



Neutral Citation Number: [2006] EWHC 1996 (QB)

Case No: HQ04X03313

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/07/2006

Before:

THE HON. MR JUSTICE EADY

Between:

Paul McKenna
- and -
MGN Ltd

Claimant

Defendant

Desmond Browne QC and Manuel Barca (instructed by **Swan Turton**) for the Claimant
John Kelsey-Fry QC and Catrin Evans (instructed by **Davenport Lyons**) for the Defendant

Hearing dates: 10th to 19th July 2006

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE EADY

The Hon. Mr Justice Eady:

Introduction

1. This is a curious case in some respects. Much energy has been expended to very little purpose. The essential facts have gradually come to light since the claim was launched on 15 October 2004, through the familiar processes of disclosing documents and exchanging witness statements, and yet the battle has continued over tangential matters which might be seen, to the casual observer, to be far removed from the original allegation sued upon. No doubt there would have been various windows of opportunity for sensible compromise and setting the record straight. Yet the parties seem to have been determined to fight themselves to a standstill. The litigation has spawned a huge amount of paper running to some 15 lever arch files and the costs are no doubt massive on both sides. Even during the trial the Internet was being plundered without mercy. What all this has achieved is open to question, and no doubt the costs judge will in due course have the concept of proportionality in mind.
2. The Claimant is Mr Paul McKenna (his preference is not to be addressed as “Dr McKenna”). He is a hypnotherapist who has become widely known through the publication of what are obviously popular and reasonably accessible publications on “self help” in areas such as slimming, coping with stress and giving up smoking, as well as through television. Although in the past he devoted much of his time to using hypnosis as a form of entertainment, more recently the focus has been upon the production of self help video and audio tapes and the teaching of hypnosis.
3. I should make clear at the outset that in these proceedings no criticism has been levelled at his competence or integrity in this context. It is accepted that he has been very successful in the practical application of hypnosis. In the course of the trial reference was made to earlier tributes paid to his work in this field. For example, Dr C J Pattinson, a consultant psychiatrist, referred to his successful application of hypnotic techniques in relieving disabling psychological symptoms and the fact that he had (in the mid-nineties) begun training doctors in the use of such techniques. Also, Ms Mandy Langford, who had been principal of the UK College for Complementary Health Care, spoke of his “notable contributions in the furtherance of hypnosis as an invaluable tool for therapeutic interventions” and stated that his skills were valued “by both medical and complementary sectors”. No doubt many other tributes could be cited from those who have appreciated Mr McKenna’s services over the years. He advises many well known companies and professional firms which I do not need to identify. I simply record that no attack has been made on his practical skills or on the value of his services. The case has been concerned only with one narrow aspect of his career.
4. For some years, between 1997 and 2003, he was from time to time the subject of comment in various newspaper columns by a journalist called Victor Lewis-Smith, which seem to have been largely written in collaboration with a long time colleague called Paul Sparks (who gave evidence in this trial). He too has a PhD (being a specialist in the Neapolitan mandolin) and also prefers to be addressed as “Mr”. They returned regularly to the theme that Mr McKenna had obtained a post-graduate degree from an institution in Louisiana, at one time known as La Salle University, which later changed its name and eventually went out of business. It was owned by the World Christian Church, which had been incorporated in 1989 under the laws of

Louisiana. The moving spirit was one Thomas Kirk. Mr Lewis-Smith referred to the degree as “bogus” and made the allegation on a number of occasions that La Salle degrees could be obtained merely in exchange for the payment of money. The last straw, it appears, was an article appearing in *The Mirror* on 18 October 2003 published by MGN Ltd under the heading “It’s a Load of Doc and Bull”. Despite this background, neither of the two individuals has been made a defendant in this litigation.

Mr Kirk pleads guilty

5. In order to make sense of the dispute, I should at this point set out a brief summary of the unusual developments concerning the university in 1996. Its President, Mr Thomas Kirk, was under investigation by the Federal Bureau of Investigation over suspected fraud. There was an FBI raid on the premises in July 1996 and eventually, in November of that year, he entered a plea of guilty on the basis that he had misled students into believing that the institution was accredited for the granting of degrees when, in truth, it was not. What he had apparently done was to create a fictitious accrediting body in 1992 with the title of the Council on Post-Secondary Christian Education (“COPCE”) and an address in Washington DC. In its name a certificate of accreditation was issued to La Salle in January 1994 purportedly covering the next five years. The Defendant suggests that this did not display on Mr Kirk’s part great confidence in his university’s capacity to achieve accreditation by more conventional means.
6. As it happened, it was also in November 1996 that Mr McKenna was granted his doctorate of philosophy (*magna cum laude*). He was unaware of this inauspicious development concerning Mr Kirk, however, for some months thereafter. In fact, he only discovered what had been going on after he read an article by Mr Lewis-Smith in April 1997 and then made contact with the university. In the meantime, a letter had been sent out to inform students of what had happened but, for one reason or another, it did not come to Mr McKenna’s attention until he made contact with the university in the circumstances I have described. It was never put to him that he was lying about his state of knowledge in this respect.
7. He was, as he explained in the witness box, one of many innocent victims of Mr Kirk’s misrepresentations. Indeed, as the Department of Justice had explained to the House of Representatives’ Committee on Banking, “La Salle defrauded unsuspecting students by leading them to believe that they were accredited”. Along with others, Mr McKenna submitted a claim form for compensation to the United States government in January 1998, because he recognised that his degree had been devalued by the revelation that the university had not been accredited. In due course, he received compensation but only a proportion of the fees he had paid out. So why (asks the casual observer) is he suing? Because, despite all this, he does not accept that the degree was completely worthless or “bogus”.
8. The university carried on its activities, quite lawfully, for several years thereafter, despite this unfortunate hitch, and no proceedings were taken against it or indeed any other individual associated with it. It applied for accreditation, which was a matter still being considered at the time it went out of business in 2001. Meanwhile, it had been awarded a temporary licence. It is also of some interest that a witness statement from one of the Defendant’s solicitors, producing some of her research from the

Internet, showed that La Salle had been included in statistics collated by the National Centre for Education Statistics (a federal body), which recorded the fact that in 1994-1995 it had granted six doctorates in hypnotherapy. No suggestion was apparently made that these were in any way invalid or did not “count”.

Accreditation in the United States

9. The notion of “accreditation” in the context of university degrees is by no means as straightforward as one might imagine. There is no federal system. Practice varies, so I understand, from state to state. There are a large number of private bodies who take responsibility for investigating institutions and, where appropriate, giving accreditation. It is by no means an essential pre-requisite for granting degrees, although it is plainly an important factor for the purpose of recognition by other academic institutions in the United States and by potential employers. Mr Kirk’s problem was not that he, or the university, had been granting degrees unlawfully, but rather that he had been pretending that the institution had been accredited for the purpose when it had not.

The words complained of

10. In the light of that very brief summary of the background, I return to the article complained of. It contained the following allegations:

“DID I ever tell you about my PhD, researching into why it is most people never finish their PhDs? Sadly, I never finished it, but I’m now hard at work on another PhD, this time trying to find out how Roald Dahl got his ‘n’ shot off in the war.

Apparently, old Ronald was flying a Spitfire over Dunkirk, when bally Jerry got him right between the ‘o’ and the ‘a’. Tragic business.

This talk of doctorates reminds me that I once gave stage hypnotist Paul McKenna short shrift (well, I foolishly washed my shrift, and it shrank), because some years ago his publicity material began boasting that he’d acquired a PhD from Lasalle University in the US. He had, but it wasn’t from the well-respected Lasalle University in Philadelphia.

I discovered that his doctorate had been awarded by another Lasalle University, an obscure degrees-by-post establishment based in Mandeville, Louisiana. And when I rang the ‘university’ switchboard I discovered that anyone could be fully doctored by Lasalle within months (no previous qualifications needed), just so long as they could answer the following question correctly: ‘Do you have \$2,615, sir?’

