Defamation Law: The Basics

There is always a delicate balance between one person's right to freedom of speech and another's right to protect their good name. It is often difficult to know which personal remarks are proper and which run afoul of defamation law.

The term "defamation" is an all-encompassing term that covers any statement that hurts someone's reputation. If the statement is made in writing and published, the defamation is called "libel." If the hurtful statement is spoken, the statement is "slander." The government can't imprison someone for making a defamatory statement since it is not a crime. Instead, defamation is considered to be a civil wrong, or a tort. A person that has suffered a defamatory statement may sue the person that made the statement under defamation law.

Defamation law, for as long as it has been in existence in the United States, has had to walk a fine line between the right to freedom of speech and the right of a person to avoid defamation. On one hand, people should be free to talk about their experiences in a truthful manner without fear of a lawsuit if they say something mean, but true, about someone else. On the other hand, people have a right to not have false statements made that will damage their reputation. Discourse is essential to a free society, and the more open and honest the discourse, the better for society.

Elements of a Defamation Lawsuit

Defamation law changes as you cross state borders, but there are normally some accepted standards that make laws similar no matter where you are. If you think that you have been the victim of some defamatory statement, whether slander or libel, then you will need to file a lawsuit in order to recover. Generally speaking, in order to win your lawsuit, you must show that:

1. Someone made a statement;
2. that statement was published;
3. the statement caused you injury;
4. the statement was false; and
5. the statement did not fall into a privileged category.

To get a better grasp of what you will need to do to win your defamation lawsuit, let's look at each element more closely.

The Statement -- A "statement" needs to be spoken, written, or otherwise expressed in some manner. Because the spoken word often fades more quickly from memory, slander is often considered less harmful than libel.

Publication -- For a statement to be published, a third party must have seen, heard or read the defamatory statement. A third party is someone apart from the person making the statement and the subject of the statement. Unlike the traditional meaning of the word "published," a defamatory statement does not need to be printed in a book. Rather, if the statement is heard over the television or seen scrawled on someone's door, it is considered to be published.

Injury -- To succeed in a defamation lawsuit, the statement must be shown to have caused injury to the subject of the statement. This means that the statement must have hurt the reputation of the subject of the statement. As an example, a statement has caused injury if the subject of the statement lost work as a result of the statement.

Falsity -- Defamation law will only consider statements defamatory if they are, in fact, false. A true statement, no matter how harmful, is not considered defamation. In addition, because of their nature, statements of opinion are not considered false because they are subjective to the speaker.

Unprivileged -- Lastly, in order for a statement to be defamatory, it must be unprivileged. Lawmakers have decided that you cannot sue for defamation in certain instances when a statement is considered privileged. For example, when a witness testifies at trial and makes a statement that is both false and injurious, the witness will be immune to a lawsuit for defamation because the act of testifying at trial is privileged.
Whether a statement is privileged or unprivileged is a policy decision that rests on the shoulders of lawmakers. The lawmakers must weigh the need to avoid defamation against the importance that the person making the statement have the free ability to say what they want.

Witnesses on the stand at trial are a prime example. When a witness is giving his testimony, we, as a society, want to ensure that the witness gives a full account of everything without holding back for fear of saying something defamatory. Likewise, lawmakers themselves are immune from defamation suits resulting from statements made in legislative chamber or in official materials.

**Higher Burdens for Defamation -- Public Officials and Figures**

Our government places a high priority on the public being allowed to speak their mind about elected officials as well as other public figures. People in the public eye get less protection from defamatory statements and face a higher burden when attempting to win a defamation lawsuit.

When an official is criticized in a false and injurious way for something that relates to their behavior in office, the official must prove all of the above elements associated with normal defamation, and must also show that the statement was made with "actual malice."

"Actual malice" was defined in a Supreme Court case decided in 1964, *Hustler v. Falwell*. In that case, the court held that certain statements that would otherwise be defamatory were protected by the First Amendment of the United States Constitution. The court reasoned that the United States society had a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."

This meant, according to the Court, that public officials could only win a defamation suit when the statement that was made was not an honest mistake and was in fact published with the actual intent to harm the public figure. According to the Court, actual malice only occurs when the person making the statement knew the statement was not true at the time he made it, or had reckless disregard for whether it was true or not.

For other people that are in the public eye, but not public officials, the defamation laws are also different. These people, such as celebrities and movie stars, must also prove, in most situations, that the defamatory statements were made with actual malice.

Freedom of speech is less meaningful when a statement is made about a private individual because the statement is probably not about a matter of public importance. As noted above, a private person has no need to show that the statement maker acted with actual malice in order to be victorious in their defamation lawsuit.
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