

LIBEL FACT SHEET

Definition and Elements

1. Defamation has been defined as the injury to reputation by words that tend to expose one to public hatred, shame, contempt or disgrace, or to induce an evil opinion of one in the minds of right-thinking persons and to deprive one of their confidence.
2. The essential elements common to both libel and slander actions are
 - (1) the making of a defamatory statement;
 - (2) the publication of that statement; and
 - (3) the identification in some way of the person defamed.
3. The words complained of must be such as will injure the reputation of a living person or existing organization. Some words such as "thief," "cheat," "murderer," or "whore," are almost universally understood to hurt someone's reputation.
4. In general, defamation tends to involve false charges that fall into the following categories:
 - (1) Accusation of a crime;
 - (2) Sexual impropriety or other immoral behavior;
 - (3) Having a loathsome disease or being mentally ill;
 - (4) Professional incompetence or misconduct in one's business;
 - (5) Bankruptcy, financial irresponsibility or dishonesty;
 - (6) Disgraceful behavior such as child abuse or substance abuse;
 - (7) Product disparagement (trade libel).
5. Publication is a legal term of art meaning that the defamatory communication, whatever its form, has been perceived by someone other than the person defamed. Publication in the sense of printing and distribution of printed matter is not required.
6. There are two types of libel: Libelous communications plain upon their face (libel per se) such as "John Doe is a bastard" and those which require reference to extrinsic circumstances to give them the necessary defamatory meaning (libel per quod) –The erroneous newspaper story stating that Mary Doe of 1234 Shady Lane has just given birth to twins at a local hospital. The story is libelous because of the extrinsic fact that Mrs. Doe has been married only one month before and several persons reading the story know this fact.

7. The major remedy for defamation is the award of monetary damages.
 - (1) Pecuniary or economic loss actually resulting from the defamatory communication and reasonable foreseeability of the loss.
 - (2) Pecuniary and nonpecuniary loss for such injuries as hurt feelings, embarrassment, mental and emotional distress and physical consequences.
 - (3) If spite, evil motive or reckless disregard for the truth is present, the jury will be instructed that it may award the plaintiff punitive damages.

Defenses

1. **Truth** is a defense in civil actions for defamation. The defense will fail if only a portion of the allegation is verified.
2. One who possesses an **absolute privilege** or an absolute immunity from suit is not required to establish his or her good faith in making the defamatory communication. The public proceedings in which the absolute privilege is available are divided into the legislative, judicial, executive and administrative.
3. A **qualified privilege** exists if an otherwise defamatory statement is made in good faith upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is made to a person having a corresponding interest or duty. The qualified privilege is defeated if the statement is made in bad faith or with malice.
4. **Fair comment** involves the honest expression of the communicator's opinion on a matter of public interest based upon facts correctly stated in the communication.
5. If the defamer publishes a **retraction** of the defamatory communication punctually and with essentially the same prominence as he or she gave to the defamation, the danger of a punitive damages award will be negated and compensatory damages may be reduced. The retraction must be complete and unequivocal. Less than full retraction or a veiled continuance of the defamation will not mitigate the damages but, in fact, may increase them.

First Amendment

1. Public officials may not recover damages for defamatory falsehoods relating to their official conduct unless they prove with "convincing clarity" that the statements are made with actual malice.
2. "Actual malice" was defined by the Supreme Court as publication with knowledge that the statement in question is false or made with "reckless disregard" for whether or not it is false.
3. The idea of "fair comment" is broadened to include facts and to permit the communication of erroneous facts, and is raised to a constitutional privilege when the comment concerns conduct of public officials relating to their offices.
4. Knowingly misquoting a source may constitute actual malice.
5. Even public officials are entitled to private lives and false and defamatory communications relating thereto would not be protected by the actual malice standard.

Facts vs. Opinions

1. Opinions are not actionable as defamation.
2. As opposed to opinions, false statements of fact may be demonstrated to be such and are not protected when made with fault.
3. The test for distinguishing between fact and opinion:
 - (1) Specific language (common or ordinary meaning of the words)
 - (2) Verifiability (whether the statement can be proven true or false)
 - (3) Journalistic context (when entire article is considered)
 - (4) Social context or setting (whether it is a column or on op-ed page or whether it is a political cartoon, for example)
4. Statements of opinion that can be interpreted as stating or implying false facts may be actionable. Thus, to say that someone told a lie is a factual allegation which the plaintiff can prove or disprove, whereas to say that someone is "ignorant" is merely an opinion.

Right of Privacy

1. Four distinct branches of the violation of an individual's right to privacy:
 - (1) appropriation of another's name or likeness;
 - (2) unreasonable intrusion upon another's seclusion;
 - (3) publicity which unreasonably places another in a false light before the public; and
 - (4) unreasonable publicity given to another's private life.
2. **Appropriation** law gives the individual the option to prevent others from trading on his or her name or likeness or to permit such trading for a price.
3. **Intrusion** consists of the violation of one's legally protected physical sphere of privacy without one's consent. Often the intrusion itself is not physical but consists of eavesdropping with telephoto lenses or electronic listening devices in areas private to aggrieved individuals such as their homes or offices. When individuals are in a public zone, however, they may be photographed or otherwise recorded without fear of legal action so long as the recording is reasonable.
4. If journalists actively encourage or aid and abet others in acts of intrusion, however, they can be held liable for such conduct under ordinary principles of tort law.
5. Creating a false image for an individual or placing him or her in a **false light** through publication may be actionable as an invasion of privacy whether or not such falsity involves defamation. One form of this invasion is to ascribe to individuals political or other views which they do not in fact hold or falsely attribute to them authorship of certain writings or remarks. Another dangerous practice is to use a picture or videotape of someone out of context.
6. **Public Disclosure of Private Facts** is the unreasonable publication of private facts of an embarrassing and objectionable nature.
7. Courts will protect individuals' privacy regarding medical records.