At about the same time, the ‘principal’ of the ‘university’ (Thomas James Kirk, aka Thomas McPherson) was being investigated by the FBI, and later pleaded guilty to federal

fraud charges. Soon after, Mr McKenna's publicity material suddenly removed all mention of his PhD.

However, I now have good news for the academic world. Earlier this year Mr McKenna obtained a genuine PhD from a genuine business school, and can now legitimately refer to himself as Dr McKenna. I like to think that my exposure of his bogus degree gave him the impetus he needed to start studying for a genuine one, but sadly I've had no letter of thanks from him. That's gratitude for you.

But his newly-acquired doctorate shouldn't blind anyone to the fact that the man made his name by reviving on TV the sort of distasteful and humiliating acts that were banned in this country's theatres in the 50s.

Nor that he made a career out of taking impressionable members of the audience and coaxing them into making embarrassing exhibitions of themselves on stage.

Doubtless, Dr McKenna will now claim that his work has always had a serious medical basis, but the shows I've watched have had little to do with science. No, they were variety shows that (like his first bogus degree) were a matter of con-science.

By the way, a friend told me yesterday that his mother had just finished a worthy PhD about dyslexia. 'In that case, surely it should be called a DhP?' I replied. He left me there in a pool of blood."

Anyone who manages to get through the article will realise that it was intended to be humorous and not taken too seriously. Indeed, that is confirmed by the editorial "plug" at the top of Mr Lewis-Smith's column: "He's midway between East Ham and Upney – He's Barking".

11. Only the paragraphs in italics are complained of as defamatory. They need to be read, however, in context. The Claimant does not complain of the suggestion that he subjected members of his audience to "distasteful and humiliating acts". That is a distinct and severable allegation, which he is therefore entitled to exclude from the present enquiry: see e.g. *Polly Peck (Holdings) plc v Trelford* [1986] QB 1000. Equally, of course, in so far as that allegation may have caused injury to his reputation, he is not entitled to claim compensation for it in this litigation.

The nature of Mr McKenna's complaint

12. The meaning pleaded on the Claimant's behalf emerges from paragraph 4 of the Amended Particulars of Claim, namely that:

"The Claimant had (until his exposure by Mr Lewis-Smith) fraudulently boasted in his publicity material that he had a PhD whilst knowing full well that it was bogus, since he had

obtained his doctorate from La Salle University in Louisiana by post and merely in return for the payment of money”.

13. Mr McKenna complained shortly after publication about these allegations which he found offensive and distressing. He apparently knew the then editor of the newspaper, Mr Piers Morgan, who soon became aware of the complaint and his attitude was revealed in an e-mail sent to Mr McKenna on 27 October 2003, when he simply said:

“Paul, you know what Victor is like. He’s leaving us in a couple of weeks and if you want my honest advice I wouldn’t worry too much – nobody takes what he says too seriously. But if you want to pursue it legally I fully understand”.

Mr McKenna was not prepared to leave it at that. He clearly took him more seriously than Mr Morgan.

14. There is no doubt that Mr McKenna’s attitude throughout was that all he wanted was *The Mirror* to put the record straight; that is to say, to acknowledge that he had not simply obtained his degree in exchange for money and that he had not been fraudulent. The issue in this case is not what Mr Victor Lewis-Smith, or anybody else for that matter, thought about La Salle University or its academic standing. What the Claimant wanted to have recognised was that he had submitted work, and obtained exemptions, in order to comply in good faith with the university’s requirements for granting a doctorate in hypnotherapy. That simple fact the Defendant was never prepared to acknowledge. Its attitude over the course of this litigation has been intransigent. There has been a good deal of arm chair machismo, as evidenced by a letter of 11 March 2004 in which Mr McKenna was warned by the in-house lawyer “... that he has picked the wrong fight, about the wrong article, and with the wrong newspaper”.

The shifting nature of the Defendant’s case

15. When it came to formulating its defence, on the other hand, the newspaper’s stance has, to say the least, fluctuated. The nature of *The Mirror*’s case has chopped and changed. There have been at least three versions. Prior to the commencement of litigation, the initial response by letter of 31 October 2003 was not that the allegations were true but that the article had not been defamatory. That was plainly untenable.
16. Next, the position was adopted that the degree was bogus, although it was not suggested that Mr McKenna *knew* it was bogus. The in-house lawyer wrote on 6 February 2004 to the Press Complaints Commission, which was Mr McKenna’s first port of call, making the observation that the United States Department of Justice would hardly give people like Mr McKenna compensation if his degree was genuine rather than “bogus”. That was to an extent consistent with Mr McKenna’s own position, since he considered himself along with many others to have been an innocent victim of Mr Kirk’s fraudulent activities. He plainly believes, on the other hand, that his degree was far from worthless, and firmly rejects any suggestion that he was fraudulent or dishonest in any representations that he has made in the course of promoting and selling his products. It is important to have in mind, as Mr McKenna

frankly accepts, that he had no academic background or experience and was not in a position to make any independent judgment about the quality of the university or its academic credentials before he signed up for the course in July 1995. In any event, he maintains that what he produced to the university was of value and worthy of recognition.

17. His determination to obtain genuine academic recognition for his work is borne out by the fact, which Mr Lewis-Smith expressly acknowledged, that subsequently in early 2003 he acquired a doctorate from an accredited British institution known as the International Management Centres Association. His work on this occasion was reviewed by Dr Robert Parkinson (an occupational psychologist from the London Guildhall University) and Dr Brian Edwards CBE (a Professor at Sheffield University). It is no part of the Defendant's pleaded case to rubbish that achievement.
18. By the time the defence was served in its original form on 25 February 2005, there was a plea of justification on the basis that the La Salle degree was bogus and that there were reasonable grounds to suspect that Mr McKenna knew it was so. The Claimant's advisers applied to strike out the "reasonable grounds" meaning since the article obviously went further than that. The Defendant recognised the difficulty of its position, withdrew the defence and agreed to pay costs.
19. An Amended Defence was served on 27 July 2005. This time the plea of justification was on the footing that the Claimant publicly claimed to have a doctorate "whilst either knowing it was bogus or being reckless as to whether it was bogus". The case it sought to present was thus different from, and rather more sophisticated than, that put forward by Mr Lewis-Smith in his article. It seemed to be that Mr McKenna ought to have appreciated from his experience with La Salle university, and the process leading up to his degree, that it was bogus and that, accordingly, he was reckless in claiming thereafter to have a doctorate of philosophy.
20. The fate of this plea was similar to that of the first; the meaning based on "recklessness" was struck out by consent at a hearing before me on 10 May of this year. Finally, the defence crystallised in the form which fell to be determined at the trial. It was sought to justify the meanings that the Claimant publicly claimed to possess a doctorate whilst knowing it was "bogus" and that this claim was made to enhance his credibility at a hypnotist. The case is unusual in this respect, in the sense that often media defendants will become more timorous as the trial approaches, rather than less. Here, on the other hand, the Defendant's position has become firmer – at least so far as the *Lucas-Box* meaning is concerned. As to the underlying particulars, however, the case has in an important respect gone into reverse.
21. It was part of the Defendant's case until 10 May that degrees from the university could be "obtained by post merely by payment of the 'course' fee". The university was characterised as "a diploma mill", which is an expression apparently used in the United States to signify an institution which simply churns out diplomas or degrees in exchange for money. Obviously the inverted commas around the word "course" were intended to convey that the fee was paid without any actual academic course being offered in return.
22. That very clear statement of the Defendant's position at least explained why it was being maintained that the degree was "bogus" and would, as a matter of fact, also

have led to a ready inference that the Claimant must have known that a degree which was merely “bought” was of no academic value. Yet, despite adopting the straight allegation of dishonesty for the purposes of the *Lucas-Box* meaning, the Defendant has now toned down the allegation about the nature of Mr McKenna’s degree. It is no longer suggested that the degree was obtained “merely” by payment: rather the case now is that it was obtained “*in effect* by payment of the ‘course’ fee”. In a libel defence the formulation “*in effect*” naturally rings loud warning bells. It would suggest that the publisher recognises that the article got it wrong but wishes to argue that it was “more or less” right. The reason why the Defendant finds itself in this delicate position is not far to seek.

