

MASS MEDIA AND SOCIETY

Libel Law

Introduction

One of the areas that news media, and other media, need to be careful with is defamation of character. With most news stories that get beyond just reporting about an event, SOMEONE doesn't want the story run. The area of law that deals with written defamation of character is called libel. A related, and almost identical area of law deals with spoken defamation of character. It is called slander.

The First Amendment suggests that the press should have broad freedoms, but those freedoms have to end somewhere when they start hurting others. I may have the freedom to swing my fists, but that freedom may end right before my fist hits your nose.

With libel law the media can legally write bad things about someone, sometimes even if the statements later turn out to be untrue.

Each state has its own libel laws, so the discussion below is in general terms. Also, while libel is discussed below, as indicated, slander laws are almost identical.

Types of Libel

There are two types of libel. Both are identically actionable, but you should know the difference. The first type is libel *per se*. *Per se* derives from Latin, meaning "on its face." In other words, the words you use clearly defame a person's reputation. Accusing a person of committing a crime or heinous offense would be libel *per se*. This assumes, of course, that the statement is untrue.

The second type of libel is libel *per quod*. Again, *per quod* derives from Latin and roughly means "under cover." This type of statement is libelous depending on the context it is used. Take the word "fix," for instance.

- If we are talking about a toaster, this is a good word.
- If we are talking about a traffic ticket we are in a gray area.
- If we are talking about cocaine, then it is a defaming word.

You might report that Jane Smith on Elm Street just had a healthy child. That is good. Unless, of course, the Jane Smith who lives on Walnut Street is the one who had the child and the one who lives on Elm Street is a nun. Then the circumstances make it embarrassing for the subject.



Elements of Libel

There are three elements that **MUST** be present before something is libelous. There is also a fourth element that may determine whether something is libelous or not. Again, we are assuming information that is untrue.

The first element that must be present is identification. The person whose reputation is damaged must clearly be identified. Using a person's name is identification, but so is a description of the person so that most people would rightly suspect who you are talking about. As in this example:

The intern, who was not identified by name, is said to be the only female intern on staff.

That pretty much limits it. But the description might not need be that specific to identify the person the story is about. You cannot be libeled unless the description narrows the field of suspects down. A group cannot be libeled, though individuals in the group might argue that a description was so vague that it impugned them along with the guilty party.

The second element that must be present is publication. The defamation must be passed on to a third party. If I write defaming things about you, but only share them with you, no libel has taken place. But if I publish them in a paper, announce them on air, or distribute them via e-mail, publication has taken place. One reporter was accused of publication of defamatory material simply because of the types of questions he asked other sources about an individual.

The third element that must be present is defamation. Just writing something bad about someone does not qualify as defamation. The information must change people's minds and those people will now avoid, shun, harass, etc. the subject because of the statements. If a person has a reputation of being a mobster, then writing that he is not necessarily defamatory. Also, a writer is free to state opinions about someone. It is when the opinions are stated as fact that they become a problem. Note the difference between the following statements.

- I think John Smith is a crook and should be punished.
- John Smith committed the crime and should be punished.

All three of those elements -- identification, publication and defamation -- must be present or there is no libel.

A fourth element may also determine whether a defamatory statement is actionable. It is called fault. To what degree was the reporter at fault for the statement. Just saying that "I was only repeating what I heard from Jane Smith" is not enough. How credible was Jane Smith? How careful was the reporter in checking that what Jane Smith said was true or was probably true? Fault usually is determined only after the three other elements are determined. The degree of fault that is considered varies from case to case.

Defenses to libel

All of the above could be present and libel not take place. In fact, any story that contains controversial information about someone is likely to have at least the three necessary elements.

There are a number of defenses the media legitimately have against a libel claim.

The first of these is truth. If what is written is true, then it cannot be libelous. Of course, there is truth and then there is TRUTH. "Everybody knows it is true" is not a good enough defense. Reporters are warned that they might have to prove the truthfulness in a court of law using legal rules of evidence. If the reporter feels confident that can be done, there is less problem. In other words, check the facts.

Of course, if someone has already been found guilty in a court of law, then it is provably true. But what do you do about someone like O.J. Simpson? He was found not guilty in a criminal prosecution of killing his wife. But in a civil court, he was found culpable . . . more guilty than innocent, but more innocent than guilty.

