

Truth Is A Defense To A Claim Of Defamation

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"The truth is incontrovertible, malice may attack it, ignorance may deride it, but in the end; there it is." –Winston Churchill

Truth is a complete defense to a claim of defamation.

It is the great equalizer in any libel or slander suit. It is what the plaintiff's lawyer fears the most; that what his client's accuser says is true. It does not matter that the defendant made the statement out of malice or out of bad faith, so long as the statement is true. *Washer v. Bank of America* (1948) 87 Cal.App.2d 501, 509; *Campanelli v. Regents of Univ. of Calif.* (1996) 44 Cal.App.4th 572, 581; Rest. 2d, Torts § 581A; *Francis v. Dun & Bradstreet* (1992) 3 Cal.App.4th 535, 540 (credit report, even one causing harm, is not defamatory if true); *Ellenberger v. Espinosa* (1994) 30 Cal.App.4th 943, 953 (statements as to dentist's misconduct were true given Board of Dental Examiner's determination that dentist had been grossly negligent and in violation of provisions of Business and Professions Code).

So what does it mean to establish truth? Does that mean the defendant must establish the truth of his statements in every particular? Surprisingly, the answer is no.

It is sufficient if the defendant proves that the substance or the "gist" of the statement is true. *Heuer v. Kee* (1936) 14 Cal.App.2d 710, 714; *Gantry Const. Co. v. American Pipe & Const. Co.* (1975) 49 Cal.App.3d 186, 194 ("The concept that it is the gist or sting of the alleged defamatory statements that must be false rather than the specific details of the charge is deeply rooted in our common law."). *Weller v. American Broadcasting Cos.* (1991) 232 Cal.App.3d 991, 1009, footnote, 17; See *Campanelli, supra* (admission that plaintiff basketball coach engaged in tirades so bad that seven

players were thinking of quitting established truth of defendant's assertion that players "were in trouble psychologically"). But who bears the burden of proof? The previous rule in California was that the plaintiff needed to plead that the statements were false. This is no longer required. The burden of pleading and proving that the statements are true rests squarely on the shoulders of the defendant. See *Lipman v. Brisbane Elementary School Dist.* (1961) 55 Cal.2d 224, 233.

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