23. Whereas Mr Lewis-Smith originally claimed to have had a telephone conversation on 16 April 1997 in which he was told by a La Salle representative that he could obtain a PhD within a month just so long as he could pay \$2,615, this turned out to be untrue. Mr Lewis-Smith had no such conversation. Although it is true to say that his colleague and collaborator Mr Paul Sparks did speak to someone at La Salle on the relevant date, his evidence does not bear out the claim that they would offer a degree simply in exchange for a cheque. He was given a figure supposedly representing the cost of the PhD course but not actually told that no work was required. Mr Sparks is firmly of the view that La Salle degrees were bogus anyway, since the standards to be achieved were too low. But that is a separate point. What is more, his view is not adopted by the Defendant whose counsel expressly disavowed any suggestion that one of the former La Salle faculty members who gave evidence, Dr Dale Norris, was other than genuine in his supervision and assessment of students in 1996-97. Another witness was Dr Nemecek, who explained how he had obtained a La Salle doctorate and still used it: yet he was not accused of being dishonest or of having a bogus degree either.
24. Having had the advantage of disclosure of documents, and the exchange of witness statements, the Defendant now would appear to accept that there was something more to obtaining the degree than handing over a cheque but, it is said, the position was to all intents and purposes just the same. That is to say, in so far as there was any submission of work by the candidate or any assessment by members of the university’s staff, it was purely a sham. It is, however, essential to prove that Mr McKenna realised that it was a sham. It will not suffice simply to show that he was naïve and taken in by La Salle.
25. It would have been relatively straightforward to prove that Mr McKenna’s claims to have the benefit of a PhD degree were false if indeed “he could obtain a doctorate merely by sending payment for \$2,615”, as originally claimed, but since the issue has now become whether or not the process of granting the degree was *tantamount* to this the parties’ efforts have been directed towards persuading the court to make a value judgment on the worth of the material submitted and upon the process by which it was assessed. It is in this context that reliance has been placed by both sides upon expert evidence. This was defined by the Master’s order by reference to expertise in the tertiary education system operating in the United States generally – not, be it noted, by reference to expertise in the field of hypnotism or medicine.
26. The experts were introduced to assist the court to come to a conclusion on the proposition that “in so far as course work or dissertations were submitted, if they were assessed at all, they were not subject to proper assessment”. This proposition is to be

found in paragraph 6.10 of the Re-Amended Defence. It is important to remember, however, that the ultimate object of the exercise is not to demonstrate what either of the experts thought about the quality of the work, or for that matter for the court to assess its quality, but rather to prove that Mr McKenna was dishonest in making claims for his degree while knowing perfectly well that it was worthless or “bogus”. His perception, at the various stages that are material, is therefore critical.

Mr McKenna’s state of mind when he enrolled at La Salle

27. In this context, it is important to have in mind that when he initially applied to the university to be admitted for the PhD course, in March 1995, his application was rejected by the Admissions Director, Ms Barbara Moore, in these terms:

“Based on your previous academic work experience, and life experience we have determined your background is not sufficient to enrol in the program in which you expressed an interest”.

A few days later she suggested a more modest target for Mr McKenna; that is to say, “an Associate of Science Degree in General Studies”. There was nothing surprising about this since Mr McKenna’s academic achievements at this time consisted of three ‘O Levels’. He did not have a first degree – let alone a postgraduate degree such as an MA or MSc. He nevertheless believed that he had achieved so much in his life, despite the absence of academic credentials, that he was ready to embark upon a doctorate. Mr McKenna therefore set about the task of persuading the university, contrary to first impressions, that he was indeed worthy of enrolment for the PhD course. It is thus reasonable to conclude, at least at that stage, that he did not consider the process to be simply a matter of sending a cheque.

28. What he did was to submit a copy of his popular book *The Hypnotic World of Paul McKenna*, published in 1993, and some of his audio and video tapes to show his achievements in hypnotherapy. I am told that the book was a joint work between Mr McKenna, Dr Hugh Wilbourn and Ms Clare Staples, but that the ideas were those of Mr McKenna. Ms Staples told me that she merely corrected his spelling and grammar for him. The position about Dr Wilbourn’s part in the book is less clear. In paragraph 93 of his witness statement Mr McKenna said that his contribution to the audio and video tapes was 50 per cent. In his second witness statement, he explains that he wrote the scripts in collaboration with Dr Wilbourn, who had “better organisational and language clarity skills”.
29. By 14 July 1995, when he signed up for the PhD course, he had clearly persuaded the university to relent. This may seem puzzling to the uninitiated, since it might appear to be in the very nature of a postgraduate degree that those aspiring to it will at some stage have graduated by one means or another. It is thus important to understand the notion of “prior learning” or “credentialization”.

Mr McKenna’s “prior learning” applications

30. For many years now, and particularly since the second world war, arrangements have been in place in the United States for those aspiring to a university degree to be credited with points to recognise life experiences or achievement which can be

deemed equivalent to certain levels of formal academic qualifications. For example, those returning from war service were allowed to take part in tertiary education by substituting life experience for examination grades. This has become a very sophisticated operation as years have gone by. Since 1974 there has been a supervisory body called the Council for Adult Education Learning (known as “CAEL”). This publishes a guide book on the assessment of “prior learning” for obtaining exemptions from formal academic qualifications. La Salle followed this guide. This process can apparently be used either when obtaining entrance to a university course or for the purpose of obtaining exemptions from certain parts of the course itself.

31. La Salle University published a document setting out the requirements for a PhD in hypnotherapy, which included an option for obtaining the equivalent of 156 units by work or life experience assessment. Mr McKenna wished to take as much advantage of this as possible by obtaining credit for his past work and experience. He has been criticised for this on the basis that he was not seeking to widen his horizons or obtain educational benefit from the course, since he was trying to by-pass as much of it as possible. Indeed, there is one document which suggested that Mr McKenna was trying to have *The Hypnotic World of Paul McKenna* accepted as the dissertation itself – thus avoiding even that stage of the process. Yet there was nothing dishonest about it. He was only seeking to take the university at its word. It was up to the assessors to decide whether he merited the credits by judging his past achievements. All this, however, undoubtedly supports Mr Kelsey-Fry’s proposition that what Mr McKenna was really interested in at that stage was obtaining the “three letters” (PhD) after his name rather than self-improvement, following an academic course of study or conducting original research. The acquisition of a doctorate would serve him well commercially, so it is said, especially in the American market.
32. Nobody disputes that the notion of “prior learning” or “credentialization” is widely used nowadays to offer wider opportunities for higher education (although the use of the word “credentialization” itself appears not to be so wide-spread). The practice was by no means confined to La Salle. But one of the points taken by the Defendant’s expert, Dr Steele, was that it was unusual in his experience to find it used for access to a postgraduate course; in other words, not for the purpose of gaining access to a first degree course but to enable someone to leapfrog from three ‘O Levels’ to a doctorate.
33. Mr Browne invites me to treat Dr Steele’s approach to “prior learning” as academic snobbery, but I think that would be simplistic. Much work was done by Mr McKenna’s legal advisers to research how many institutions in the United States offered credits for prior learning in one form or another, but what is relevant to this dispute is how many offer it in the context of a PhD. The Defendant’s researches led to a detailed and more focussed schedule which indicated that, of the institutions identified by Mr McKenna’s solicitors, only one appeared to qualify in this respect. This very much confirms the impression of Dr Steele. (It is fair to record that Mr Browne said that he had not had time to study it properly and it did not therefore receive a considered response. But he did not ask me to exclude it and it certainly appears to show what is claimed for it.)
34. Part of the thinking at La Salle seems to have been that his previous work, and especially *The Hypnotic World of Paul McKenna* (albeit jointly written), equated to a Master’s degree. Dr Steele does not agree with that assessment. He does not regard it

as a work of scholarship; nor indeed does it claim to be. He is entitled to his opinion, just as he is entitled to take the view that the audio-tapes submitted for his final project or dissertation at La Salle were not truly comparable to a PhD thesis. Mr McKenna's own expert, Dr Ruden, who thought the tapes contained good and original ideas (linking hypnosis with neuro-linguistic programming and learning theory), recognised that the project would have benefited from proper supervision. In the end, however, this case is not about the quality of the work submitted. It is about whether the whole exercise was a charade, and if it was, whether Mr McKenna was aware of this. As Mr Browne submitted in his closing remarks, "... any perceived lack of academic rigour at La Salle ... cannot, without more, be probative of dishonesty on the part of the Claimant". That is the nub of the case.

