to trial in Fairfax county, Virginia.

At issue in the case is far more than two bold-face names: it's about domestic violence, free speech and victims' rights. That's all fine from the usual tittle-tattle that happens when celebrities hit the court circuit.

Depp and Heard met while filming the 2011 comedy The Rum Diary. They wed in 2015 in Los Angeles, USA Today reported. Heard sought divorce from Depp in 2016. She also obtained a restraining order against him, claiming their divorce was finalized in 2017. Heard won $7m, promising that she would donate this money to the American Civil Liberties Union, according to People and the newspaper.

Depp's rise to immense global fame began in the mid-1980s. His first non-extra movie role was in the 1984 film Nightmare on Elm Street. Depp's breakthrough came in 1987 when he landed a position on 21 Jump Street. His rise to mainstream stardom was in 1990, when he appeared in John Waters' Cry-Baby and Tim Burton's Edward Scissorhands.

Exactly what impact the Virginia proceedings will have on first amendment free speech protections, or victims' rights, remains unclear until the trial begins. However, it is all but certain the courtroom battle will provide as clear an answer as possible about whether Depp abused Heard.

"There are a lot of issues that have to be unpacked in any defamation case," said Mariann Wang, who represented former Apprentice contestant Summer Zervos in her defamation case against Donald Trump. "Fundamentally, if the speaker can prove that what she said or wrote was true, that will bar his claim."

Roy Gutterman, director of the Tully Center for Free Speech at Syracuse University's Newhouse School of Public Communications, provided a similar explanation.

"A plaintiff in a defamation case has to prove that a false statement is published about that person and that it causes harm to their reputation," Gutterman said.

"Looking at this from the outside, I think the biggest issue is really the truth or falsity of the allegations - whether Johnny Depp committed domestic violence against his wife or then-girlfriend and, on the converse, whether Amber Heard made stuff up about this."

Depp and Heard each accuse the other of defamation. Photograph: AP

Those interviewed by the Guardian had mixed views as to whether lawsuits filed against accusers might deter others from coming forward.

"You'd expect the increase in high profile defamation lawsuits against women discussing prior sexual assaults and intimate partner violence to have a silencing effect on victims wanting to talk about their traumas," Carrie Goldberg, owner of victims' rights law firm C.A.Goldberg, PLLC, said in an email.

"But instead, we're seeing that victims with something to say are getting savvier about how to discuss their abuse while protecting themselves from litigation. We're getting more cases where survivors of assault and abuse come to us for legal advice before sharing their stories."

"Rarely will a plaintiff-abuser actually be able to disprove an assault or abuse, but abusers sue because they think that will somehow help their public profile - as if by calling their accuser a liar, the public will believe the allegations are untrue," Goldberg also said. "Mostly, the abuser's goal is to bring the lawsuit to intimidate the other person into retracting and apologizing.

"Unfortunately, the abusers who bring defamation cases tend to be wealthy and able to afford legal fees, while the victims are not necessarily of equal financial power. So the victim may be incentivized to retract, rather than spend six figures they don't have defending a lawsuit."

Gutterman said: "Whenever we see one of these defamation cases, especially with a verdict against a speaker or a writer, there's always a fear of a chilling effect, and the underlying Washington Post column was a serious exploration of an individual's experience with domestic violence."

"It's also important to note that Johnny Depp wasn't specifically named in that piece, though she's always going to be linked to him so it wouldn't really take much to connect the two," Gutterman pointed out. "As a society, under the first amendment, we want to allow people to express themselves on important issues such as domestic violence and abuse - and I wouldn't want to see liability attached to that."

Several of those interviewed noted that defamation cases bring attention to the events behind allegedly damaging statements. High-profile cases will be chronicled by the media. Discourse surrounding alleged wrongdoing will continue - regardless of the outcome - putting to question whether a victorious plaintiff actually wins.

The fact that allegations will be litigated in public are "often a reason why many people do not bring defamation claims," Wang said.

"It becomes the centerpiece of the trial, so you end up, in fact, prolonging the conversation around the underlying facts," continued Wang, of Cuti Hecker Wang LLP. "Defamation actions can be very exhausting and brutal on both sides ... under any circumstance, the underlying accusations are going to be talked about and entertained."

"This case is a mess, to tell you the truth," Gutterman said at one point during his interview. "And in a way, they're re-litigating a contentious marriage through civil tort law with these dueling defamation claims."

Gutterman pointed to Depp's unsuccessful defamation case against the British tabloid newspaper the Sun over an April 2018 column that called him a "wife beater". The judge dismissed Depp's libel claim, determining that the column was "substantially true" - and found that he assaulted Heard on a dozen occasions and made her "fear for her life" three times.

"The court in the Sun case found that there was substantial truth in the allegation even though Amber Heard wasn't a party to that lawsuit - certain elements of the underlying facts might play out even in the Virginia court," Gutterman also said.

"It's already been so messy - and frankly, so disturbing - to see this play out in public, I would imagine the only end game he has is to try to restore his reputation," said Winter Wheeler, a mediator and arbitrator who previously worked as a litigator. "In my opinion, I don't think that happens from winning this case, if he does, in fact win."

"I think people have already made a decision about how they feel about him, and I don't think that that's going to change," Wheeler said. "Dragging your alleged victim back into court doesn't sit well with your average person."

"If I had to mediate this case, I would ask him, 'What are you really trying to accomplish here? Because ultimately, you're not going to walk away with a net positive,' Wheeler added. "It's just more people with their eyes on you."

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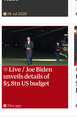

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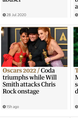

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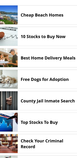

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