DEFAMATION

Defamation is an injury to the reputation or character of someone resulting from the false statements or

actions of another. Defamation is a false attack on your good name. Your good name is regarded as a

proprietary interest, not a personal interest. Defamation is an improper and unlawful attack against your

proprietary right to your good name, your reputation.

By definition anyone “who communicated the slanderous Peebles paper was committing defamation. It

does not matter whether they were aware of what the paper said, or if they were not aware of the law.

The simple act is defamation. It does not matter what form the act takes, verbal or written (publishing).

Defamation Law

In law, defamation (also called vilification, slander, and libel) is the communication of a statement that

makes a false claim, expressively stated or implied to be factual, that may harm the reputation of an

individual, business, product, group, government or nation. Most jurisdictions allow legal actions, civil

and/or criminal, to deter various kinds of defamation and retaliate against groundless criticism.

Defamation law is supposed to balance the private right to protect one’s reputation with the public right to

freedom of speech. The law allows people and organizations to sue those who say or publish false and

malicious comments. Anything that brings a person into contempt, disrepute or ridicule, or otherwise

injures the person’s reputation, is likely to be defamatory.

Defamation law is an extremely slow, expensive and unreliable way to address injuries to reputation.

Cases often take years to progress through the legal process and, if they run in court, can cost hundreds of

thousands of dollars. Decisions are often dependent on esoteric legal points rather than the substance of

what happened.

Finally, the normal remedy for successful litigants, a payment to the defamed party, does not in itself

redresses the injury to reputation. The reality is that defamatory comments occur all the time but the law

is seldom an effective means to obtain redress.

History

In the later Roman jurisprudence, from which many of modern laws descend, verbal defamations are dealt

with in the edict under two heads. The first comprehended defamatory and injurious statements made in a

public manner (convicium contra bonos mores). In this case the essence of the offense lay in the

unwarrantable public proclamation. In such a case the truth of the statements was no justification for the

unnecessarily public and insulting manner in which they had been made. The second head included

defamatory statements made in private, and in this case the offense lay in the imputation itself, not in the

manner of its publication. The truth was therefore a sufficient defense, for no man had a right to demand

legal protection for a false reputation. Even belief in the truth was enough, because it took away the

intention which was essential to the notion of injuria.

The law thus aimed at giving sufficient scope for the discussion of a man's character, while it protected

him from needless insult and pain. The remedy for verbal defamation was long confined to a civil action

for a monetary penalty, which was estimated according to the significance of the case, and which,

although vindictive in its character, doubtless included practically the element of compensation. But a

new remedy was introduced with the extension of the criminal law, under which many kinds of

defamation were punished with great severity. At the same time increased importance attached to the

publication of defamatory books and writings, the libri or libelli famosi, from which we derive our

modern use of the word libel; and under the later emperors the latter term came to be specially applied to

anonymous accusations or pasquils, the dissemination of which was regarded as particularly dangerous,

and visited with very severe punishment, whether the matter contained in them were true or false.

Types of torts

Traditionally, there are two types of defamation but now another type has been added to it so there are three type of defamation

1) Slander

Slander is the harmful statement in a transitory form, especially speech. Slander is oral defamation, such

as from stories told at a meeting or comments in a telephone conversation.

Slander is a term describing defamation that you hear, not see, usually in the form of someone talking

trash about you or spreading or repeating lies and unfounded rumor.

Slander is an oral statement that tends to injure you in respect to your office, profession, trade or business.

The statement or statements generally suggest that you lack integrity, honesty, incompetence, or that you

possess other reprehensible personal characteristics.

2) Libel

Libel is the harmful statement in a fixed medium, especially writing but also a picture, sign, or electronic

broadcast, each of which gives a common law right of action.

Libel is published defamation, such as a newspaper article or television broadcast. Pictures as well as

words can be libelous. Defamation on the Web or e-mail is a type of libel.

Libel exposes or subjects you to hatred, contempt, ridicule, or disgrace, or causes you to be shunned or

avoided, or injures you in your occupation.

Defamation" is the general term used internationally, and is used in this article where it is not necessary to

distinguish between "slander" and "libel". Libel and slander both require publication. The fundamental

distinction between libel and slander lies solely in the form in which the defamatory matter is published.

If the offending material is published in some fleeting form, as by spoken words or sounds, sign language,

gestures and the like, then this is slander. If it is published in more durable form, for example in written

words, film, compact disc (CD), DVD, blogging and the like, then it is considered libel.

3)Criminal defamation

Many nations have criminal penalties for defamation in some situations, and different conditions for

determining whether an offense has occurred. ARTICLE 19, Global Campaign for Free Expression, has

published global maps charting the existence of criminal defamation law across the globe. The law is used

predominantly to defend political leaders or functionaries of the state.

Defamation and freedom of speech

Strict defamation laws may come into tension with freedom of speech, leading to censorship or chilling

effects where publishers fear lawsuits. Human rights organizations, and other organizations such as the

Council of Europe and Organization for Security and Co-operation in Europe, have campaigned against

strict defamation laws, especially those that criminalize defamation.

One of the most common ways that defamation law is used to suppress free speech is through threats,

which are far more common than actual lawsuits. Even cases lodged in court seldom come to trial, with

many dropped along the way. But publishers are understandably reluctant to take the risk of a costly court

case and hence in many instances a threat leads to blocking of publication. Even more insidious than

threats is the fear of being sued, leading to a form of self-censorship.

Some editors and publishers avoid anything controversial for fear of offending potential litigants. The Net

sidesteps these problems by allowing self-publication. The author just sets up a Web site or sends e-mails

to recipients.

