

DEFAMATION

What is Defamation

The basic idea of defamation law is simple. It is an attempt to balance the private right to protect one's reputation with the public right to freedom of speech. Defamation law allows people to sue those who say or publish false and malicious comments.

There are two types of defamation.

- Oral defamation -- called *slander* *
- Published defamation -- called *libel* -- for example a newspaper article or television broadcast. Pictures as well as words can be libellous.

Anything that injures a person's reputation can be defamatory. If a comment brings a person into contempt, or ridicule. A letter to the publisher stating that a Muslim Organization in the US has connection to a terrorist group abroad is likely to be defamatory even if it is not published.

* You say on television that a building was badly designed. That's libel due to the imputation that the architect is professionally incompetent, even if you didn't mention any names.

* You sell a book that contains defamatory material. That's spreading of defamation.

The fact is, nearly everyone makes defamatory statements almost every day. Only very rarely does someone use the law of defamation against such statements.

Defenses

When threatened with a defamation suit, most people focus on whether or not something is defamatory. But there is another, more useful way to look at it. The important question is whether you have a right to say it. If you do, you have a legal defense.

If someone sues you because you made a defamatory statement, you can defend your speech or writing on various grounds. There are three main types of defense:

- * what you said was true;
- * you had a duty to provide information;

* you were expressing an opinion.

For example:

* You can defend yourself on the grounds that what you said is true.

* If you have a duty to make a statement, you may be protected under the defense of "qualified privilege." For example, if you are a teacher and make a comment about a student to the student's parents -- for example, that the student has been naughty -- a defamation action can only succeed if they can prove you were malicious. You are not protected if you comment about the student in the media.

As a publisher

* If you are expressing an opinion, for example on a film or restaurant, then you may be protected by the defense of "comment" or "fair comment," if the facts in your statement were reasonably accurate.

* There is an extra defense if you are a parliamentarian and speak under parliamentary privilege, in which case your speech is protected by "absolute privilege," which is a complete defense in law. The same defense applies to anything you say in court.

What can you do when you are defamed

* You can threaten the defendant with a defamation suit.

What do you do. You write might receive a letter saying that unless you retract a statement, you will be sued. Often threat are enough to deter someone from speaking out, or enough to make them publish a retraction.

However, if the organization or individual who defame you knows that you do not have the financial means nor will to file a lawsuit will not retract. Especially when the actor is a publisher of a newspaper who has more protection from defamation lawsuits under Sullivan v. NY Times decision which gives more protection to the media to protect the right of free speech.

I would suggest that once an organization or an activist in the community is defamed need to rally members and organizations in the community to support him and show the seriousness of the threat and the readiness to go as far filing a lawsuit.

Members of the community need also to act at once and not say that defamatory statement will vanish with time. The experience I have as a lawyer is that the more you wait and plan for steps the more difficult to rebuff defamatory statements.

This does not mean however that the lawsuit is the only means to redress defamatory statements.

If you choose the legal means file a lawsuit against the persons or organizations that are more or less financially vulnerable. Remember winning a defamatory case against a less notorious defendant will give you leverage and earn you respect by wealth and powerful individuals and institutions.

* The defamation case can go to court, with a hearing before a judge or jury. However, the majority of cases are abandoned or settled. Settlements sometimes include a published apology, sometimes no apology, sometimes a payment, sometimes no payment. Only a small fraction of cases goes to court.

DEFENSES

As a result of the presumptions, many libel cases turn on the defense(s). There are five defenses available. They are:

Truth (a complete defense) – this defense often requires calling eye witnesses. It is expensive and risky. It goes without saying that the plaintiff has been offended by what has been published. He or she has sued. To respond by pleading and publicly proving that the offending statements are true is the defense of last resort for many well-advised defendants.

Fair comment on a matter of public interest (applies to opinion only) – this defense distinguishes between opinion, on the one hand, and the facts on which it is based, on the other. The defendant must prove the facts on which the opinion is based. If challenged, the defendant must establish that the opinion is honestly held.

Privilege (usually qualified, but possibly absolute, on certain specifically defined occasions) – the courts protect all communication where the speaker or writer has a duty or interest (social, moral, or financial) to communicate on a given occasion to specific persons.