Mr McKenna's present state of mind

35. One of the clearest indications of Mr McKenna's sincerity (and perhaps also of his naivety) has been the determination with which he has pursued this claim.
36. It was quite apparent while he was in the witness box that Mr McKenna was not trying to hoodwink the court. He was determined, indignant, and manifestly proud of his work (whatever anybody else may think of it), which he regards as original and as having made a practical contribution to improving the lives of many people. Whether it is appropriate to characterise it as scholarship worthy of *academic* recognition is another matter. No doubt many would think not. But one thing which is entirely clear to me is that Mr McKenna to this day does not believe it was bogus or that he misled anyone in allowing himself to be referred to as a "PhD". It is always necessary, when assessing his state of mind, to recall just how little he knew about the academic world. In his written statement, he said:

"I decided to undertake a doctorate partly because I had already attained a certain level of knowledge in hypnosis and hypnotherapy and partly because I wanted to build and develop the studying that I had previously undertaken and achieve some academic success, particularly as my school grades were disappointing. My understanding was that a PhD is awarded to recognise a contribution to science and to benefit the community as a whole and I was advised that this would add value to my private practice and business. I also wanted my study to result in something that would have practical therapeutic benefits so that seemed like the most appropriate form of qualification to try to achieve.

At the time I decided to study for a PhD, I had little knowledge of how the academic world works either here or in the US. But I knew that having a PhD was something that was well respected and wanted to focus myself towards obtaining such a qualification belatedly to achieve some academic recognition for the learning and experience that I had already achieved from years of study and experience. I also understood that a PhD qualification would be commercially valuable to me in America."

At the trial he said that he had not at that time quite appreciated the high status of a doctorate, although he vaguely thought that a professor or emeritus professor would have ranked higher. He was obviously not comparing like with like.

The irrelevance of whether hypnotherapy is suitable for a PhD

37. As a matter of fact, Dr Steele believes that hypnotherapy is not a subject worthy of academic recognition in the form of a doctorate at all. He regards it as impressionistic or inspirational rather than involving the application of rigorous scientific method. Again, he is fully entitled to that opinion. As I have already indicated in argument, I do not regard that question as justiciable. There is no doubt room for differing opinions. I note in passing that Mr McKenna said that, as far as he was aware, La Salle was the only American university offering at that time a PhD in hypnotherapy. That is at least consistent with Dr Steele's impression. This debate, however, is far removed from the thrust of Mr Lewis-Smith's memorable barb:

“And when I rang the ‘university’ switchboard I discovered that anyone could be fully doctored by La Salle within months (no previous qualifications needed), just so long as they could answer the following question correctly: ‘Do you have \$2,615, sir?’”.

It was obviously intended as a witticism but, unfortunately, it also conveys a factual assertion. That is simply untrue.

38. Had Mr Lewis-Smith confined himself to the message that the doctorate had been awarded by “an obscure degrees-by-post establishment”, he would have had a defence of fair comment available. In any case, Mr McKenna would probably not have sued. The proposition may be offensive and unflattering, but La Salle was obscure and, since it operated a system based on “distance learning”, it would appear that “degrees-by-post” is a legitimate description. He could have expressed the view that hypnotherapy was not a suitable subject for a PhD, and that would probably not have been defamatory at all. Similarly, he would have been entitled to comment on the quality of the work submitted (had he been able to see it) or on the short time within which such a degree could be obtained. Mr McKenna, on the other hand, does not accept that he was dishonest. Nor does he regard the degree as “bogus”.

Evidence from La Salle alumni or former staff

39. I heard evidence from John Nemecek who is currently an associate professor at Spring Arbor University, Michigan, where he teaches both undergraduate and graduate students. There is a mix of distance learning and face to face teaching. It is an institution accredited by the North Central Association, although not yet for the granting of PhD degrees. In the course of his career he has been associated in one capacity or another with a number of American universities which were accredited.
40. He was also awarded a doctorate at La Salle, which he earned by compliance with the La Salle academic requirements, including the submission of a dissertation. This has apparently been recognised by Spring Arbor and he stills calls himself “Dr” Nemecek. In his view the standards at La Salle were comparable to those at the other universities of which he had experience. He accepted that he gained his doctorate within a year,

which he explained by three factors in particular: credentialization, being able to write well and having the capacity to read fast. It is interesting that despite being given some credits for credentialization he insisted on actually doing two of the courses by means of curriculum study in order to gain better grades. It was his view that the lack of accreditation did not adversely affect standards at La Salle. That is inevitably to some extent a subjective assessment. What his evidence clearly confirms, however, is that the process was not a charade and that more was required than the mere payment of cash. As I have already recorded, Mr Kelsey-Fry did not accuse him of dishonesty. There was no basis for doing so, and yet it is not easy to reconcile that with the Defendant's case.

41. It was, for example, submitted at paragraph 14 of its skeleton argument for the trial that, even if Mr McKenna did not know that his PhD was bogus at the time he completed the course, "he must have known at the latest in December 1996 when students and alumni were told about it". If that argument is valid for Mr McKenna, it would surely hold good for all alumni including those who gave evidence.
42. So too, I heard from Mr Orlowski who had also obtained a doctorate from La Salle in the mid-nineties. His field was engineering and he had acted in the capacity of an expert witness in motor accident cases in various courts in the United States. He applied to La Salle in 1994 and duly received exemptions through the process of credentialization from the course requirements except that he had to take the compulsory paper on religious studies and to produce a thesis or dissertation. He was a student for over three years before obtaining his doctorate. This was because he was working and therefore not able to devote himself full time to the La Salle requirements. There were periods when he had to put that work aside. The content of his final paper was published in 1995, the year after he registered as a student, as part of a book. La Salle was aware of this and no objection was taken. The subject of his thesis was an analysis of how trucks are affected by shifting cargo loads. This evidence also confirms that the obtaining of his degree was not a mere formality. It was no part of the Defendant's case to accuse Mr Orlowski of dishonesty either.
43. The last witness to give evidence was Dr Dale Norris. He is currently Assistant Professor of Education at the Nicholls State University, which is accredited by the Southern Association of Colleges and Schools. The significance of his evidence is that he was for a relatively brief period (about 18 months starting the summer of 1996) a part-time member of the staff at La Salle. He was able to confirm the accuracy, in essential respects, of the student brochure of the time as to its description of the buildings and layout of the university. He was invited to do this because Mr Sparks suggested that even the brochure might have been a fictitious document generated by Thomas Kirk as part of his fraud. This was not adopted by the Defendant as part of its case. Nor had it adopted Mr Sparks' assertion (in an e-mail of 23 January 2004) that, when the FBI raided La Salle (in July 1996), they found it consisted of one person, "a woman with no academic qualifications whatsoever (except a La Salle degree)". It was clearly not true. Mr Sparks was entitled to be cynical but it is important that he had no direct knowledge of these matters. In this respect, he was speculating. Dr Norris, on the other hand, gave evidence based on his own experience.
44. As I have already noted, it was not put to him in cross-examination that La Salle was "bogus" or a "diploma mill". Indeed, Mr Kelsey-Fry very fairly expressly made clear what his client's position was:

“Dr Norris, let me make it clear that I have absolutely no reason to doubt that you discharged your duties quite properly; can I make that clear? ...