Defenses

Even if a statement is derogatory, there are circumstances in which such statements are permissible in

law.

Truth

In many legal systems, adverse public statements about legal citizens presented as fact must be proven

false to be defamatory or slanderous/libel. Proving adverse, public character statements to be true is often

the best defense against a prosecution for libel or defamation. Statements of opinion that cannot be proven true or false will likely need to apply some other kind of

defense. The use of the defense of justification has dangers, however; if the defendant libels the plaintiff

and then runs the defense of truth and fails, he may be said to have aggravated the harm.

Another important aspect of defamation is the difference between fact and opinion. Statements made as

"facts" are frequently actionable defamation. Statements of opinion or pure opinion are not actionable. In

order to win damages in a libel case, the plaintiff must first show that the statements were "statements of

fact or mixed statements of opinion and fact" and second that these statements were false. Conversely, a

typical defense to defamation is that the statements are opinion. One of the major tests to distinguish

whether a statement is fact or opinion is whether the statement can be proved true or false in a court of

law. If the statement can be proved true or false, then, on that basis, the case will be heard by a jury to

determine whether it is true or false. If the statement cannot be proved true or false, the court may dismiss

the libel case without it ever going to a jury to find facts in the case.

In some systems, however, notably the Philippines, truth alone is not a defense. Some U.S. statutes

preserve historical common law exceptions to the defense of truth to libel actions. These exceptions were

for statements "tending to blacken the memory of one who is dead" or "expose the natural defects of one

who is alive."

It is also necessary in these cases to show that there is a well-founded public interest in the specific

information being widely known, and this may be the case even for public figures. Public interest is

generally not "that which the public is interested in," but rather that which is in the interest of the public.

Privilege and malice

Privilege provides a complete bar and answer to a defamation suit, though conditions may have to be met

before this protection is granted.

There are two types of privilege in the common law tradition:

Absolute privilege

Absolute privilege has the effect that a statement cannot be sued on as defamatory, even if it were made

maliciously; a typical example is evidence given in court (although this may give rise to different claims,

such as an action for malicious prosecution or perjury) or statements made in a session of the legislature

(known as 'Parliamentary privilege' in Commonwealth countries).

Qualified privilege

Qualified privilege may be available to the journalist as a defense in circumstances where it is considered

important that the facts be known in the public interest; an example would be public meetings, local

government documents, and information relating to public bodies such as the police and fire departments.

Qualified privilege has the same effect as absolute privilege, but does not protect statements that can be

proven to have been made with malicious intent.

Other defenses

Statement made in a good faith and reasonable belief

Statement made in a good faith and reasonable belief that they were true is generally treated the same as

true statements; however, the court may inquire into the reasonableness of the belief. The degree of care

expected will vary with the nature of the defendant: an ordinary person might safely rely on a single

newspaper report, while the newspaper would be expected to carefully check multiple sources.

Opinion

Opinion is a defense recognized in nearly every jurisdiction. If the allegedly defamatory assertion is an

expression of opinion rather than a statement of fact, defamation claims usually cannot be brought

because opinions are inherently not falsifiable. However, some jurisdictions decline to recognize any

legal distinction between fact and opinion. The United States Supreme Court, in particular, has ruled that

the First Amendment does not require recognition of an opinion privilegeFair comments on the matter of public interest

Fair comments on the matter of public interest statements made with an honest belief in their truth on a

matter of public interest (official acts) are defenses to a defamation claim, even if such arguments are

logically unsound; if a reasonable person could honestly entertain such an opinion, the statement is

protected.

Innocent dissemination

Innocent dissemination is a defense available when a defendant had no actual knowledge of the

defamatory statement or no reason to believe the statement was defamatory. The defense can be defeated

if the lack of knowledge was due to negligence. Thus, a delivery service cannot be held liable for

delivering a sealed defamatory letter.

In addition to the above, the defendant may claim that the allegedly defamatory statement is not actually

capable of being defamatory; an insulting statement that does not actually harm someone's reputation is

prima facie not libelous.

Why Commencing Defamation Action Is Not Always a Good Idea

While people who are targeted by lies may well be angry enough to file a lawsuit, there are some very

good reasons why actions for defamation may not be a good idea.

The publicity that results from a defamation lawsuit can create a greater audience for the false statements

than they previously enjoyed. For example, if a newspaper or news show picks up the story of the lawsuit,

false accusations that were previously known to only a small number of people may suddenly become

known to the entire community, nation, or even to the world. As the media is much more apt to cover a

lawsuit than to cover its ultimate resolution, the net effect may be that large numbers of people hear the

false allegations, but never learn how the litigation was resolved.

Another big issue is that defamation cases tend to be difficult to win, and damage awards tend to be small.

As a result, it is unusual for attorneys to be willing to take defamation cases on a contingent fee basis, and

the fees expended in litigating even a successful defamation action can exceed the total recovery.

Another significant concern is that, even where the statements made by the defendant are entirely false, it

may not be possible for a plaintiff to prove all of the elements of defamation. Most people will respond to

news that a plaintiff lost a defamation lawsuit by concluding that the allegations were true.

In other words, the plaintiff in a defamation action may be required to expend a considerable amount of

money to bring the action, may experience significant negative publicity which repeats the false

accusations, and if unsuccessful in the litigation may cement into the public consciousness the belief that

the defamatory accusations were true. While many plaintiffs will be able to successfully prosecute

defamation actions, the possible downside should be considered when deciding whether or not such

litigation should be attempted.