

## **Defamation**

Defamation (sometimes known as calumny, vilification, libel, slander or traducement) is the oral or written communication of a false statement about another that unjustly harms their reputation and usually constitutes a tort or crime. In several countries, including South Korea and Sweden, as well as the U.S. state of Louisiana, communicating a true statement can also be considered defamation.

Under common law, to constitute defamation, a claim must generally be false and must have been made to someone other than the person defamed. Some common law jurisdictions also distinguish between spoken defamation, called slander, and defamation in other media such as printed words or images, called libel. In the United States, false light laws protect against statements which are not technically false but are misleading.

In some jurisdictions, defamation is treated as a crime rather than a civil wrong. The United Nations Human Rights Committee ruled in 2012 that the libel law of one country, the Philippines, was inconsistent with Article 19 of the International Covenant on Civil and Political Rights as well as urging that "State parties [to the Covenant] should consider the decriminalization of libel". In Saudi Arabia, defamation of the state, or a past or present ruler, is punishable under terrorism legislation.

A person who defames another may be called a "defamer", "libeler", "slanderer" or rarely a "famacide". The term libel is derived from the Latin libellus (literally "small book", or "booklet").

### **Types**

#### **Slander**

The common law origins of defamation lie in the torts of "slander" (harmful statement in a transient form, especially speech) and "libel", each of which gives a common law right of action.

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 or the like, then it is slander.

#### **Libel**

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. The law of libel originated in the 17th century in England. With the growth of publication came the growth of libel and development of the tort of libel.[15]

#### **Cases involving libel**

An early example of libel is the case of John Peter Zenger in 1735. Zenger was hired to publish New York Weekly Journal. When he printed another man's article that criticized William Cosby, who was then British Royal Governor of Colonial New York, Zenger was accused of seditious libel. The verdict was returned as Not Guilty on the charge of seditious libel, because

it was proven that all the statements Zenger had published about Cosby had been true, so there was not an issue of defamation. Another example of libel is the case of *New York Times Co. v. Sullivan* (1964). The U.S. Supreme Court overruled a state court in Alabama that had found The New York Times guilty of libel for printing an advertisement that criticized Alabama officials for mistreating student civil rights activists. Even though some of what The Times printed was false, the court ruled in its favor, saying that libel of a public official requires proof of actual malice, which was defined as a "knowing or reckless disregard for the truth".

### **Proving libel**

There are several things a person must prove to establish that libel has taken place. In the United States, a person must prove that the statement was false, caused harm, and was made without adequate research into the truthfulness of the statement. These steps are for an ordinary citizen. For a celebrity or public official, a person must prove the first three steps, and that the statement was made with the intent to do harm or with reckless disregard for the truth, which is usually specifically referred to as "actual malice".

### **Scandalum magnatum**

At one time, the honor of peers was especially protected by the law; while defamation of a commoner was known as libel or slander, the defamation of a peer (or of a Great Officer of State) was called scandalum magnatum, literally "the scandal of magnates."

### **Defenses** to claims of defamation include:

- Statements made in a good faith and reasonable belief that they were true are 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 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 privilege.
- Mere vulgar abuse is an insult that is not necessarily defamatory because it is not intended to be taken literally or believed, or likely to cause real damage to a reputation. Vituperative statements made in anger, such as calling someone "an arse" during a drunken argument, would likely be considered mere vulgar abuse and not defamatory.
- Fair comment on a matter of public interest, arguments made with an honest belief in their soundness on a matter of public interest (such as regarding official acts) are defensible against a defamation claim, even if such arguments are logically unsound; if a reasonable person could honestly entertain such an opinion, the statement is protected. In the US fair comment is a common law defense, and it has been argued has been superseded by constitutional defenses.
- Consent is an uncommon defense and makes the claim that the claimant consented to the dissemination of the statement.

- 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. Thus, a delivery service cannot be held liable for delivering a sealed defamatory letter. The defense can be defeated if the lack of knowledge was due to negligence.
- Claimant is incapable of further defamation – e.g., the claimant's position in the community is so poor that defamation could not do further damage to the plaintiff. Such a claimant could be said to be "libel-proof", since in most jurisdictions, actual damage is an essential element for a libel claim. Essentially, the defense is that the person had such a bad reputation before the libel, that no further damage could possibly have been caused by the making of the statement.
- Statute of limitations. Most jurisdictions require that a lawsuit be brought within a limited period of time. If the alleged libel occurs in a mass media publication such as a newspaper or the Internet, the statute of limitations begins to run at the time of publication, not when the plaintiff first learns of the communication.[41]
- No Third-party communication: If an employer were to bring an employee into a sound-proof, isolated room, and accuse him of embezzling company money, the employee would have no defamation recourse, since no one other than the would-be plaintiff and would-be defendant heard the false statement.
- No actual injury: If there is third-party communication, but the third-party hearing the defamatory statement does not believe the statement, or does not care, then there is no injury, and therefore, no recourse.
- Slander per-se: is an exception to Slander (presume general damages). Slander per-se states that an individual has: 1. A loathsome disease, 2. Business improprieties, 3. Committed a crime or have been in prison for a crime, 4. Committed sexual improprieties/impotent.

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. Also, the public figure doctrine, also called the absence of malice rule, may be used as a defense.

### **Public figure doctrine (absence of malice)**

In the United States, special rules apply in the case of statements made in the press concerning public figures, which can be used as a defense. A series of court rulings led by *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) established that for a public official (or other legitimate public figure) to win a libel case in the United States, the statement must have been published knowing it to be false or with reckless disregard to its truth (also known as actual malice).

Under United States law, libel generally requires five key elements: the plaintiff must prove that the information was published, the plaintiff was directly or indirectly identified, the remarks were defamatory towards the plaintiff's reputation, the published information is false, and that the defendant is at fault.

The Associated Press estimates that 95% of libel cases involving news stories do not arise from high-profile news stories, but "run of the mill" local stories like news coverage of local criminal

investigations or trials, or business profiles. Media liability insurance is available to newspapers to cover potential damage awards from libel lawsuits.

## **Freedom of speech**

Defamation laws may come into tension with freedom of speech, leading to censorship or chilling effects where publishers fear lawsuits. Article 10 of the European Convention on Human Rights permits restrictions on freedom of speech when necessary to protect the reputation or rights of others.

Jurisdictions resolve this tension in different ways, in particular in determining where the burden of proof lies when unfounded allegations are made. The power of the internet to disseminate comment, which may include malicious comment, has brought a new focus to the issue.

There is a broader consensus against laws that criminalize defamation. 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 that criminalize defamation. The European Court of Human Rights has placed restrictions on criminal libel laws because of the freedom of expression provisions of the European Convention on Human Rights. One notable case was *Lingens v. Austria* (1986).