No reason to doubt that you ensured that your students undertook the proper academic studies and courses and produced, where appropriate, proper work”.

45. I had no difficulty in accepting Dr Norris’ evidence, which was consistent with that of Dr Nemecek and Mr Orłowski. He confirmed that he supervised his students and critically appraised their work. There was a significant proportion of students whose work was rejected. While that may arguably reflect on La Salle’s admissions system, it clearly confirms that it was not prepared to grant degrees merely in exchange for the payment of cash.
46. Dr Norris’ name (although not his signature) appeared on the letter of 17 June 1996 which informed Mr McKenna that his proposal for his final project was not sufficiently particularised to justify acceptance at that stage. Dr Norris had no recollection of this, 10 years on, but thought it likely that he would have looked at the proposal and rejected it himself. This would have been one of the earliest assignments he was given after joining the staff. He was asked why he was asked to assess a project on hypnotherapy since that was not his field of expertise. He answered that there were certain structural and design criteria which were applicable to dissertations in almost all subjects. As I understood his evidence, he was saying that he was in a position to make an assessment of the structure, layout, design or presentation for the purpose of deciding whether a particular project was likely to be acceptable without having to go into the specialist content.
47. This was, of course, the second rejection Mr McKenna had received from La Salle. His enrolment application had originally been rebuffed just over a year before in March 1995. It was undoubtedly another factor which confirmed to Mr McKenna that La Salle was being critically selective in its approach to degrees and degree courses. He was firmly under the impression that he needed genuinely to meet certain criteria.

The extent of supervision offered by La Salle

48. In so far as it matters, one of the weakest parts of Mr McKenna’s case was that designed to demonstrate that La Salle offered him supervision and guidance for his final project that was appropriate to a PhD thesis (as he always believed). No doubt in this day and age electronic communication is such that supervision could be provided by “distance learning” and some universities in the United States do operate on this basis (for example, Capella, North Central and the University of Phoenix). But the reality in this case emerges from the evidence of two people in particular. I have already mentioned Dr Ruden’s acceptance that the work apparently lacked supervision and guidance. The other witness, however, was the very person who was supposed to have offered the relevant guidance. He had been practising as a hypnotist since 1960, but had no academic background. There is no need for me to give his name in this judgment. One can have considerable sympathy with him for having been brought out of retirement, no doubt somewhat reluctantly, to participate in foreign litigation. That said, his evidence was clearly an embarrassment. Mr Browne readily conceded that it was “unsatisfactory”.

49. He was apparently first approached by the solicitors for the Defendant. A telephone conversation on 9 March 2006 was taped (without his knowledge) in which two solicitors from Davenport Lyons were trying to find out what he knew or remembered about his supervisory role. He told them that he had spoken to Mr McKenna once over the telephone by way of introduction and then had nothing further to do with him. He was called at the trial, on behalf of the Claimant, in order to give evidence by video link. Before he was confronted in cross-examination with this telephone transcript, he had said that so far as he could remember he had spoken on average to Mr McKenna twice a month for six months to a year. (It cannot have been for as long as a year because he was only named to Mr McKenna as his guide or supervisor in December 1995 and the tape project was completed by the following summer.) In his written statement, he had merely referred to “several times during 1995 and 1996”.
50. When he was shown the transcript and given the opportunity to read it, he appeared to suggest that he had been lying to Davenport Lyons because he just wanted to get rid of them. This lacked conviction, especially since at one stage he complained that he had been misled into thinking that they acted for Mr McKenna. Another variation on the theme was that he had not lied to Davenport Lyons but had rather given them his best recollection at the time. If that is so, it undermines his present account to some extent at least. No explanation was given at the trial as to how he could give such widely differing accounts. Subsequently, however, on 25 July I received a short statement from him which I was invited to take into account. He explained that on 9 March he was still going through a great deal of pain following a knee operation in February. By the time of the trial, he had recovered and had called to mind the details which he had not immediately remembered at the time of the telephone call.
51. Mr McKenna’s own evidence about this witness’s role is somewhat vague. He said “I remember him being very knowledgeable in hypnosis, and found his softly spoken guidance over the telephone of great assistance in my studies and writing my dissertation and coursework”. He recalled regular or “many” conversations which he found useful. I think his recollection is probably at fault here. There was a last minute alteration to his statement on 5 July, when it was said in correspondence that Mr McKenna could no longer be sure that his conversations about his past work and learning were with this witness. This was by way of correcting paragraph 68 of his first witness statement, but it reveals in my view a more general vagueness of recollection about the role of the witness. Yet I should make clear that Ms Staples also had a memory of regular telephone contact with *someone* at La Salle.
52. It is to be remembered that the witness had only received his La Salle doctorate himself in 1995 before he was invited to call himself “Professor” and to offer guidance to other students. It seems that Mr McKenna was the only one allocated to him (apart from a “young lady” with whom he had never communicated at all). In other words, he had no experience whatever of teaching or supervising at the postgraduate level. Any services he was to give, in exchange for calling himself “Professor”, were to be rendered *gratis*. What he had was practical experience going back to 1960. Valuable though that may have been, it would hardly equip one for supervising a PhD candidate.
53. Like Mr McKenna’s, his own PhD had been obtained to a large extent by exemptions for life experience, although I was shown a copy of his final project on the subject of “Hospices, Hypnosis, Hospitals”. It would also, no doubt, be characterised by the

Defendant's witness as lacking in scholarly rigour but it is at any rate a genuine piece of work.

54. When he was asked whether he had received any written materials from Mr McKenna, the witness said that this had been purely to demonstrate his past experience – not for comment or advice on content:

“... different papers on his life experiences and his programs and some of the articles and something he had written and his performances over in London ... Just to enlighten me on his qualifications”.

He was not apparently invited to see the project itself (i.e. the tapes or any draft script) – or at least had no recollection of it. This lack of supervision or guidance obviously shows, as the experts appear to agree. It plainly reflects on the quality of what La Salle offered some of its students. It is also worthy of note that, although it would seem on paper that this supervisor had been appointed in December 1995, he did not over the next five or six months apparently offer sufficient guidance even to enable Mr McKenna to have his project proposal accepted by Dr Norris at the first attempt. In this respect, it seems, Mr McKenna had a raw deal. As Mr Browne submitted, “He cannot be blamed for the fact that appropriate supervision was lacking at La Salle”.

55. I accept that much work on Mr McKenna's part went into the preparation of his project, which was published in the form of the audio-tapes and seems to have been commercially successful. The transcript of the tapes, I am told, contained well over 50,000 words. The work was more or less complete even before the project was finally approved as being suitable, which happened in September 1996. It had on 17 June been rejected for lack of information. He was thus taking a chance in one sense in going ahead with it, but it was his intention to publish the tapes anyway – so they would not have been wasted. He was asked in cross-examination what would have happened if the subject had *not* been approved for the PhD final project, to which he replied that he would have chosen to submit something different. I do not consider this hypothesis useful. The fact is that the project was approved and, it appears, accepted by someone at the university as worthy of a doctorate.
56. Evidence in the form of a Civil Evidence Act statement was introduced from another witness in order, supposedly, to bear out the genuineness and quality of Mr McKenna's work. This witness did not wish to participate directly, and indeed was not keen for his name to be mentioned in the course of the proceedings, because he wanted to keep his former connection with La Salle University out of the limelight. I shall not embarrass him unnecessarily by using his name. The evidence was introduced by way of an account of conversations with him from a member of the staff at Mr McKenna's solicitors. It was all rather vague and I can attach very little weight to it. I understand that it was this witness's responsibility to decide upon the quality points to be attributed to Mr McKenna's previous work for the purpose of according him exemptions or credentialization in respect of the course work. He remembered receiving “two or more boxes of information” which he thought of high quality. He would not simply rubber stamp what was placed in front of him.
57. I understand that this gentleman was responsible also for the ultimate approval, in September 1996, of Mr McKenna's final project as a fit subject for that purpose.