A second defense is privilege. Privilege comes in two forms:

- Absolute privilege is something that is protected by law, statute or judicial rule. Thus, accusing someone of committing a crime while sitting in the witness stand would be protected. A police officer filling out a crime report could include an interpretation of the facts that might be defamatory, but be protected.
- Qualified privilege is a fair and accurate summary of something that has an absolute privilege. For instance, the police report or the testimony in court might have an absolute privilege, but the reporter writing a story based on the information in those reports would have a qualified privilege as long as the story is a fair and accurate summary of the information contained in the report.

Still another defense is fair comment. In 1964 the Supreme Court ruled in the case of *New York Times vs. Sullivan* that the media should be allowed to make fair comment about public officials without fear of making misstatements. The court ruled that public officials, those who are elected to office or appointed by elected officials, could not sue for libel unless they first proved actual malice. Actual malice takes place when the reporter knows the information is incorrect, or suspected that the information was incorrect and didn't bother to check, or should have known the information was incorrect and had the opportunity to check its validity, but did not.

Since that case the concept of public official has been expanded to include public figures as well. But who is a public figure? Clearly a movie star or a rock star or a star athlete fits into that category. But it gets cloudy after that. Is a football coach a public figure? If coach of a nationally recognized team, yes. If coach of Cerritos College, maybe. Certainly the coach of the Cerritos team is not a public figure in the *New York Times*. But he might be in the *LA Times* or the *Long Beach Press-Telegram*. He certainly is in the *Cerritos College Talon Marks*. In other words, whether someone is a public figure might come down to where and under what circumstances publication takes place.

Non-public officials and non-public figures do not have to prove actual malice. But keep in mind that opinions are protected none-the-less. The *New York Times* is free to question the effectiveness of the Cerritos Coach in an opinion piece. But even in the opinion column, when opinions are stated as fact they might become actionable.

Damages of Libel

Okay, let's assume that libel has taken place. The three necessary elements are there. There is no defense. What can the aggrieved party sue for? There are three types of damages.

- **General damages** -- This is for loss of reputation. How much is your reputation worth? And how much has it been damaged? The aggrieved party might have an over-inflated opinion of the worth of her reputation . . . and how badly it has been damaged. The courts might have to sort through those questions, but have lots of experience in doing so.
- **Special damages** -- This is for out-of-pocket expenses, including attorney fees. The aggrieved party might have lost a job because of the libel. The courts will have to determine how much was lost or how much will be lost until the aggrieved party can recover from the damage done by the libel.
- **Punitive damages** -- This is designed to punish the defendant for inappropriate behavior. And this is the biggest area of a lost suit. The court might determine that your reputation is only worth \$50,000 and was damaged 50 percent (\$25,000). The out-of-pocket expenses might be another \$25,000 for a total of \$50,000. But the jury might decide to punish the paper to the tune of \$5 million.

And keep in mind that the person who committed the libel might be a reporter straight out of school and who is earning something just over minimum wage. Maybe that reporter was sick the day the class learned about libel. It is important that those working in the media know and understand the law of libel.

Retractions

What about retractions? Couldn't I just say, "Sorry?" The rules vary from state to state. Here in California, a plaintiff -- the one who wants to sue -- has to ask for a retraction before he/she can sue for libel.

That request must come within one year of finding out about the libel. The publication or broadcast station has 30 days in which to respond with a retraction, or until the next publication if it publishes less than monthly.

If the defendant agrees that there was an error and published the retraction -- which does not have to include an apology, only a clarification of the facts -- then no punitive damages can be sought. Of course, since the defendant has admitted to making a mistake, the plaintiff will prevail on general and special damages.

Or the defendant can stand behind the original statement and force the plaintiff to prove the libel. That can be tough.

It is quite common for people upset with a story about them to threaten to sue for libel. It is less common that they actually go through with the suit unless proving the elements will be easy. If the person is a public figure, he/she must prove actual malice, which can be extremely difficult.

Reading Assignment

You should be reading the chapter on media law in your textbook to get more information about media law and the First Amendment.

Exercise

Very briefly, outline the types of libel, the elements of libel, the defenses of libel and the damages of a libel suit.

Note that when submitting the answer start the subject line with:

J100x - YourLastName - Libel

Send to rcameron@cerritos.edu