



#1 Free Legal Website

FindLaw.com is the leading and largest online resource for legal information. For basic legal issues to more complex ones, you'll find thousands of helpful articles, a legal community to get answers to your specific questions, an attorney directory, blogs, news, DIY forms, and much more.

Elements of Libel and Slander

Specific requirements that a plaintiff must prove in order to recover in a defamation action differ from jurisdiction to jurisdiction. Under the Restatement (Second) of Torts, which is drafted by the American Law Institute and has been influential among state courts, a plaintiff must prove four elements.

1. First, the plaintiff must prove that the defendant made a false and defamatory statement concerning the plaintiff.
2. Second, the plaintiff must prove that the defendant made an unprivileged publication to a third party.
3. Third, the plaintiff must prove that the publisher acted at least negligently in publishing the communication.
4. Fourth, in some cases, the plaintiff must prove special damages.

Defamatory Statements

One essential element in any defamation action is that the defendant published something defamatory about the plaintiff. The Restatement defines a communication as defamatory "if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating with him." Examples of defamatory statements are virtually limitless and may include any of the following:

- A communication that imputes a serious crime involving moral turpitude or a felony
- A communication that exposes a plaintiff to hatred
- A communication that reflects negatively on the plaintiff's character, morality, or integrity
- A communication that impairs the plaintiff's financial well-being
- A communication that suggests that the plaintiff suffers from a physical or mental defect that would cause others to refrain from associating with the plaintiff

One question with which courts have struggled is how to determine which standard should govern whether a statement is defamatory. Many statements may be viewed as defamatory by some individuals, but the same statement may not be viewed as defamatory by others. Generally, courts require a plaintiff to prove that he or she has been defamed in the eyes of the community or within a defined group within the community. Juries usually decide this question.

Courts have struggled to some degree with the treatment of statements of opinions. At common law, statements of opinion could form the basis of a defamation action similar to a statement of pure fact. Generally, if a statement implies defamatory facts as the basis of the opinion, then the statement may be actionable.

Publication Requirement

Another requirement in libel and slander cases is that the defendant must have published defamatory information about the plaintiff. Publication certainly includes traditional forms, such as communications included in books, newspapers, and magazines, but it also includes oral remarks. So long as the person to whom a statement has been communicated can understand the meaning of the statement, courts will generally find that the statement has been published.

Meaning of a Communication

In some instances, the context of a statement may determine whether the statement is defamatory. The Restatement provides as follows: "The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express." Courts generally will take into account extrinsic facts and circumstances in determining the meaning of the statement. Thus, even where two statements are identical in their words, one may be defamatory while the other is not, depending on the context of the statements.

Reference to the Plaintiff

In a defamation action, the recipient of a communication must understand that the defendant intended to refer to the plaintiff in the communication. Even where the recipient mistakenly believes that a communication refers to the plaintiff, this belief, so long as it is reasonable, is sufficient. It is not necessary that the communication refer to the plaintiff by name. A defendant may publish defamatory material in the form of a story or novel that apparently refers only to fictitious characters, where a reasonable person would understand that a particular character actually refers to the plaintiff. This is true even if the author states that he or she intends for the work to be fictional.

In some circumstances, an author who publishes defamatory matter about a group or class of persons may be liable to an individual member of the group or class. This may occur when: (1) the communication refers to a group or class so small that a reader or listener can reasonably understand that the matter refers to the plaintiff; and (2) the reader or listener can reasonably conclude that the communication refers to the individual based on the circumstances of the publication.

FINDLAW.COM EMPOWERS PEOPLE WITH TRUSTED, TIMELY AND INTELLIGENT LEGAL INFORMATION

BLOGS – FindLaw Blogs present timely news that has real-life implications, deliver important information and discuss law-related entertainment.

FINDLAW ANSWERS – A vibrant, interactive online community where everyday people can ask legal questions and get real-time answers from legal professionals and others with similar experiences.

NEWS & NEWSLETTERS – Updated throughout the day and night and covering a wide range of legal topics, FindLaw.com's News page presents current legal news, keeping people informed and educated.

FIND A LAWYER – An easy-to-search database of more than one million lawyers and law firms. It provides detailed information, enabling people to contact a qualified lawyer when they are ready.



DO-IT-YOURSELF FORMS & CONTRACTS – FindLaw.com provides accurate legal documents for common legal matters. Choose from a library of easy-to-use, low-cost, accurate legal forms for everyday legal issues.

FINDLAW VIDEO – On FindLaw.com, you'll find an online directory of more than 1,500 short videos dedicated exclusively to legal topics and attorney and law firm profiles.

Connect With Us

FindLaw.com has an entire social media team dedicated to providing our users with as many options as possible to join, participate in, and learn from the FindLaw community. Some of the social key channels are the following:



[FindLaw for Consumers on Facebook](#)

Making the law easy to access with interactive legal updates aimed at starting conversations, informing followers of their legal rights and providing a forum for questions and resources



[@FindLawConsumer on Twitter](#)

Tweeting interesting, entertaining and informative legal news everyday

HAVE A LEGAL QUESTION?
NEED TO FIND AN AFFORDABLE,
QUALIFIED ATTORNEY?

Protect yourself, your family or
your business with a legal plan
or form from LegalStreet

www.LEGALSTREET.com

Copyright © 2013 FindLaw, a Thomson Reuters business. All rights reserved. The information contained in this article is for informational purposes only and does not constitute legal advice. The use and distribution of this article is subject to the Creative Commons BY-NC-ND license, which can be viewed at <http://creativecommons.org/licenses/by-nc-nd/3.0/>. You must attribute the article by providing the title of the article, FindLaw copyright notice and link to the original work. You may not use the article for commercial purposes and you may not alter or transform this article in any way.

FindLaw[®]
A Thomson Reuters Business