Whether he was the person who also thereafter adjudged the content worthy of achieving the necessary standard is not clear. His own evidence does not state clearly that he did and it was obviously not explored in cross-examination. I am left therefore in a state of uncertainty as to who took on that responsibility. Mr McKenna certainly does not know. Of course, it may seem surprising that it is not a matter of record who granted him his “*magna cum laude*” and that he is not aware of it either. The fact remains that the Defendant has not discharged the burden of proving that it was either not assessed at all or “not subject to proper assessment”. Since the Defendant now accepts that some La Salle doctorates were properly assessed (e.g. in the case of Dr Nemecek and Dr Orłowski), I see no reason why I should assume that Mr McKenna’s was not. The probability is that it was subjected to some form of assessment by somebody. I can put it no higher.

The relatively narrow issues to be determined

58. The issues to be resolved are relatively straightforward:
- i) What do the words mean and are they defamatory?
 - ii) Has the Defendant proved to the civil standard that the defamatory allegation is substantially true?
 - iii) What is the appropriate sum to compensate Mr McKenna for hurt feelings and injury to reputation (assuming that he has been defamed)?

My conclusion on meaning

59. As to the first issue, I must apply the test that is well known from cases such as *Skuse v Granada Television* [1996] EMLR 278 and *Gillick v BBC* [1996] EMLR 267: see also *Gatley on Libel and Slander* (10th edn.) at paragraph 30.5. There is virtually no difference between the parties as to the real sting of the article. It means what it says. As counsel for the Defendant submitted in their skeleton argument, “... the true single meaning of the article in this action ... is that [Mr McKenna] presented himself publicly as having a genuine PhD, when he knew it was bogus. It is the act of relying on the PhD to present himself to the public in a false light which matters here”. I have no hesitation in upholding the meaning pleaded on the Claimant’s behalf: see paragraph [12] above.

The issue of justification

60. It is crystal clear to this day that Mr McKenna quite sincerely believes that the PhD, albeit unaccredited but lawfully conferred upon him, was earned by his own original work. He has no academic points of reference of his own against which to make a judgment about its value as original scholarship (as opposed to its practical use). His work either gained him exemptions from elements of the coursework, comprising the curriculum requirements for the La Salle doctorate, or was directly submitted as constituting the required “dissertation or final project”. This was defined by La Salle as “a physical creation such as a video or audio tape, a book, manual or other practical creation that illustrates a thorough knowledge of the degree major. The Dissertation must be accompanied by a written explanation of the purpose of the project and the methods by which it was created”.

61. It is equally clear that until he read an article by Mr Lewis-Smith in the *Evening Standard* in April 1997 it had not entered his head that his recently acquired degree was in any way suspect. His honesty can be judged to a considerable extent by what he then did. He contacted the university to find out what had been going on. What he did first was to make contact with the registrar, Gina Carroll, on 25 April 1997. He sent her copies of Mr Lewis-Smith's articles in the *Evening Standard* of 17 April and in *The Mirror* of 19 April. Her response was to point out that, although the university had not actually been accredited, it was "authorised by the State of Louisiana to grant degrees as a post secondary educational institution". On 29 April he contacted Sheryl Raybon, described as the Director of Operations at La Salle. She wrote a letter dated 6 May 1997 of which Mr McKenna sent a copy to Piers Morgan, the editor of the *Daily Mirror*. It was in these terms:

"Dear Mr McKenna

Per our telephone conversation on 4/29/97 concerning the news article(s) published in '*The Evening Standard*' and '*The Daily Mirror*', as well as your fax request dated 4/25/97, I submit the following response to the allegations noted.

Students enrolled at La Salle University do not simply "buy" a degree, they EARN their degree through credentialization or curriculum study. The programs are set up to be completed within 12 to 30 months depending on the chosen degree program. The programs contain Core Courses and Electives pertinent to the field of study and, in addition, each student must complete a paper or project, thesis, or dissertation prior to graduating and receiving a degree. All work or documentation submitted by the student is graded and/or verified by the University faculty and staff prior to a degree being awarded. Our student enrollment is approximately 15,000 in number, however, the actual number of degrees awarded is only approximately 5,500 – if you could simply "buy" a degree from La Salle University, wouldn't the number of graduates match the number of enrolled students?

With regard to the second allegation, "... *Mandeville's town map makes no mention whatsoever of the place having a university ...*", if Mr Lewis-Smith had taken the time to investigate more fully, he would have found that La Salle University is indeed located in Mandeville, Louisiana and has been at this particular location since January, 1994. The University grounds are located in the Beau Rivage subdivision, occupies several buildings in a two-block area and employs 75 people on a full-time basis. The University originally was housed in two buildings located at 630 Village Lane North (Communications) and 634 Village Lane North (Faculty & MIS). During the past few years, the University has added a mail processing facility located at 638 Village Lane North, purchased and renovated a building at 610 Lotus Drive North (Accounting, Student Finance, University Bookstore,

Recruitment & Public Affairs). Our facility at 620 Lotus Lane North houses our Executive and Administrative personnel and Human Resources. In 1995 the University built the World Christian Church (625 Lotus Drive North) which is used for employee training and seminars, as well as for the University's annual commencement ceremony. In addition, if Mr Lewis-Smith had done his 'homework' more thoroughly, a telephone call to the St Tammany Parish Clerk of Court in Covington, Louisiana would (will) verify the above information.

At this time La Salle University is not accredited. It is, however, authorized by the State of Louisiana to grant degrees as a postsecondary educational institution. Currently, La Salle is looking at the accreditation criteria of agencies and associations which are nationally based and are recognized by the U.S. Secretary of Education. La Salle University has engaged the Corporation for American Education (CAE)(Hawthorne California), an educational consulting firm, to assess La Salle's curriculum, management, organizational structure and processes in order to determine our accreditation options. La Salle University is currently listed in the 1995-1996 Directory of Postsecondary Institutions, Volume 1, 4-Year and 2-Year Institutions that is published by the U.S. Department of Education, Office of Educational Research and Improvement. I am enclosing a copy of the front cover of this book, as well as the Foreword and page 177 with the La Salle University listing circled. La Salle University is a member of the St. Tammany West Chamber of Commerce (see attached). Also enclosed is a letter from the Louisiana Board of Regents, information regarding accreditation from the Department of Education, and copies of "The Quarterly News" published by the University.

I hope that the information I have provided will aid you in your response to Mr Lewis-Smith and to the newspapers that printed his story. A copy of your fax and this letter has been forwarded to the University's Legal Counsel for review and response.

If I can be of further assistance, please contact me at (504)624-2972

Sincerely

Sheryl L Raybon

Director of Operations

Interim Director of Student Affairs".

Ms Raybon also copied the letter to the editors of the *Evening Standard* and *The Mirror*.