A (qualified) privilege is also extended to publication based on a journalist's perception of public interest. A privilege is also accorded to specific types of reports (such as a fair and accurate summary of a court decision or other similar public document, a fair and accurate summary of a public meeting, parliamentary debates, etc.).

Mitigation – this is a defense that is very seldom successful. The defendant seeks to mitigate by proving that the plaintiff didn't have a good reputation to begin with. A previously unblemished reputation is presumed and the defendant who employs the defense of mitigation must prove that the plaintiff, previous to the publication, had a poor reputation generally, not by calling eye-witnesses to specific prior deeds but, rather, by calling witnesses with knowledge of the plaintiff's prior general reputation. This defense turns a trial into a horrendous mud-slinging match, often best avoided

What is not defamation?

Generally, a statement made about an indefinable group of people or organizations cannot be defamation. Peter King statement: Take, "Muslims are evil state agents are crooks." It's defamatory enough, but there is no identifiable victim.

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 redress 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.

Many people who are defamed would like most of all to be able to reply promptly to the same audience that was exposed to the defamatory comments. However, the mass media are notoriously reluctant to publish retractions and frequently fight a case through the courts at great expense rather than provide a prompt opportunity to reply. By comparison, the Net provides a wonderful solution to Net defamation, namely a low cost and timely avenue for replying to the same audience.

If damaging material is posted on the Web or circulated on an e-mail list, one response is to request the author to post a reply and to send a reply to the e-mail list. That is straightforward and happens routinely. If the author refuses to post a reply or to remove the offending material, information about this can be circulated to potentially interested parties on the Net with rapidity, low cost, convenience and precision that is impossible to match with mass media, much less the courts.

Things look better on paper, but in practice defamation law often restrains free speech and a lot of times the courts defer to free speech and first amendment under the constitution

There are hundreds of cases where the Courts usually believe that the U.S. defamation law has been used to intimidate citizens who write letters of or opinion that serves the public interest. Under this presumption groups discredit the Muslim community like and manipulate the system under free speech.

The Net cannot solve all these problems at a stroke, but it does offer the potential to get around one major obstacle: how to publish material when the mass media are scared away by the threat of defamation. The answer: put it on the Web or an e-mail list.

Statements of facts, idea and opinion.

Media and publisher:

In each of these cases, the statements must be published as facts, not opinions or ideas. For example, writing, "I think that [someone] is accepting bribes." is not libel because it is published as an idea of the publisher. On the other hand, if the publisher writes, "[Someone] is accepting bribes." and the statement is proved to be false, then the publisher can be considered guilty of libel.

However, the "I think" or "I believe" clause is not always a valid exemption from libel law, if the implication is that the author is indeed attempting to convey factual information. Eric S. Freibrun observes:

"The issue of whether an allegedly defamatory statement is one of opinion or fact is one of the more difficult and common questions in a defamation suit. Courts have held that merely prefacing an otherwise defamatory statement with the words "I believe..." is not enough to eliminate the implication that the statement was intended to communicate facts."

Plaintiff must prove malice: qualified privilege

The plaintiff must prove that some form of damage occurred from the published statement. The damage may have been tangible losses, such as the loss of a job, financial loss, or the damage may have been intangible such as the loss of reputation and respect in a community.

Public figures:

The "Public Figure" Issue

Traditional defamation law, as defined in the courts, distinguishes between the public figure and the private individual when considering the seriousness of a transgression. The public figure is viewed differently for two reasons:

- The public figure has made the choice to enter the public eye and face the difficulties that may arise as a result of this status
- The public figure has greater access to news media than the private individual and can therefore defend himself more effectively

Public figures such as politicians have less protection under libel law as plaintiff and more protection under libel as defendants. (Qualified immunity for m law suit unless plaintiff can prove malice and is outside parliamentary hearings and are also than average individuals.

As plaintiffs they cannot take action unless they can prove that the statement published about them is of malicious intent and not simply of misinformation. The reasoning behind this is that in theory a public figure can restore his or her reputation more quickly and easily expressly because he or she is already in the public eye and commands the attention of that public.