62. In sending a copy of this letter to Mr Morgan, it is apparent (a) that Mr McKenna was seeking to be as open as possible, and (b) thought the contents were a convincing refutation of Mr Lewis-Smith's allegations. Whether Mr Morgan read the letter, kept it on file or remembered the thrust of its contents six years later are questions which remain unresolved. It is suggested on Mr McKenna's behalf in his pleaded case that the Defendant knew the allegations complained of to be false and published them maliciously, and as part of a long standing campaign against Mr McKenna carried out by Mr Lewis-Smith (not himself a party to the litigation). This plea is directed solely at the aggravation of damages, since malice is in no way necessary to establishing liability. Nevertheless, if such an allegation is to be made, it has to be convincingly demonstrated and by reference to identified employees of the Defendant who had the relevant knowledge and/or intention. It emerged in the course of the hearing that it was being alleged that Mr Morgan had in effect conspired with Mr Lewis-Smith to publish false allegations and that the evidence relied upon to establish knowledge included the receipt of the Sheryl Raybon letter. It thus became necessary for the Defendant's advisers to establish contact with Mr Morgan (in America), he having been dismissed from *The Mirror* two years ago. In my view this was an unwelcome and disproportionate diversion from the main task. Yet, if it was to be maintained it would have to be dealt with fairly: Mr Morgan and Mr Lewis-Smith must be given the opportunity to refute the conspiracy theory.
63. Be that as it may, I am primarily concerned with Mr McKenna's perception. He had no doubt about the worth of his degree until he learned about the Thomas Kirk affair in 1997 and discovered that the degrees had not been accredited. He did not personally refer to his degree after that because he felt that it had been tarnished. That is the main reason why he set about achieving his second doctorate. He nevertheless continued to value the achievement, as he saw it, and he did not regard the lack of accreditation as fatally undermining the qualification. Mr McKenna accepts that reference continued to be made in some of his books and other products to the PhD from La Salle (albeit without identifying the institution which had granted it). As I understand the evidence about the tertiary system in the United States, accreditation is not an essential prerequisite for the granting of degrees. It was the unchallenged evidence of Dr Norris that the system is voluntary. In that context, therefore, it would not necessarily amount to a representation of accreditation merely to claim to have a PhD. There is no central accrediting body to which readers of Mr McKenna's literature would naturally assume any such claim was referring.

“La Salle's terminology: A recipe for confusion”

64. Mr Browne headed a section of his closing submissions as “La Salle's terminology: A recipe for confusion”. The object of this was to demonstrate that Mr McKenna could have become confused in his accounts of what he did, and was required to do, for his La Salle degree. He considered himself entitled to say that he had complied with the “coursework” requirements by one of the available options (i.e. credentialization). He was not “exempted” from coursework but should be regarded as having carried it out by means of credentialization. He did not complete his coursework by curriculum study, but he completed it nevertheless.
65. There does appear to have been a somewhat flexible terminology. For example, sometimes the dissertation element was referred to as a “core course” and sometimes

it is used as though it were separate from the coursework. Also, it appears that the term “coursework” has sometimes been confused with “curriculum study”.

66. Mr McKenna received an undated letter (probably towards the end of 1996) from the Registrar (Gina Carroll) which set out a list of items to be included in his student file before he could be evaluated for graduation. This included various formalities but also, at item 5, the statement:

“All coursework must be complete, including exemptions and final paper before submitting Graduate Record Verification from”.

It is fair to acknowledge that this too is an illustration of the flexibility (or scope for confusion) because it appears that even the “exemptions” are being included as part of the coursework.

67. Unfortunately, Mr McKenna has done little to dispel the confusion, and it is fair to say that the Defendant can hardly be blamed for failing to understand the way in which language was used in the La Salle vocabulary at the material time.

Mr McKenna adds to the confusion

68. This is one area of the evidence which needs to be investigated in a little detail because Mr Kelsey-Fry relied heavily upon it for showing that Mr McKenna has been dishonest from the outset. He argues that he knew his degree was going to be bogus and that this can be demonstrated by the false account given to *The Mirror*, and later perpetuated in these proceedings, of how his degree was obtained. It is said that he lied repeatedly, through his various legal advisers, because he knew that, if the truth came out, “anyone who was not born yesterday” (to borrow a phrase from Mr Sparks) would immediately realise that the whole exercise had been a sham. I am satisfied, however, that the premise is false because Mr McKenna really does not believe it was all a sham. That was quite apparent, as I have said, when he was in the witness box. The suggested motive for lying will therefore not stand up. Nevertheless, I need to examine this contention further in order to see whether the statements made on Mr McKenna’s behalf were in fact false and, if so, how that came about.

69. It all began in April 1997 when Mr McKenna complained about Mr Lewis-Smith’s article in *The Mirror*. His solicitors wrote a letter dated 18 April which included the following assertions which understandably misled those who read them and are, in any ordinary use of the English language, untrue:

“The process of obtaining his degree took nearly two years, and required completion of a 50,000 word dissertation.”

This would give the impression that there had been nearly two years of academic work, whereas Mr McKenna enrolled in July 1995 and submitted his final project in September 1996. According to paragraph 87 of his first witness statement he had completed it by July or August. Mr Browne suggests that the accuracy of these claims should be judged by calculating the time from his original (unsuccessful) application to La Salle in March 1995 and continuing to the completion of certain administrative formalities early in 1997, despite the fact that the degree was awarded in November

1996. I did not find this very convincing. A maximum of 12 or 13 months is not “nearly two years”.

70. The same paragraph in the letter also made the claim that before he was accepted on to the course he “first had to undergo a rigorous process of academic examination. ...”. There is no evidence which supports that description. Granting credits for life experience is the antithesis of “academic examination”. That is the point of it. Finally, it was not explained to *The Mirror* that in La Salle parlance a “dissertation” could be extended to include audio-tapes for self-help. In the absence of such an explanation, it would not occur to any reasonable reader. It would have been possible to identify the *Success for Life* project as being the “dissertation” in question, but it was never revealed. Nonetheless, Mr Lewis-Smith took the claims at face value. In an article of 19 April he acknowledged:

“Paul McKenna assures me (and I have no reason to disbelieve him) that his degree took nearly two years and required completion of a 50,000 word dissertation.”

71. Not unreasonably, Mr Lewis-Smith wanted to buy a copy of the dissertation. When Mr Sparks telephoned La Salle he was rebuffed. The process was described in an article on 26 April 1997. (Again it was presented as though Mr Lewis-Smith had made the call.) He was kept waiting after he made the enquiry for ten minutes:

“Then she [the receptionist] returned to tell me: ‘That’s not possible sir, we don’t let anyone have copies.’

Curious. Most universities lament the way their PhD theses gather dust on library shelves, and are delighted when anyone asks to see them.

What’s more, accredited US universities are obliged to make their theses available to the public, but not Lasalle.

It’s very strange, and some suspicious people might even draw the conclusion that Lasalle’s students don’t submit proper theses, but not me.

My only hope is Dr McKenna will provide me with a copy of his work and enable me to scotch such rumours at once by publishing extracts from it in this august journal.

Meanwhile, I consider Lasalle’s PhD prices to be a little steep, but I am thinking of doing a BA there, followed by another BA (in black sheep). Think about it. At least it’ll be a first.”

72. The challenge was repeated in *The Mirror* for 21 June 1997 under the heading “A bit of hire education”. It was within Mr McKenna's power to enlighten Mr Lewis-Smith but for years he never did so. It remains a mystery why, since *Success for Life* was commercially available, this project could not be identified as the “dissertation” or “thesis” in question. Mr Lewis-Smith’s suspicions were allowed to flourish.

73. From time to time Mr Lewis-Smith returned to this theme (or flogged it to death, depending on one's point of view). There were further articles on 30 July and 29 November 1997. But he was left with no more information than that contained in the solicitor's letter of April that year.
74. The years went by, and meanwhile Mr McKenna obtained his IMCA PhD, but on 12 September 2003 he wrote to Jeanette Arnold of the *Evening Standard* to complain of an article published the day before in which Mr Lewis-Smith had resurrected the story. He explained about his second PhD but repeated his earlier claims in relation to La Salle:

“In 1996 I was awarded a PhD following nearly two years study I was not initially accepted on the PhD course and my doctorate was the result of a 50,000 word thesis.”

Yet still there was no reference to *Success for Life* by way of verification. I suspect that the reluctance was because of the suspicion that, if he was given the facts, Mr Lewis-Smith would go on pouring scorn anyway. Had he done so, of course, that is something Mr McKenna would have had to take on the chin.

75. Even after these proceedings had been launched, the mystery continued. First, my attention was drawn to the letter before action of 29 October 2003 which contained the assertion that “[o]ur client then completed a very substantial doctorate before being awarded his degree which was then assessed in the appropriate academic fashion”. It was finally accepted in a letter of 16 December 2004 that he had decided to do a thesis in the form of a project because he would want to turn it into a book or series of tapes. It was also claimed:

“Our client liaised with his assigned professor at Lasalle University and discussed with him the form of thesis which he proposed to write. It was accepted by the University that he should do it in the form of a practical project which was to apply the learning acquired by our client in studying for his PhD to creating a series of self-help tapes.”

This may be thought a little misleading because the tape project was already complete before it was “accepted” by the university in September 1996.

76. The Defendant directs particular criticism, however, at further information supplied in the Claimant's name on 26 May 2005 in response to a request of 25 April:

“He is prepared to confirm, however, that he completed each of the core course requirements by means of the first of the permitted methods, namely curriculum study, having applied unsuccessfully for exemptions for various of the courses in the hope that his past experience and study would qualify him for exemption under the credentialization procedure. He cannot recall what system of grading was used but as far as he can recall he was awarded top grades for most, if not all, of the courses he completed.”

This is manifestly inaccurate. Mr McKenna did not complete each of the core course requirements (of which there were nine) by “curriculum study” precisely because he had *successfully* applied for exemptions in seven out of nine topics. He had to do only the compulsory paper in “Theocentric Studies”, a multiple choice test (known as ORIN 101), and the dissertation. He obtained the exemptions by applications based on cutting and pasting from his other published work *The Hypnotic World of Paul McKenna* and also, to some extent, from *Success for Life* which ultimately constituted his “dissertation” or “project”. I should make it clear that the term “cutting and pasting” derives from the evidence of Ms Staples who was often with Mr McKenna when the process took place.

77. Even in his second witness statement of 19 June 2006 Mr McKenna repeated that he thought he had a more than adequate basis to be exempted from coursework, and sought full exemption, but he “was nonetheless required by La Salle University to complete the necessary coursework”.
78. This is to me quite incomprehensible. Mr McKenna must surely have known that he was allowed seven exemptions, and therefore appreciated that he can hardly have been “awarded top grades for most, if not all, of the courses he completed”. He did not complete those courses. Mr Kelsey-Fry submitted that, since he is not stupid, he must be lying.
79. It is in this context, however, that Mr Browne argues that Mr McKenna was confused by the terminology used at La Salle. He submits that in reality he did complete the courses in question by his “prior learning” or “life experience” (i.e. by the cutting and pasting). It is wrong to think of it as obtaining “exemptions”. In La Salle “speak” it is simply a way of actually doing the work. That does not wash for at least two reasons.
80. In the first place, some of the La Salle literature does speak of “exemptions”. For example, the “core course requirements” were identified as follows:

“The following core courses are required for completion of the Doctor of Philosophy in Hypnotherapy. Required Core Courses can be, at the discretion of the university completed by any of the following methods: (1) curriculum study; (2) challenge examinations; (3) course exemptions; (4) transfer credit.”

It is clear that Mr McKenna obtained “course exemptions” for seven out of nine elements. What is more, a letter from La Salle of April 1996 refers expressly to the seven “exemption applications”. This was from Lorraine Taylor, the “Financial Supervisor”. (She was chasing him for payment of \$315 to “expedite processing of your work.”) Secondly, it is impossible to know what Mr McKenna was referring to when he spoke of “unsuccessfully” having applied for exemptions. In fairness to him, I suppose, some allowance has to be made for what he described as his lack of “language clarity skills” and his dyslexia.

81. Another problem is what Mr McKenna was intending to convey in various places in his witness statement where he refers to having completed the “coursework”. In particular, he claimed (at paragraph 85 of his first witness statement) to have spent hundreds of hours on his thesis *and* “approximately five hundred hours” on the coursework. That plainly cannot refer to the cutting and pasting. I thought that he was

counting the time spent on his earlier jointly published products; that is to say, the written and taped material submitted to obtain “course exemptions”. He now accepts that the 500 hours must cover coursework and dissertation. In a letter of 5 July 2006 it was said that “the total of 500 hours work is a conservative estimate of the time spent in satisfying the coursework requirements by credentialization and completing the Final Project”.

82. In the end, however, I am persuaded, contrary to one’s first impression, that he must have been confused. The primary reason is that he had disclosed to the Defendant (as “PM 14-20”) all the seven applications for exemption together with their explanatory “top sheets”. He could hardly have done so if he wanted to deceive. He seems to have persuaded himself that he did complete these courses by submitting the documents which constituted merely his applications for exemption.
83. It appears that Ms Clare Staples, Mr McKenna’s former colleague and partner, is of a similar view. As she said in cross-examination, “That actually involved submitting work which – pages and pages of writing, which is in effect coursework. Whatever it is called by a name, it is still coursework”. However “rum” this may seem (to adopt Mr Kelsey-Fry’s word), I think that they both believe this quite genuinely and this explains part of the confusion. Nonetheless, it has to be recognised that in so far as Mr McKenna has confused others over the years, such as Mr Lewis-Smith, the Defendant and its advisers, he is to that extent the author of his own misfortune.

My conclusion on liability

84. Mr McKenna had been granted a degree by La Salle, for what it was worth (as to which opinions clearly differ). He valued it and was not seeking to deceive anyone by making reference to it himself or permitting others to do so, any more than were Dr Nemecek and Mr Orlowski.
85. In these circumstances, I cannot accept that the Defendant has discharged the burden of proving that the sting of the words complained of was substantially true. Mr McKenna was not in my judgment dishonest and, for that matter, whatever one may think of the academic quality of his work, or of the degree granted by La Salle, it would not be accurate to describe it as “bogus”. It was certainly not granted “merely” for money (or even “in effect” merely for money). The Claimant is therefore entitled to succeed on liability.

The outstanding question of damages

86. It follows that Mr McKenna will be entitled to a sum of money to compensate and, so far as is appropriate, to vindicate him in respect of Mr Lewis-Smith’s allegations. As a matter of first impression, I would think that the damages would be relatively modest in all the circumstances, and having regard to two matters especially (leaving aside the Kirk fiasco itself). I have in mind first that Mr McKenna could have cleared up the mystery years ago by explaining the steps he took to obtain his degree. Instead he added to the confusion as I have described above.
87. Secondly, both experts agree that while *Success for Life* contains some original and useful ideas, it would have required supervision and guidance to work it up into a

good PhD thesis – which Mr McKenna did not receive from La Salle. As even his own expert, Dr Ruden, put it:

“I think the problem I face here is that the material content and ideas presented, if formatted correctly, and if done by a supervisor who would have directed him better, the knowledge that he imparts in this would have been suitable for an advanced degree, including a PhD, if properly supervised. ... I believe he mastered his subject. Unfortunately the thesis was not supervised as well as I had hoped.”

88. I cannot dispose of this issue now because, as I have already said, Mr McKenna’s advisers wish to pursue for purposes of aggravation the allegation of “malice” against Mr Lewis-Smith, and to argue that this (including what has been described as Mr Lewis-Smith’s “campaign”) is to be laid at the Defendant’s door by way of vicarious liability. There is also the suggestion which only crystallised during the trial itself that Mr Morgan, who had been the editor from 1995 to 2004, was part of a conspiracy with Mr Lewis-Smith to undermine Mr McKenna’s reputation. Both Mr Morgan (from whom the Defendant’s advisers had, understandably, not thought it necessary even to obtain a witness statement) and Mr Lewis-Smith (who was for personal family reasons not in a position to attend the trial) need to be given the chance to deal with these allegations. That is why the matter will have to be resolved in the Michaelmas term if a sensible agreement cannot be negotiated. How worthwhile this exercise will prove remains to be seen. The delay and duplication will significantly increase the costs, and take up further court time, and it is an open question who should bear the responsibility for that.